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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

CLASS ACTION

**DECLARATION OF ISAM C. KHOURY 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

1 I, Isam C. Khoury, declare as follows:

2 1. I am a Founding Partner at the law firm of Cohelan Khoury & Singer, co-counsel
3 of record for Plaintiff Juan Garcia in this consolidated action. I submit this declaration in
4 support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Representative
5 Action Settlement. The following facts are within my personal knowledge and if called to
6 testify I could and would competently testify to them.

7 2. Pursuant to Sacramento Local Rule 2.99.05(C), I have reviewed the Court's
8 Checklist for Approval of Class Action and/or PAGA Settlements and confirmed Plaintiff's
9 Motion for Preliminary Approval of Class and PAGA Representative Action Settlement
10 complies with the guidelines.

11 3. I am a 1973 Hastings School of Law graduate and was admitted to the California
12 State Bar in 1974 and am admitted to practice in all state courts in California and in the all
13 federal courts in California, as well as the First Circuit Court of the State of Hawaii and the
14 United States Court of Appeals for Sixth Circuit.

15 4. In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a Partnership of
16 Professional Law Corporations, and within a few years began to focus on class actions. Cohelan
17 & Khoury became Cohelan Khoury & Singer in 2009. Our firm represents plaintiffs in class and
18 representative action litigation, including wage and hour, labor and employment, antitrust,
19 consumer protection, construction defect and other public interest class and representative
20 actions.

21 5. I, along with Partner Diana M. Khoury, have been selected by our peers based on
22 ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
23 California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer,
24 Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California
25 Labor and Employment Attorneys and selected to the Southern California Super Lawyers in
26 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment
27 Attorneys in 2020. I am AV – Preeminent rated by Martindale-Hubbell, as are many attorneys
28 in our firm.

1 6. Cohelan Khoury & Singer has been certified by the State Bar of California to
2 provide the Mandatory Continuing Legal Education activity entitled “Litigating California Class
3 Actions” and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.
4 Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated annually),
5 part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing
6 author on the CEB publication California Wage and Hour Law: Compliance and Litigation
7 (2010-2022 updated annually), in which he wrote the opening chapter overview on California
8 Wage and Hour laws, including the public policy underpinnings for those laws, and the Private
9 Attorneys General Act (“PAGA”) Claim chapter. He is also a contributing author to the CEB
10 Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr.
11 Singer has served as a columnist for the California State Bar, Litigation Section on wage and
12 hour litigation and has contributed articles on wage and hour and class action issues through the
13 years to numerous California publications.

14 7. Prior to COVID-19, Mr. Singer typically lectured several times per year for
15 continuing education courses on wage and hour and class action issues at events in San Diego,
16 Orange County, Los Angeles, and San Francisco. For over twelve years, he has served as wage
17 and hour amicus co-chair and liaison for the California Employment Lawyers Association,
18 drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California
19 Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
20 employment law since 2000, handling well over 300 wage and hour class and PAGA actions
21 and several individual labor cases. He has litigated several types of employment actions,
22 including complex ERISA employee welfare benefit plan cases, as well as wage and hour class
23 actions before Federal and State Courts in California. In 2014, Mr. Singer tried a wage and hour
24 class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v*
25 *Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in *Dilts*
26 finding state laws preempted by the FAAAA for truck drivers. Mr. Singer has participated in
27 over 50 appellate cases and argued writs and appeals before several California District Courts of
28 Appeal, arguing for plaintiffs on rehearing in *Brinker International Inc. v. Superior Court*

1 before the Fourth District Court of Appeal, as well as federal appeals in the Second, Third, and
2 Ninth Circuit Courts of Appeals. In addition, Mr. Singer has drafted numerous appellate briefs
3 as the appellant, respondent, or amicus curiae in employment class and individual actions. As
4 co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly reported at
5 (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District Court of Appeal in
6 May 2008 on transfer from the California Supreme Court, and co-authored the successful
7 Petition for Review.

8 8. My firm has successfully tried class cases, obtained appellate reversals of class
9 certification denials (*e.g. Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), and has
10 certified multiple wage and hour class.

11 9. As a part of our overall firm philosophy lawyers perform community service and
12 pro bono work. Firm volunteer work includes service through Legal Aid at Work, San Diego
13 Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of
14 San Diego. I am a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr.
15 Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served
16 as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits
17 on the Board as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro
18 Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana M.
19 Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of
20 San Diego, Consumer Attorneys of California, and American Association for Justice serving
21 and chairing various committees through the years for these organizations. For six years from
22 2010 through 2015, Ms. Khoury served on the Board of Directors for Consumer Attorneys of
23 San Diego. Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego
24 County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association
25 providing access to justice to the underserved and impoverished in the San Diego County
26 region. Our firm's pro bono victories include a settlement which prohibits the City of San Diego
27 from targeting homeless people for illegal lodging tickets under Penal Code Section 467(j).
28 (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer*

1 settlement had the effect of increasing the number of available shelter beds in San Diego.

2 10. Cohelan Khoury & Singer has been certified Class Counsel in the following
3 contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court
4 Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court
5 Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*,
6 Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND*
7 *HOURLY EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of
8 Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
9 United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v.*
10 *Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California
11 Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the
12 Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*,
13 Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United
14 States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les*
15 *Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-
16 300000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
17 *PICS*, Los Angeles County Superior Court Case No. BC472891; *Gutierrez v. Save Mart*
18 *Supermarkets*, San Mateo County Superior Court Case No. CIV530955; *Wilcox v Albertsons*,
19 San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al. v. Freedom*
20 *Communications, Inc. d/b/a The Orange County Register*, Orange County Superior Court Case
21 No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District Court,
22 Southern District of California Case No. 10CV0672 (FLSA Conditional Certification); *Hicks v.*
23 *Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No. B198414;
24 *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior Court
25 Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State of
26 Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County
27 Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and*
28 *Marketing Company*, United States District Court, Central District of California Case

No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of California Case No. 10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330, among others, as well as being appointed Class Counsel in connection with well over 200 class action settlements.

11. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively commenced, prosecuted and concluded numerous state and federal class and representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the resolution of over 200 such cases, including the following, which have received court approval: (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYs*, United States

1 District Court, Central District of California Case No. 18-cv-00415, Hon. David O. Carter; (e)
2 *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court Case No. BC472891,
3 Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County
4 Superior Court Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce*
5 *Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu
6 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court
7 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
8 Orange County Superior Court Case No. 2018-01017838; (j) *Klein v. Loomis Armored US,*
9 *LLC*, San Bernardino County Superior Court Case No. CIVDS1704547, Hon. David Cohn; (k)
10 *Laureano v. The Art of Shaving*, Los Angeles County Superior Court Case No. BC550093, Hon.
11 Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States
12 District Court, Southern District of California Case No. 17-CV-010624 JM, Hon. Jeffrey T.
13 Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No.
14 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development*
15 *Corporation, et al.*, United States District Court, Southern District of California Case. No. 15-
16 CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles
17 County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The*
18 *Los Angeles Country Club*, Los Angeles County Superior Court Case No. BC566493, Hon.
19 William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara
20 County Superior Court Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v.*
21 *Aramark Services, Inc.*, Santa Clara County Superior Court Case No. 2015-1-CV-288310, Hon.
22 Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court
23 Case No. CIVDS1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, United States District
24 Court, Northern District of California Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney;
25 (u) *Rivas v. ESA Management*, United States District Court, Central District of California Case
26 No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group,*
27 *Inc.*, Los Angeles County Superior Court Case No. BC541313, Hon. Kenneth Freeman; (w)
28 *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371,

Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, United States District Court, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among many others.

12. 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. Plaintiff alleges Backyard Products misclassified these persons as independent contractors, rather than employees, and thus: failed to pay all straight time, overtime, reporting time, and final wages; failed to provide meal and rest periods and accurate wage statements; failed to reimburse expenses; and violated the unfair competition law ("UCL"). Attached hereto as Exhibit 1 is a true and correct copy of the Class Action and PAGA Settlement Agreement and Class Notice.

13. 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

1 believe was a widespread issue.

2 14. Plaintiff alleges this failure to reimburse expenses may also constitute a
3 deduction from wages under Labor Code section 221. Because this is an alternative theory, it is
4 not separately assessed for damages herein. Together, the Class Action Complaint and PAGA
5 Complaint are called the “Operative Complaints.” Attached as Exhibit 2 is a true and correct
6 copy of Plaintiff’s Class Action Complaint, *Garcia v. Backyard Products LLC*, Sacramento
7 Superior Court Case No. 24CV009779, filed May 17, 2024; Exhibit 3 is a true and correct copy
8 of Plaintiff’s PAGA Complaint, *Garcia v. Backyard Products LLC*, Sacramento Superior Court
9 Case No. 24CV019984, filed October 2, 2024; Exhibit 4 is a true and correct copy of
10 Plaintiff’s PAGA Notice, May 6, 2024.

11 15. Class Members and Aggrieved Employees are referred to herein as “Installers.”

12 16. As an Installer, Plaintiff’s job was to: accept a job through Backyard Products’
13 mobile application, “Skedulo;” pick up an unassembled shed or playset, including instructions,
14 from a Backyard Products’ warehouse; drive to the customer’s site with it; install it; and notify
15 Backyard Products of status updates and of when he completed the installation. To accomplish
16 his job, Plaintiff used his personal cell phone, personal vehicle, and tools he purchased, and
17 purchased his own liability insurance.

18 17. Plaintiff executed a Subcontractor Installer Agreement with Backyard Products
19 which included an arbitration agreement and class action waiver.

20 18. Settlement Class Members are all persons who performed installation services
21 for Defendant in California during the Class Period as an independent contractor who do not
22 timely and properly opt out. The Class Period is from September 1, 2020 through April 30,
23 2025. Aggrieved Employees are all persons who performed shed construction services for
24 Defendant in California during the PAGA Period as an independent contractor. The PAGA
25 Period is from July 29, 2023 through April 30, 2025. Defendant estimates there are 509 Class
26 Members, who performed a total of 17,677 Installations, and 153 Aggrieved Employees.
27 Aggrieved Employees will not be able to opt out of the settlement, and release, of PAGA
28 claims.

1 19. Aggrieved Employees, and PAGA Members, are used interchangeably in the
2 Settlement Agreement. For consistency, Plaintiff uses only Aggrieved Employees herein.

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

6 21. To effectuate the Settlement, the Parties sought, and on June 12, 2025 were
7 granted, consolidation of the Class Action and Representative Action, with the Class Action
8 serving as the lead case.

9 22. Prior to mediation, Plaintiff obtained, through informal discovery, pay data,
10 exemplar contracts, recruiting and advertisement documents, and information relating to the
11 size and scope of the Class, as well as data permitting Plaintiff to fully understand the nature
12 and scope of the allegations in the Complaint.

13 23. Backyard Products provided that, through January 15, 2025, there were 509
14 Class Members (35 of whom had worked in the last 30 days) who performed 17,677
15 Installations, and 153 Aggrieved Employees who performed 8,960 Installations. Backyard
16 Products provided that its review of the Skedulo application showed the majority of
17 Installations were completed within a single day.

18 24. Plaintiff imputed an average Installer hourly rate of pay of \$17.50 by dividing his
19 average pay per Installation (\$350) by the average time it took him to complete the Installation
20 over two days (20 hours).

21 25. The Parties excluded the builders and installations covered by a prior settlement,
22 in the case of Brian Dunn v. Backyard Products, LLC, Riverside Superior Court Case No. RIC
23 1901927, that covered a Class Period of March 18, 2015 through August 31, 2020, and that was
24 subject to a separate release.

25 26. Plaintiff contends Installers were misclassified as independent contractors under
26 the "ABC Test" or, alternatively, the right-to-control test.

27 27. As to the "ABC Test," Plaintiff contends Installers: (a) were not free from the
28 control and direction of Backyard Products, because they performed installations according to

1 Backyard Products' specifications; (b) did Backyards Products' usual business by installing
2 sheds and playsets produced by Backyard Products; and (c) did not customarily engage in
3 independently established trades.

4 28. Plaintiff contends this misclassification was willful, subjecting Backyard
5 Products to penalties under Labor Code section 226.8.

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

10 30. Plaintiff contends Class Members were only paid for Installations, and as such,
11 were not paid all hourly wages they were owed for all time worked.

12 31. Specifically, Plaintiff contends Installers were not paid for time spent: driving to
13 pick up unassembled sheds; driving to Installation sites; and communicating with Backyard
14 Products regarding Installations.

15 32. Plaintiff contends each Installation required him to work about three (3) hours of
16 unpaid straight time.

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

21 34. Plaintiff contends Backyard Products did not have any meal or rest period
22 policies and did not authorize and permit 30-minute, uninterrupted meal periods or 10-minute
23 rest periods.

24 35. Backyard Products contends: Installers were independent contractors not subject
25 to the Labor Code requirement to provide meal and rest breaks; Installers could decide
26 independently when to take breaks because they had no Backyard Products' supervision during
27 Installations; and that the overwhelming majority of shed Installations could be completed in
28 4.5 hours or less, before the entitlement to a meal period would arise.

1 36. Plaintiff contends Installers had to use their personal cell phones, vehicles, and
2 tools, and had to purchase their own liability insurance under the Subcontractor Installer
3 Agreement, to perform Installations for Backyard Products, but that Backyard Products had no
4 policy to, and did not, reimburse them for these necessary business expenses. Installer vehicle
5 expenses included: insurance, maintenance, fuel, and mileage. Installer tool expenses included:
6 ladders, roofing/framing guns, compressors, and hoses.

7 37. Backyard Products contends Installers were independent contractors not subject
8 to the Labor Code requirement to reimburse necessary business expenses.

9 38. Plaintiff contends Backyard Products willfully failed to issue wage statements
10 and timely final wages to Installers.

11 39. Backyard Products contends Installers were independent contractors not subject
12 to the Labor Code requirements to provide wage statements and timely final wages.

13 40. Backyard Products will pay a Gross Settlement Amount (“GSA”) of \$1,350,000
14 based on 17,677 installations performed by the Class, which includes: (a) an Administration
15 Expenses Payment to Administrator ILYM Group, Inc. (“ILYM” or “Administrator”) not to
16 exceed \$10,000; (b) a Class Counsel Fees Payment of not more than one-third of the GSA,
17 currently estimated as \$450,000, and a Class Counsel Litigation Expenses Payment not to
18 exceed \$30,000; (c) a Class Representative Service Payment not to exceed \$10,000 to Plaintiff;
19 and (d) PAGA Penalties of \$75,000—\$56,250 to the LWDA (75%) and \$18,750 (25%) to
20 Aggrieved Employees.

21 41. The remainder, estimated at \$775,000, is the Net Settlement Amount. Plaintiff
22 has consented in writing to the division of attorneys’ fees between Mara Law Firm (50%) and
23 Cohelan Khoury & Singer (50%). Current actual itemized costs total \$16,355.41. Attached as
24 Exhibit 5 is a true and correct copy of Class Counsel’s Itemized Costs.

25 42. Plaintiff anticipates incurring a few hundred dollars more in costs in filing the
26 instant motion and motion for final approval.

27 43. The Net Settlement Amount (est. \$775,000) will be divided by the total number
28 of Class Period Intallations (approximately 17,677), resulting in payment of approximately

1 \$43.84 per Installation performed to each Participating Class Member.

2 44. The Aggrieved Employees' share of the \$75,000 PAGA Penalties (\$18,750) will
3 be divided by the total number of PAGA Period Installations (approximately 8,960), resulting in
4 payment of approximately \$2.09 per PAGA Period Installation.

5 45. The average Participating Class Member Payment will be \$1,522.59 (\$775,000
6 NSA/509 Class Members), and the average Aggrieved Employee Payment will be \$122.55
7 (\$18,750/153 Aggrieved Employees).

8 46. Participating Class Members release Released Parties from all claims that were
9 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
10 Complaints, for the Class Period.

11 47. Aggrieved Employees release Released Parties from all claims for PAGA
12 penalties that were alleged, or reasonably could have been alleged, based on the facts stated in
13 the PAGA Action and the PAGA Notice, for the PAGA Period.

14 48. Plaintiff releases Released Parties "from all claims" arising during the Class
15 Period, and also waives the protections of California Civil Code section 1542.

16 49. All Parties have agreed to the proposed language of the Class Notice.

17 50. Within fifteen (15) calendar days of Preliminary Approval, Defendant will
18 provide the Class Data to ILYM.

19 51. Within fourteen (14) calendar days after receiving the Class Data, ILYM will
20 search the National Change of Address Database to update and correct addresses, and will mail
21 a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail. Attached
22 as Exhibit 1(A) is a true and correct copy of the Class Notice.

23 52. For Class Notices returned as undeliverable, ILYM will skip-trace search for an
24 alternate address and re-mail the Class Notice within three (3) business days.

25 53. In the event that a Class Notice is re-mailed to a Class Member, the Response
26 Deadline for that Class Member shall be extended by fourteen (14) calendar days.

27 54. The Class Notice informs all Class Members about the claims, the terms of the
28 Settlement, the releases, the anticipated distribution, the amount of fees and expenses being

1 requested by Class Counsel, the amount of the Service Payment being requested by Plaintiff,
2 and how Class Members can dispute the number of Installations allocated to them, object to the
3 Settlement, and request exclusion from the Settlement, as well as the timeline for doing so.

4 55. Further, the Class Notice will include the date and place of the final approval
5 hearing, as well as information regarding how Class Members may access the proceedings
6 remotely.

7 56. All settlement checks mailed out will expire after one hundred eighty (180) days.

8 57. The total amount of expired checks will escheat to the State of California's
9 Controller, to be held in the name of each expired check payee, pursuant to applicable
10 unclaimed property laws. The Parties agree that this disposition results in no "unpaid residue"
11 under California Civil Procedure Code section 384.

12 58. In deciding whether to approve a proposed class action settlement the Court must
13 find a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996)
14 48 Cal.App.4th 1794, 1801. A proposed settlement is presumed fair where: (1) parties settle
15 after extensive arms'-length negotiations; (2) sufficient investigation and discovery allow
16 counsel and the Court to act intelligently; (3) counsel is experienced; and, (4) the percentage of
17 objectors is small. *Dunk*, 48 Cal.App.4th at p. 1802. Here, the first three factors are met.

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

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

23 61. Plaintiff's Counsel have significant experience in wage and hour class actions.
24 This allowed Counsel to compare the settlement with the risks of further litigation, including
25 trial and appeals.

26 62. Defense counsel, Ashton Riley and Josh Klein of Fisher Phillips LLP, are
27 experienced wage and hour class action litigators who defended Backyard Products vigorously,
28 including through mediation and negotiation of all settlement terms.

63. 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 Reimbursements) + \$61,200 (Wage Statement Penalties) + \$196,350 (Waiting Time Penalties) = \$1,621,828.38. $\$1,350,000 / \$1,621,828.38 = 83$ percent.

64. 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.

65. 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; defeat certification given the need for individualized inquiries as to damages; and at summary judgment or trial, prove Plaintiff was properly classified as an independent contractor.

66. 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 Backyard Products might avoid paying these damages if it showed its omission was “in good faith” and based on “reasonable grounds.”

67. Plaintiff does not contend for this analysis that Backyard Products’ 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; $\$15.00 \times 1.5 = \$22.50$. 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

1 should have been paid at least \$330 per Installation (16 x \$15.00 + 4 x \$22.50, or \$240 + \$90).
2 As he was paid approximately \$350, Plaintiff does not contend there was a shortfall of
3 minimum or overtime wages paid by Backyard Products for Installations.

4 68. Maximum meal and rest period premium wages were calculated, each, as:
5 17,677 Installations x 2 days per Installation x \$17.50 per hour x 1 premium = \$618,695. For a
6 realistic exposure, Plaintiff discounted meal and rest period premiums by 90%, to \$154,673.75,
7 given the common risks above, and given that Backyard Products might prove the majority of
8 Installations took less than five hours to complete, meaning no meal periods were due, and that
9 Installers were free to take meal and rest periods when they pleased, given no Backyard
10 Products' supervision on site.

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

23 70. Maximum wage statement penalties were calculated as: 153 Installers x \$4,000
24 maximum penalty under section 226(e) = \$612,000. For a realistic exposure, Plaintiff
25 discounted wage statement penalties by 90%, to \$61,200, given the common risks above, and
26 given most Installers likely worked far fewer than the 41 pay periods which would entitle them
27 to the maximum \$4,000 in penalties.

28 ///

71. Maximum waiting time penalties were calculated as: 374 Installers x 30 days x average daily wage of \$175.00 = \$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.

72. Backyard Products Installers were paid per Installation, via direct deposit.

73. Each Installation can be viewed as its own pay period.

74. 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; decline to stack PAGA penalties; decline to award the maximum penalties as they would be "unjust, arbitrary and oppressive, or confiscatory," 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.

75. The \$75,000 PAGA Penalties will be paid \$56,250 (75%) to the LWDA, and \$18,750 (25%) to Aggrieved Employees.

76. 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.

77. Further, the percentage of maximum exposure achieved by the PAGA Penalties is in line with those accepted by other California district courts.

78. Finally, the Motion and exhibits were provided to the LWDA on the date filed. Attached hereto as Exhibit 6 is a true and correct copy of the LWDA Confirmation of Receipt.

79. 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.

80. Courts often award fees equaling one-third of the gross recovery in class action settlements. Class Counsel have been awarded one-third of the common fund in numerous class action and PAGA actions.

81. Since 2020, Cohelan Khoury & Singer has been awarded one-third of a common fund in many class and representative action settlements, including:

a) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838 (Hon. Glenda Sanders – approving attorneys' fees of 33-1/3% of \$175,000 settlement in a PAGA action).

b) *Redin v. Accountabilities Professional Group, Et al.*, Orange County Superior Court, Case No. 2017-00929734 (Hon. Glenda Sanders –attorneys' fees of 33-1/3% of \$255,000 settlement in Class action).

c) *White v. Sacramento Regional Transit District*, Sacramento County Superior Court, Case No. 234-2018-00240461 (Hon. David D. Alba –attorneys' fees of 33-1/3% of \$385,000 settlement in Class action).

d) *Burris v. Resort Vacations, Inc.*, Orange County Superior Court, Case No. 30-2018-00997260 (Hon. Randall J. Sherman –attorneys' fees of 33-1/3% of \$1,485,000 settlement in Class action).

e) *Jimenez v. Reyes Holdings, LLC, et al.*, San Diego County Superior Court, Case No. 37-2019-00051577 (Hon. Joel R. Wohfeil –attorneys' fees of 33-1/3% of \$650,000 settlement in Class and Representative action).

f) *Santos, et al. v. National General Management Corp.*, San Bernardino County Superior Court, Case No. CIVDS 1918865 (Hon. David Cohn –attorneys' fees of 33-1/3% of \$680,000 settlement in PAGA action).

g) *Loreto v. General Dynamics Information Technology, Inc.*, USDC Southern District of California, Case No. 3:19-cv-01366-GPC-MSB (Hon. Gonzalo P. Curiel –attorneys' fees of 33-1/3% of \$900,000 settlement in a pre-certification wage and hour class action).

h) *Romanov v. Amazon Services LLC.*, USDC Central District of California, Case No. 2:20-cv-02692-SB-KS (Hon. Stanley Blumenfeld, Jr. – approving attorneys' fees of 33-1/3% of \$700,000 settlement in a pre-certification wage and hour class action).

i) *Olson v. Wrike, Inc.*, Santa Clara County Superior Court, Case No. 20CV366599 (Hon. Patricia M. Lucas – approving attorneys' fees of 33-1/3% of \$2,000,000 settlement in a pre-certification wage and hour class action).

j) *Gutierrez v. Kite Electric Incorporated*, Orange County Superior Court, Case No. 30-2020-01133960 (Hon. Peter J. Wilson – approving attorneys' fees of 33-1/3% of \$458,991 settlement in a pre-certification wage and hour class action).

1 k) *Ramos Gonzalez v. Staff Pro, LLC, et al.*, San Diego County Superior Court,
2 Case No. 37-2019-00044561 (Hon. Joel R. Wohfeil –attorneys’ fees of 33-1/3% of \$1,500,000
settlement in Class and Representative action).

3 l) *Dolan v. Abacus Data Systems, Inc.*, San Diego County Superior Court, Case No.
4 37-2019-00051447 (Hon. Katherine Bacal –attorneys’ fees of 33-1/3% of \$600,000 settlement
in Class and Representative action).

5 m) *Lopez, et al. v. Pacific Gas and Electric Company.*, San Francisco County
6 Superior Court, Case No. CGC-17-562970 (Hon. Richard B. Ulmer, Jr. –attorneys’ fees of 33-
1/3% of \$350,000 settlement in Class and Representative action).

7 n) *Popal v. Wells Fargo Bank, National Associate*, San Diego County Superior
8 Court, Case No. 37-2020-00038101 (Hon. Gregory W. Pollack –attorneys’ fees of 33-1/3% of
\$3,000,000 settlement in Class and Representative action).

9 o) *Randolph v. Konica Minolta Business Solutions U.S.A., Inc.*, Sacramento County
10 Superior Court, Case No. 34-2018-00237087 (Hon. Lauri A. Damrell – attorneys’ fees of 33-
1/3% of \$325,000 settlement in Class and Representative action).

11 p) *Sanchez, et al. v. Renzenberger, Inc. et al.*, Los Angeles County Superior Court,
12 Case No. 19STCV46131 (Hon. Yvette M. Palazuelos – attorneys’ fees of 33-1/3% of
\$2,400,000 settlement in Class and Representative action).

13 q) *De Benning v. Costco Wholesale Corporation*, Sacramento County Superior
14 Court, Case No. 34-2021-00309030 (Hon. Gregory W. Pollack – attorneys’ fees of 33-1/3% of
\$9,000,000 settlement in Class and Representative action).

15 r) *Tam v. Q Tech Corporation*, Los Angeles County Superior Court, Case No.
21STCV18635 (Hon. Elihu M. Berle – attorneys’ fees of 33-1/3% of \$650,000 settlement in
Class and Representative action).

16 s) *Mireles v. Lodi Memorial Hospital Association, Inc., et al.*, San Joaquin County
17 Superior Court, Case No. STK-CV-UOE-2020-0004458 (Hon. Erin Guy Castillo – attorneys’
fees of 35% of \$1,500,000 settlement in PAGA action).

18 t) *Foley, et al. v. Yuen;s Enterprise Obe, Inc., et al.*, San Bernardino County
19 Superior Court, Case No. CIVDSI912925 (Hon. Jessica Morgan – attorneys’ fees of 33-1/3% of
\$2,824,090.50 settlement in Class and Representative action).

20 u) *Schiller v. Ashley Distribution Services, LTD.*, San Bernardino County Superior
21 Court, Case No. CIVDS2013264 (Hon. Jessica Morgan – attorneys’ fees of 33-1/3% of
\$350,000 settlement in Class and Representative action).

22 v) *Caracoza, Jr. v. Ashley Furniture Industries, Inc.*, San Bernardino County
23 Superior Court, Case No. CIVDS2012912 (Hon. Corey G. Lee – attorneys’ fees of 33-1/3% of
\$2,500,000 settlement in Class and Representative action).

24 w) *Morris v. The Lincoln National Life Insurance Company.*, Los Angeles County
25 Superior Court, Case No. 22STCV20426 (Hon. Lawrence P. Riff – attorneys’ fees of 33-1/3%
of \$500,000 settlement in Class and Representative action).

26 x) *Augustine, et al. v United Parcel Service, Inc.*, Los Angeles County Superior
27 Court, Case No. BC636468 (Hon. Stuart M. Rice – attorneys’ fees of 33-1/3% of \$5,188,336.88
settlement in Class and Representative action).

28 y) *Parra, et al. v Aztec Landscaping, Inc.*, San Diego County Superior Court, Case
No. 37-2019-00002992 (Hon. James A. Mangione – attorneys’ fees of 33-1/3% of
\$3,000,000.00 settlement in a certified Class action).

1 z) *Butler v. Powerschool Group LLC*, Sacramento County Superior Court, Case No.
2 34-2021-00299363 (Hon. Jill H. Talley – attorneys’ fees of 33-1/3% of \$898,852.00 settlement
in in Class and Representative action).

3 82. Class Counsel will provide their time records at final approval.

4 83. Plaintiff seeks a \$10,000 service payment for the work he did, and the duties he
5 undertook, by filing this action against Backyard Products. Plaintiff estimates he spent
6 approximately 30 hours working on his two cases with his attorneys, which he details in his
7 declaration. Plaintiff also executed a general release in conjunction with the Settlement. This
8 service payment comports with others awarded by California district courts, and those obtained
9 by Class Counsel, under similar circumstances.

10 84. Given that the average Participating Class Member Payment will be *significant*,
11 at \$1,522.29, a service payment of \$10,000 is not unreasonable.

12 85. This Court should award Plaintiff \$10,000 in recognition of his service to the
13 Class and general release.

14 86. The Class of all individuals performing installations for Backyard Products
15 during the Class Period is ascertainable from Backyard Products’s records, and is so numerous
16 joinder would be impracticable, at 509 Members.

17 87. The same written policies applied to the entire putative Class, and common
18 questions predominate.

19 88. Plaintiff’s claims are typical because he was an individual, classified as an
20 independent contractor, subject to the same written policies as Class and because he suffered the
21 same violations.

22 89. Plaintiff can and will continue to protect the interests of the Class. Plaintiff
23 accepted the risks of serving as a class representative, spent significant time assisting in the
24 prosecution of the consolidated actions, and placed the interest of the class above his own.

25 90. Plaintiff’s attorneys are qualified to conduct the litigation and Plaintiff’s interests
26 are not adverse to the interest of the Class.

27 91. This Settlement should be preliminarily approved, though it may affect another
28 pending superior court action against Backyard Products. The Parties are aware of two later

1 filed actions, both on behalf of Victor Hernandez, against Backyard Products LLC. One
2 *Hernandez* action was pending before the U.S. District Court for the Northern District of
3 California, Case No. 5:24-cv-05963-EKL, but was apparently terminated on May 8, 2025. The
4 other *Hernandez* action is pending before the Sacramento County Superior Court, Case No.
5 24CV449470. On May 15, 2025, the individual PAGA claims were compelled to arbitration and
6 the representative PAGA claims were stayed pending arbitration.

7
8 I declare under the penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct and this declaration is executed on July 31, 2025 in San Diego,
10 California.

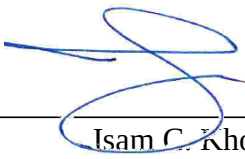
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff JUAN GARCIA (“Plaintiff”) and Defendant BACKYARD PRODUCTS LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS.

- 1.1. “Action” means, collectively, the class action lawsuit alleging wage and hour violations against Defendant initiated on May 17, 2024, in the Sacramento County Superior Court bearing Court Case No. 24CV009779 (the “Class Action”) and the representative Private Attorneys General Act (“PAGA”) proceeding in the Sacramento County Superior Court bearing Case No. 24CV019984 (the “PAGA Action”).
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person who performed shed construction services for Defendant in California during the PAGA Period as an independent contractor.
- 1.5. “Class” means all persons who performed installation services for Defendant in California during the Class Period as an independent contractor.
- 1.6. “Class Counsel” means David Mara and Jill Vecchi of MARA LAW FIRM, PC, and Michael Singer and Rosemary Khoury of COHELAN KHOURY & SINGER.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, e-mail address to the extent Defendant has an email address on file, Social Security number, and number of Class Period Installations and PAGA Installations.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. "Class Period" means the period from September 1, 2020, through April 30, 2025.
- 1.13. "Class Representative" means Plaintiff.
- 1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. "Court" means the Superior Court of California, County of Sacramento.
- 1.16. "Defendant" means BACKYARD PRODUCTS LLC, the named defendant in the Action.
- 1.17. "Defense Counsel" means Fisher & Phillips LLP.
- 1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. "Gross Settlement Amount" means One Million, Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00), which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of installations performed during the Class Period.
- 1.24. "Individual PAGA Payment" means the Aggrieved Employees' pro rata share of 25% of the PAGA Penalties calculated according to the number of installations performed during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Period" means the period from July 29, 2023, through April 30, 2025.
- 1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.32. "PAGA Notice" means Plaintiff's May 6, 2024, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount of Seventy Five Thousand Dollars and Zero Cents (\$75,000.00), allocated 25% to the Aggrieved Employees (\$18,750) and the 75% to the LWDA (\$56,250) in settlement of PAGA claims.
- 1.34. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.35. "Plaintiff" means JUAN GARCIA, the named plaintiff in the Action.
- 1.36. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.37. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.38. "Released Class Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 5.4 below.
- 1.40. "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.
- 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. "Response Deadline" means 60 calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class

Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, (b) fax, email, or mail his or her Objection to the Settlement, or (3) fax, email, or mail disputes as to the number of Installations attributed to him or her. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.43. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.44. “Installation” means a shed installation performed by a Class Member during the Class Period and PAGA Period, as provided by Defendant’s records.

2. RECITALS.

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

2.2. 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.

2.3. On October 2, 2024, Plaintiff Garcia initiated a representative action pursuant to PAGA. The Class and PAGA actions are the operative complaints in the Action (the “Operative Complaints”). Defendant denies the allegations in the Operative Complaints, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.4. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.5. On February 13, 2025, Plaintiff and Defendant participated in an all-day mediation presided over by Jill Sperber, Esq., which led to this Agreement to settle the Action.

2.6. 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. Plaintiff’s investigation was sufficient

to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

- 2.7. The Court has not granted class certification.
- 2.8. The Parties are aware of a two later filed actions, both on behalf of Victor Hernandez, currently pending before the U.S. District Court for the Northern District of California, Case No. 5:24-cv-05963-EKL and the Sacramento County Superior Court, Case No. 24CV4497470, that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay One Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
 - 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$450,000.00, and a Class Counsel Litigation Expenses Payment of not

more than \$30,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. The Class Counsel Fees Payment awarded by the Court shall be allocated as follows: 50% shall be paid to MARA LAW FIRM, PC, and 50% shall be paid to COHELAN KHOURY & SINGER.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Installations completed by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's number of Installations.

3.2.4.1. Tax Allocation of Individual Class Payments. 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The other 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$75,000.00 to be paid from the Gross Settlement Amount, with 75% (\$56,250.00) allocated to the LWDA PAGA Payment and 25% (\$18,750.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual

PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$18,750.00) by the total number of Installations completed by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Installations. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class and PAGA Demographics. Based on a review of its records to date, Defendant estimates there are 509 Class Members and 153 PAGA Members.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Order granting Final Approval.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall

prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and Class Members will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, heirs, administrators, successors, and assigns generally,

release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaints and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaints and/or Plaintiff's PAGA Notice. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period.

- 5.2. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

- 5.3. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaints. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. The release will be for the Class Period. The release will be effective at the time the settlement funds are paid by Defendant to the Settlement Administrator.
- 5.4. Release by Aggrieved Employees: All Aggrieved Employees, including all Non-Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the 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. The release will be for the PAGA Period. The release will be effective at the time the settlement funds are paid by Defendant to the Settlement Administrator.

6. **CONSOLIDATION OF CLASS AND PAGA ACTIONS.** The Parties agree to jointly prepare and file all papers necessary to consolidate the Class Action and PAGA Action for settlement

purposes only. The Parties agree that because the Class Action is the earlier-filed case, subject to Court approval, it will serve as the lead case in which Plaintiff will file all papers necessary to seek approval of this Agreement.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals, if any.

7.1. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. Should Defendant have any edits to: (i) the draft of the notice, and memorandum in support, of the Motion for Preliminary Approval; or (ii) the draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement, Defendant shall provide those edits to Class Counsel within seven (7) days of receipt of the draft from Class Counsel, however, in no event shall edits be provided to Class Counsel less than two (2) days prior to the filing deadline for the preliminary approval motion.

7.2. Responsibilities of the Parties. The Parties are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Plaintiff is responsible for delivering the Court’s Preliminary Approval to the Administrator.

- 7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, the Parties will expeditiously work together, by and through their respective Counsel, by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, the Parties, by and through their respective Counsel, will expeditiously work together by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

- 8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4. Notice to Class Members.
- 8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, and Installations.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail and e-mail, to the extent Defendant has email addresses on file, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The Class Notice shall be sent

out in English and Spanish. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Installations used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 8.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4 The deadlines for Class Members' written objections, Challenges to Installations, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.4.5 If the Administrator, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone no later than seven (7) days after the request is provided to all Counsel, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after mailing of the Class Notice, or the deadline dates in the Class Notice, which ever are later. If the Parties do not agree or if either Party does not timely respond to a request, the Administrator shall make a final determination as to whether the individual shall be added to the Class. If the Administrator approves the request, the Administrator will send, via email or overnight delivery, a Class Notice requiring the individual to exercise options under this Agreement not later than 14 days after mailing of the Class Notice, or the deadline dates in the Class Notice, which ever

are later.

8.5. Requests for Exclusion (Opt-Outs).

- 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.4 of this Agreement and are eligible for

an Individual PAGA Payment.

8.6. Challenges to Calculation of Installations. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Installations allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Installations contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Installations shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Installations to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7. Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the

Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. To the extent available, the URL for the settlement website shall be: www.BackyardProductsSettlement.com or something substantially similar. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails. Notice of Final Judgment pursuant to California Rules of Court, Rule 3.771(b), shall be provided to Class Members through the settlement website.

- 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Installations received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4 Installation Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Installations. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Plaintiff is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Plaintiff is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Based on a review of its records to date, Defendant estimates there are 509 Class Members. Defendant estimates that the Class Members performed a total of 17,677 Installations. The Parties agree that if the total number of Installations as of the end of the Class Period exceeds the above figure by greater than 10%, then the Gross Settlement Amount shall increase pro rata based on the number of additional Installations above 10% (i.e., if the number of Installations is 11% greater than the above figure, then the Gross Settlement Amount shall increase by 1%).

10. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement or elect to cap the Class Period as of the date the number of Installations reaches but does not exceed 19,445 Installations. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final

Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Defendant shall provide any edits to the drafts no later than 5 days after receipt and, in no event, later than 2 days prior to the filing deadline. The Parties, by and through their respective Counsel, will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose

such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

- 11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. **ADDITIONAL PROVISIONS.**

- 13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 13.2. Confidentiality Prior to Preliminary Approval. The Parties separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will

not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. The Parties separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. The Parties separately warrant and represent that they have authorized their respective Counsel to take all appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 13.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. No Tax Advice. The Parties are not providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, to the other Party’s respective counsel of record.
- 13.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.
- 13.20. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney’s fees and costs, including expert witness fees in connection with any enforcement actions.

Dated: June 24, 2025

JUAN GARCIA
DocuSigned by:

4DFECF188EB1446...

Dated: June 25, 2025

BACKYARD PRODUCTS, LLC


Dan Dalach (Jun 25, 2025 14:16 EDT)

By: Dan Dalach
Title: Executive Vice President – HR

APPROVED AS TO FORM ONLY:

Dated: June 24, 2025

MARA LAW FIRM, PC

DocuSigned by:

4579A5166C10447...

Jill Vecchi, Esq.
Attorneys for JUAN GARCIA, on behalf of
himself, all others similarly situated, and on
behalf of the general public

Dated: June 24, 2025

COHELAN KHOURY & SINGER



Michael Singer, Esq.
Rosemary Khoury, Esq.
Attorneys for JUAN GARCIA, on behalf of
himself, all others similarly situated, and on
behalf of the general public

Dated: June 25, 2025

FISHER & PHILLIPS, LLP



Ashton M. Riley, Esq.
Joshua D. Klein, Esq.
Attorneys for Defendant BACKYARD
PRODUCTS, LLC

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Juan Garcia v. Backyard Products, LLC. | Sacramento Case Nos. 24CV009779, 24CV019984

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a class action lawsuit (“Action”) entitled *Juan Garcia v. Backyard Products, LLC*, for alleged wage and hour violations. The Action was filed by a former independent contractor, Juan Garcia (“Plaintiff”), against Backyard Products, LLC (“Defendant” or the “Company”), and seeks payment of back wages and other relief for all persons who performed shed construction services for Defendant in California as an independent contractor from September 1, 2020, through April 30, 2025, with Defendant (“Class Members”), and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all persons who performed shed construction services for Defendant in California as an independent contractor from July 29, 2023, through April 30, 2025 (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring the Company to fund Individual Class Payments, and (2) a PAGA Settlement requiring the Company to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on the Company’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to the Company’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on the Company’s records showing that **you performed [REDACTED] installations** during the Class Period and **you performed [REDACTED] installations** during the PAGA Period. If you believe that you performed more installations during the Class Period, or more installations during the PAGA Period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. The Court will also decide whether to enter a judgment that requires the Company to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against the Company.

If you worked for the Company during the Class Period and/or the PAGA Period, you have legal rights and options available to you, summarized in the following table. **The Company will not retaliate against you for any actions you take with respect to the proposed Settlement.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement and Receive a Settlement Payment	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against the Company that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [REDACTED]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. This means that you will not receive a payment as a Class Member under the settlement. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. The Company must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [REDACTED]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. If you disagree with any aspect of this Settlement, you may assert your objections by timely writing to the Administrator according to the procedures described below. If you object, you will still be bound by the Settlement if it is approved by the Court. See Section 7 of this Notice.
You Can Participate in the [REDACTED] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [REDACTED]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Installations/Pay Periods Written Challenges Must be Submitted by [REDACTED]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many installations you performed during the Class Period and how many installations you performed during the PAGA Period, respectively. The number of Class Period Installations and number of PAGA Period Installations you performed according to the Company's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff performed installation services for the Company as an independent contractor. The Action alleges that the Company misclassified its independent contractors and therefore violated California labor laws by failing to pay all straight time wages, to pay minimum wages, to pay overtime wages, provide meal periods, authorize and permit rest periods, authorize and permit recovery periods, pay reporting time wages, provide accurate wage statements, pay all wages due at termination of employment, and reimburse business expenses. Based on the same claims, Plaintiff also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). The Company denies these claims and asserts that it has followed all applicable laws. The Court has made no ruling in favor of either party.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

Plaintiff and the Company hired an experienced, neutral mediator in an effort to resolve the Action by negotiating a settlement to resolve this case rather than continue the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and the Company have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, the Company does not admit any violations or concede the merit of any claims.

The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

- a. The Company Will Pay \$1,350,000.00 as the Gross Settlement Amount (Gross Settlement). The Company has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, the Company will fund the Gross Settlement thirty (30) days after the Order granting Final Approval. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
- b. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- i. Up to \$450,000.00 (one-third of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- ii. Up to \$10,000.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- iii. Up to \$10,000.00 to the Administrator for services administering the Settlement.
- iv. Up to \$75,000.00 for PAGA Penalties, 75% of which will be provided to the California Labor & Workforce Development Agency ("LWDA") as required under California law, and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- c. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Installations.
- d. Taxes Owed on Payments to Class Members. The Settlement shall be broken down as follows: 30% ("Wage Portion") of each Individual Class Payment to taxable wages and 70% ("Non-Wage Portion") to penalties and interest. The Wage Portion is subject to withholding and will be reported on IRS W-2 Forms. The Company will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and the Company have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- e. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules

of the Fund for instructions on how to retrieve your money.

- f. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against the Company.
- g. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against the Company based on the PAGA Period facts alleged in the Action.
- h. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and the Company have agreed that, in either case, the Settlement will be void: the Company will not pay any money and Class Members will not release any claims against the Company.
- i. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Installations, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- j. Participating Class Members' Release. After the Judgment is final and the Company has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the Company or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could

have been alleged, based on the facts stated in the Operative Complaints. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

The full Settlement Agreement is on file in the County of Sacramento, Case No. 24CV009779, and on the settlement website at [REDACTED].

- k. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and the Company has fully funded the Gross Settlement and separately paid all employer payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against the Company which arose during the PAGA Period and which were asserted or could have been asserted in the Action, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against the Company or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees, including all Non-Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the 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.

The full Settlement Agreement is on file in the County of Sacramento, Case No. 24CV009779, and on the settlement website at [REDACTED].

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

- a. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Installations worked by all Participating Class Members, and (b) multiplying the result by the number of Installations worked by each individual Participating Class Member.
- b. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$ [REDACTED] by the total number of Installations completed by all Aggrieved Employees and (b) multiplying the result by the number of Installations completed by each individual Aggrieved Employee.
- c. Installation Challenges. The number of Class Installations you worked during the

Class Period and the number of Installations completed during the PAGA Period, as recorded in the Company's records, are stated on the first page of this Notice. You have until [REDACTED] to challenge the number of Installations credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept the Company's calculation of Installations based on the Company's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Installation challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and the Company's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

- a. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. If you are entitled to both an Individual Class Payment and an Individual PAGA Payment, the single check will combine both of these amounts.
- b. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as in this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as Juan Garcia v. Backyard Products LLC, and include your identifying information (full name, address, telephone number, approximate dates of employment, and the last four digits of your social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class

Member who disagrees with any aspect of the Agreement and/or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair. The deadline for sending written objections to the Administrator is ILYM Group, Inc. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action (Juan Garcia v. Backyard Products LLC) and include your name, current address, telephone number, and approximate dates of employment for the Company and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [REDACTED] at [REDACTED] in Department 23 of the Sacramento Superior Court, located at 720 9th Street, Sacramento, CA 95814. You can also attend remotely through Zoom. You can join the hearing by using the following Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/ssdept23>. You can also join by telephone by using the following call information: (833) 568-8864 / ID: 16108301121.

At the Hearing, the judge will decide whether to grant Final Approval of the Settlement. Check the Court's website for the most current information. It's possible the Court will reschedule the Final Approval Hearing. You should check the settlement website ([REDACTED]) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything the Company and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the settlement website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below or consult the Superior Court website by going to <https://www.saccourt.ca.gov/> and entering the Case Number for the Action, Case No. 24CV009779. You can also make an appointment to personally review court documents in the Clerk's Office at the Sacramento Superior Court by calling 916-874-5522.

The Contact information for the Settlement Administrator, ILYM Group, Inc., is as follows:

Email Address: [REDACTED]
 Mailing Address: [REDACTED]
 Telephone: [REDACTED]

The contact information for the Parties' counsel is as follows:

Class Counsel	Counsel for Defendant
David Mara, Esq. Jill Vecchi, Esq. MARA LAW FIRM, PC	Ashton M. Riley, Esq. Joshua D. Klein, Esq. Fisher & Phillips LLP.

2650 Camino Del Rio North, Suite 302 San Diego, CA 92108 Tel: (619) 234-2833 Fax: (619) 234-4048 E-Mail: dmara@maralawfirm.com jvecchi@maralawfirm.com Michael Singer, Esq. Rosemary Khoury, Esq. COHELAN KHOURY & SINGER 605 C Street, Suite 200 San Diego, CA 92101 Tel: (619) 595-3001 Fax: (619) 595-3000 E-Mail: msinger@ckslaw.com rkhoury@ckslaw.com	2050 Main Street, Suite 1000 Irvine, CA 92614 Tel.: (949) 798-2145 Fax: (949) 851-0152 E-Mail: ariley@fisherphillips.com jdklein@fisherphillips.com
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**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT.**

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the California Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
05/17/2024
By: A. Gray Deputy

Attorneys for JUAN GARCIA, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

JUAN GARCIA on behalf of himself, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

BACKYARD PRODUCTS LLC; and
DOES 1-100,

Defendants.

Case No. **24CV009779**

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 4-2001(11); Cal. Code Regs., tit. 8 § 11040);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 4-2001(12); Cal. Code Regs. Title 8 § 11040);
- 5) Failure to Authorize and Permit Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395);
- 6) Failure to Pay Reporting Time Wages;
- 7) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 8) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203);
- 9) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11040(8)); and,
- 10) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff Juan Garcia (“Plaintiff” or “Mr. Garcia”), on behalf of himself, all others similarly
2 situated, and on behalf of the general public, complains of Defendant Backyard Products LLC
3 (“Defendant” or “BACKYARD”) and/or DOES and for causes of action and alleges:

4 1. This is a class action pursuant to *California Code of Civil Procedure* section 382 on behalf
5 of Plaintiff and all hourly, non-exempt employees who are presently or were formerly
6 misclassified by Defendant and/or DOES and/or their subsidiaries or affiliated companies
7 and/or predecessors within the State of California.

8 2. Defendant and/or DOES boasts on its website that they “make America’s backyard a
9 destination they love through designing, manufacturing and installing cutting-edge sheds,
10 pre-fab studios, magical playsets and beautiful outdoor structures.”

11 3. In fulfillment of its business of “installing cutting-edge sheds, pre-fab studios, magical
12 playsets and beautiful outdoor structures,” Defendant and/or DOES hired Mr. Garcia, and
13 other similarly situated workers it misclassified as independent contractors, to perform
14 installations and delivery work in California, including Sacramento County.

15 4. As this installation work Mr. Garcia and similarly situated workers Defendant and/or
16 DOES misclassified as independent contractors is within the usual course of Defendant’s
17 and/or DOES’ business, Mr. Garcia and similarly situated workers were employees and
18 misclassified as independent contractors under *California Labor Code* section 2775.

19 5. Defendant and/or DOES controlled the manner and means of work Mr. Garcia and
20 similarly situated employees misclassified as independent contractors performed. Thus,
21 Mr. Garcia and similarly situated misclassified employees were not free from the control
22 and direction of Backyard Products in connection with the performance of the work, but
23 under the contract for the performance of the work and in fact.

24 6. Mr. Garcia and similarly misclassified employees were also not normally engaged in an
25 independently established trade, occupation, or business.

26 7. Mr. Garcia and similarly misclassified employees did not independently make the decision
27 to go into business for themselves.

28 8. Mr. Garcia and similarly misclassified employees did not take the usual steps to establish

1 and promote themselves as independent business people, such as through incorporation,
2 licensure, advertisements, routine offerings to provide the services of the independent
3 business to the public or to a number of potential customers, and the like.

4 9. Therefore, Defendant and/or DOES are unable to satisfy any of the elements of the ABC
5 test codified at *California Labor Code* section 2775.

6 10. In the alternative, because Defendant and/or DOES retain the right to control the manner
7 and means of Mr. Garcia and similarly misclassified employees' work, Mr. Garcia and
8 similarly situated employees are employees under the right-to-control test and are entitled
9 to all protections afforded employees under the Wage Order and *California Labor Code*.

10 11. Throughout the time period that includes the four (4) years prior to filing this action to the
11 present (the "Statutory Period"), Defendant and/or DOES have maintained uniform
12 policies that violate the wage and hour rights of Plaintiff and similarly situated
13 misclassified employees in the manner complained of herein.

14 12. Plaintiff, on behalf of himself and all other workers misclassified by Defendant and/or
15 DOES as independent contractors any time during the Statutory Period brings this action
16 pursuant to *California Labor Code* sections 201-203, 218, 218.5, 222, 223, 224, 226, subd.
17 (b), 226.3, 226.7, 233, 234, 246, 510, 512, 515, 558, 1194, 1194.2, 1197, 2775, 2802, and
18 *California Code of Regulations*, Title 8, sections 11040 and 3395, seeking unpaid wages,
19 overtime, meal period, rest period, and recovery period compensation, reimbursement,
20 illegal deductions, penalties, injunctive and other equitable relief, and reasonable
21 attorneys' fees and costs.

22 13. Plaintiff, on behalf of himself and all other workers misclassified by Defendant and/or
23 DOES as independent contractors any time during the Statutory Period, pursuant to
24 *California Business and Professions Code* sections 17200-17208, also seeks injunctive
25 relief, restitution, and disgorgement of all benefits Defendant and/or DOES enjoyed from
26 their failure to pay all straight time wages, overtime wages, and meal, rest, and recovery
27 period compensation as well as reimbursement for employees' business expenses.

28 ///

1 I. **VENUE**

2 14. Venue as to each Defendant and/or DOE is proper in this judicial district, pursuant to
3 *California Code of Civil Procedure* section 395. Defendant and/or DOES conduct business
4 and commit *California Labor Code* violations within Sacramento County, and each
5 Defendant and/or DOE is within California for service of process purposes. The unlawful
6 acts alleged herein have a direct effect on Plaintiff and those similarly situated within the
7 State of California and within Sacramento County. Defendant and/or DOES employ
8 numerous hourly, non-exempt employees who perform and/or performed work for
9 Defendant in Sacramento County, California during the Statutory Period.

10 II. **PARTIES**

11 A. **Plaintiffs.**

12 15. Throughout the Statutory Period, Plaintiff is and was a resident of California. During the
13 Statutory Period, Plaintiff performed services for Defendant and/or DOES in California.
14 During the Statutory Period, Defendant and/or DOES misclassified Plaintiff as an
15 independent contractor.

16 16. Plaintiff and the proposed Class are covered by, inter alia, California IWC Occupational
17 Wage Order No. 4-2001, and Title 8, *California Code of Regulations*, section 11040.

18 B. **Defendants.**

19 17. Defendant and/or DOES boast on their website that they “make America’s backyard a
20 destination they love through designing, manufacturing and installing cutting-edge sheds,
21 pre-fab studios, magical playsets and beautiful outdoor structures.”

22 18. Defendant and/or DOES operate out of locations in California.

23 19. Defendant and/or DOES utilize workers such as Plaintiff to perform services of its
24 customers in California.

25 20. Defendant and/or DOES classify Plaintiff and the members of the proposed Class as
26 independent contractors.

27 21. The true names and capacities, whether individual, corporate, associate, or otherwise, of
28 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues

1 these Defendants by such fictitious names under *California Code of Civil Procedure*
2 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
3 Defendants designated herein as a DOE is legally responsible in some manner for the
4 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint
5 to reflect the true names and capacities of the Defendants designated hereinafter as DOES
6 when such identities become known.

7 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or
8 DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or
9 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
10 and the acts of each Defendants and/or DOES are legally attributable to the other
11 Defendants and/or DOES.

12 **III. CLASS ACTION ALLEGATIONS**

13 23. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
14 action pursuant to section 382 of the *California Code of Civil Procedure*. Plaintiff seeks to
15 represent a Class composed of and defined as follows:

16
17 All individuals who worked for Defendant and/or DOES in the State
18 of California and were classified by Defendant and/or DOES as
19 independent contractors at any time during the period of the relevant
20 statute of limitations. ("Class Members")

21
22 Plaintiff also seeks to represent subclasses composed of and defined as follows:

23
24 All Class Members who worked one (1) or more shifts in excess of
25 five (5) hours.

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27 All Class Members who worked one (1) or more shifts in excess of
28 six (6) hours.

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All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of twelve (12) hours.

All Class Members who worked one (1) or more shifts in excess of two (2) hours.

All Class Members who worked one (1) or more shifts in excess of three and one-half (3.5) hours, but less than or equal to six (6) hours.

All Class Members who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

All Class Members who separated their employment from Defendants.

All Class Members who incurred business expenses and were not reimbursed.

All Class Members who worked in temperatures of 80 degrees or

1 higher.

2
3 All Class Members who worked in temperatures of 95 degrees or
4 higher.

5
6 24. Plaintiff reserves the right under Rule 1855, subdivision (b), *California Rules of Court*, to
7 amend or modify the Class description with greater specificity or further division into
8 subclasses or limitation to particular issues.

9 25. This action has been brought and may properly be maintained as a class action under the
10 provisions of *California Code of Civil Procedure* section 382 because there is a well-
11 defined community of interest in the litigation and the proposed Class is easily
12 ascertainable.

13 **A. Numerosity.**

14 26. The potential members of the Class as defined are so numerous that joinder of all the
15 members of the Class is impracticable. While the precise number of Class Members has
16 not been determined at this time, Plaintiff is informed and believes that Defendant and/or
17 DOES currently employ, and during the liability period employed, over one hundred (100)
18 Class Members in Sacramento County during the liability period and who are or have been
19 affected by Defendant's and/or DOES' policies of failure to pay all straight and overtime
20 wages owed, failure to provide meal and/or rest periods without the appropriate legal
21 compensation, willful failure to pay all wages due at time of separation from employment,
22 knowing and intentional failure to provide accurate and itemized employee wage
23 statements, and failure to reimburse for all necessary business expenses incurred in the
24 performance of employees' jobs. Accounting for employee turnover during the relevant
25 periods increases this number substantially. Upon information and belief, Plaintiff alleges
26 Defendant's and/or DOES' employment records will provide information as to the number
27 and location of all Class Members. Joinder of all members of the proposed Class is not
28 practicable.

1 **B. Commonality.**

2 27. There are questions of law and fact common to the Class that predominate over any
3 questions affecting only individual Class Members. These common questions of law and
4 fact include, without limitation:

5 (1) Whether Defendant and/or DOES violated the *California*
6 *Labor Code* and/or applicable IWC Wage Orders by classifying Class
7 Members as independent contractors.

8 (2) Whether Defendant and/or DOES controlled and directed
9 Class Members' performance of work.

10 (3) Whether the work performed by Class Members is within
11 Defendant's and/or DOES' usual course of business.

12 (4) Whether Class Members are customarily engaged in an
13 independently established trade, occupation, or business of the same nature
14 as that involved in the work performed for Defendant and/or DOES.

15 (5) Whether Defendant and/or DOES controlled the manner and
16 means of Class Members' work.

17 (6) Whether Defendant and/or DOES retains the right to control
18 the manner and means of Class Members' work.

19 (7) Whether Defendant and/or DOES violated the *California*
20 *Labor Code* and/or applicable IWC Wage Orders in failing to pay Class
21 Members all earned wages at the proper rate for all hours worked.

22 (8) Whether Defendant and/or DOES violated the *California*
23 *Labor Code* and/or applicable IWC Wage Orders in failing to pay Class
24 Members reporting time wages.

25 (9) Whether Defendant's and/or DOES' uniform policies and/or
26 practices whereby Class Members were pressured and/or incentivized to
27 forego taking meal, rest, and/or recovery periods.

28 (10) Whether Defendant's and/or DOES' violated *California*

1 *Labor Code* section 226.7, IWC Wage Order No. 4-2001 or other applicable
2 IWC Wage Orders, and/or *California Code of Regulations*, Title 8, section
3 11040, by failing to authorize, permit, and/or provide thirty (30) minute
4 meal periods before the end of the fifth hour worked and/or failing to pay
5 Class Members one (1) hour of pay at the Class Member's regular rate of
6 compensation for each work day that the rest period was not authorized,
7 permitted and/or provided.

8 (11) Whether Defendant and/or DOES violated *California Labor*
9 *Code* section 226.7, IWC Wage Order No. 4-2001 or other applicable IWC
10 Wage Orders, and/or *California Code of Regulations*, Title 8, section
11 11040, by failing to authorize, permit, and/or provide ten (10) minute rest
12 periods to Class Members for every four (4) hours or major fraction thereof
13 worked and/or failing to pay said employees one (1) hour of pay at the Class
14 Member's regular rate of compensation for each work day that the rest
15 period was not authorized, permitted and/or provided.

16 (12) Whether BACKYARD and/or DOES violated *California*
17 *Labor Code* section 226.7 and/or *California Code of Regulations*, Title 8,
18 section 3395, by failing to authorize, permit, and/or provide recovery
19 periods to Class Members in accordance with section 3395.

20 (13) Whether Defendant and/or DOES violated *California Labor*
21 *Code* section 246 by having uniform policies and/or practices of failing to
22 provide Class Members with wage statements itemizing the amount of
23 accrued/available sick leave.

24 (14) Whether Defendant and/or DOES have uniform policies
25 and/or practices of failing to provide Class Members accurate and itemized
26 wage statements.

27 (15) Whether Defendant and/or DOES knowingly and
28 intentionally fail to provide Class Members accurate and itemized wage

statements.

(16) Whether Defendant and/or DOES have uniform policies and/or practices of failing to timely pay all wages owed to Class Members who left Defendant's and/or DOES' employ or who were terminated.

(17) Whether Defendant and/or DOES willfully fail to pay, in a timely manner, wages owed to members of the proposed Class who left Defendant's and/or DOES' employ or who were terminated.

(18) Whether Defendant and/or DOES have uniform policies and/or practices of failing to reimburse members of the proposed Class for all necessary expenses incurred in the performance of their jobs.

28. The answer to each of these respective questions will generate a common answer capable of resolving class-wide liability in one stroke.

29. Said common questions predominate over any individualized issues and/or questions affecting only individual members.

C. Typicality.

30. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and caused by Defendant's and/or DOES' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged.

31. Plaintiff was subjected to the same uniform policies and/or practices complained of herein that affected all such employees. Thus, as Plaintiff was subjected to the same unlawful policies and practices as all employees, his claims are typical of the class he seeks to represent.

D. Adequacy of Representation.

32. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class.

33. Plaintiff is ready and willing to take the time necessary to help litigate this case.

34. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and

- 1 protect the interests of the members of the Class.
- 2 35. Counsel who represent Plaintiff are competent and experienced in litigating large
3 employment class actions.
- 4 36. Specifically, David Mara, Esq. and Jill Vecchi, Esq. are California lawyers in good
5 standing.
- 6 37. Counsel who represent Plaintiff are competent and experienced in litigating large
7 employment class actions.
- 8 38. The lawyers at Mara Law Firm have been named class counsel in numerous cases and Mr.
9 Mara's and Ms. Vecchi's practice is primarily focused on representing classes, large and
10 small, on the basis of California Labor Code and IWC Wage Order Violations similar to
11 those alleged herein. The attorneys at the firm are also frequently called upon to and do
12 author amicus briefs on behalf of the Consumer Attorneys of California on cases in the
13 appellate courts and Supreme Court of California involving important issues relating to
14 those alleged herein.
- 15 39. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.
- 16 40. Mara Law Firm, PC has the experience, ability, and ways and means to vigorously
17 prosecute this case.
- 18 **E. Superiority of Class Action.**
- 19 41. A class action is superior to other available means for the fair and efficient adjudication of
20 this controversy. Individual joinder of all Class Members is not practicable, and questions
21 of law and fact common to the Class predominate over any questions affecting only
22 individual members of the Class. Each member of the Class has been damaged and is
23 entitled to recovery by reason of Defendant's and/or DOES' illegal policies and/or
24 practices of failing to pay all straight time and overtime wages owed, failing to provide
25 meal periods, failing to permit or authorize rest periods, knowingly and intentionally failing
26 to comply with wage statement requirements, failing to pay all wages due at termination,
27 and failing to reimburse for incurred expenses.
- 28 42. Class action treatment will allow those similarly situated persons to litigate their claims in

the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

43. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay All Straight Time Wages

44. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

45. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked.

46. It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

47. Plaintiff and those similarly situated Class Members were employed by Defendant and/or

1 DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff
2 for all hours worked and were prohibited from making deductions that had the effect of
3 reducing the agreed upon wage.

4 48. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
5 similarly situated for all hours worked.

6 49. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Class
7 Members for all hours worked. Defendant and/or DOES pay on a flat fee basis. Each job
8 earns Plaintiff and the Class Members a set, flat amount. That flat amount, however, does
9 not pay for things such as drive time. As Defendant and/or DOES mandate Plaintiff and
10 the Class Members have their own vehicle that can handle enough weight to perform the
11 work, requires them to transport tools and ladders, that drive time is compensable hours
12 worked. Defendant and/or DOES also does not pay for all hours worked in its piece-rate
13 pay structure, such as fueling vehicles, responding to calls, or filling out paperwork.

14 50. Further, Defendant and/or DOES also fail to keep accurate time records of Plaintiff's and
15 the Class Members' time as a result of its continuous policies or practices of not paying
16 them for all hours worked as discussed above. Defendant and/or DOES do not have any
17 record of these hours worked.

18 51. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
19 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
20 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
21 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant
22 and/or DOES to fully perform their obligations under state law, all to their respective
23 damage in amounts, according to proof at trial.

24 52. As a direct result of Defendant's and/or DOES' policy of illegal wage theft, Plaintiff and
25 those similarly situated have been damaged in an amount to be proven at trial.

26 53. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
27 below.

28 ///

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay

All Overtime Wages

54. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

55. It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

56. *California Labor Code* section 510 states that eight (8) hours of labor constitutes a day's work. Any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh (7th) day of work in any one workweek shall be compensated at the rate of no less than one and one-half (1.5) times the regular rate of pay for an employee.

57. *California Labor Code* section 510 further dictates that any work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than two (2) times the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek shall be compensated at the rate of no less than two (2) times the regular rate of pay of an employee.

58. Plaintiff and those similarly situated Class Members were employed by Defendant and/or DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff and the Class Members for all overtime hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

59. Defendant and/or DOES fail to pay for the overtime that was due, pursuant to IWC Wage

1 Order No. 4-2001, item 3(A).

2 60. Defendant and/or DOES have a continuous policy of failing to pay Plaintiff and Class
3 Members for all hours worked, including those hours worked over eight (8) hours in a day
4 and forty (40) hours in a week. Defendant and/or DOES have a continuous policy of failing
5 to pay overtime when employees worked over eight (8) hours per day and when employees
6 worked over forty (40) hours per week. Because Defendant and/or DOES fail to pay them
7 overtime wages for all overtime hours worked, Plaintiff and Class Members were deprived
8 of wages for all overtime hours worked, which resulted in Plaintiff and the Class Members
9 not being paid all overtime wages owed to them.

10 61. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Class
11 Members for all hours worked.

12 62. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Class
13 Members for all hours worked. Defendant and/or DOES pay on a flat fee basis. Each job
14 earns Plaintiff and the Class Members a set, flat amount. That flat amount, however, does
15 not pay for things such as drive time. As Defendant and/or DOES mandate Plaintiff and
16 the Class Members have their own vehicle that can handle enough weight to perform the
17 work, requires them to transport tools and ladders, that drive time is compensable hours
18 worked. Defendant and/or DOES also do not pay for all hours worked in its piece-rate pay
19 structure, such as fueling vehicles, responding to calls, or filling out paperwork. Plaintiff
20 and the Class Members are not paid for this time, and when they work over eight (8) hours
21 in a shift or 40 hours in a week, these unpaid hours must be compensated at an overtime
22 rate.

23 63. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
24 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
25 Class Members have suffered, and continue to suffer, substantial unpaid overtime wages,
26 and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to
27 compel Defendant and/or DOES to fully perform their obligations under state law, all to
28 their respective damage in amounts according to proof at time of trial. Defendant and/or

DOES commit the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention on injuring Plaintiff and the Class Members. Defendant and/or DOES act with malice or in conscious disregard of Plaintiff's and the Class Member's rights. In addition to compensation, Plaintiff is also entitled to any penalties allowed by law.

64. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order No. 4-2001(11); Cal. Code Regs., tit. 8, § 11040)

65. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

66. Under *California Labor Code* section 512 and IWC Wage Order No. 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During these meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

67. Under *California Labor Code* section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

68. Defendant and/or DOES fail to provide full thirty (30) minute meal periods to Plaintiff and the Class Members no later than the fifth hour of work.

69. Defendant and/or DOES breached the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, Defendant and/or DOES fails to provide Plaintiff and the

1 Class Members with meal periods within the first five (5) continuous hours of work.
2 Defendant and/or DOES do not provide meal periods, because they rely on their unlawful
3 misclassification of Plaintiff and the Class Members as independent contractors. As part of
4 its independent contractor misclassification regime, Defendant and/or DOES turn a blind
5 eye on whether Plaintiff and the Class Members actually take meal periods in accordance
6 with *Labor Code* section 512 or Wage Order 4-2001, section 11. Defendant and/or DOES
7 fail to perform its obligation to relieve Plaintiff and the Class Members of all duty and
8 control during meal periods and fail to actively provide or offer meal periods of not less
9 than 30-minutes to Plaintiff and the Class Members.

10 70. Defendant and/or DOES also instituted a consistent policy/practice of not providing second
11 meal periods to Plaintiff and the Class Members and/or providing compensation in lieu
12 thereof. Specifically, Plaintiff and the Class Members are required to work shifts greater
13 than ten (10) hours long but never received second meal periods in shifts over ten (10)
14 hours long.

15 71. Furthermore, Defendant and/or DOES fail to keep accurate records of meal periods for
16 Plaintiff and the Class Members.

17 72. By failing to provide compensation for such unprovided or improperly provided meal
18 periods, as alleged above, Defendant and/or DOES willfully violate the provisions of
19 *California Labor Code* sections 226.7, 512, and IWC Wage Order No. 4-2001.

20 73. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks
21 to represent have been deprived of premium wages, in amounts to be determined at trial,
22 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
23 fees and costs, pursuant to *California Labor Code* section 226.7, and IWC Wage Order
24 No. 4-2001. Plaintiff and the Class he seeks to represent did not willfully waive their right
25 to take meal periods through mutual consent with Defendant and/or DOES.

26 74. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
27 below.

28 ///

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 4-2001(12); Cal. Code Regs. Title 8 § 11040)

75. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein, as if fully plead.

76. Under IWC Wage Order No. 4-2001, every employer shall authorize and permit all employees to take rest periods, “[t]he authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.” IWC Wage Order 4-2001(12). The time spent on rest periods “shall be counted as hours worked for which there shall be no deduction from wages.” *Id.*

77. Under *California Labor Code* section 226.7, if the employer does not provide an employee a rest period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest break is not provided.

78. Defendant and/or DOES have a continuous policy and practice that fails to provide Plaintiff and the Class Members with rest periods “at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Specifically, Defendant and/or DOES do not provide Plaintiff and the Class Members with rest periods consisting of ten (10) minutes net rest time, nor do they provide them with a rest period per four (4) hours worked or major fraction thereof. Defendant and/or DOES simply rely on its misclassification and do not authorize and permit rest periods in accordance with California Labor Code and Wage Order, section 11.

79. Additionally, Defendant and/or DOES breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and the Class Members to work through their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the Class Members of the right to be completely free from employer control under California law.

80. By failing to provide rest periods for every four hours or major fraction thereof worked per

day by non-exempt employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, Defendant and/or DOES willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 4-2001 section 11(A).

81. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks to represent have been deprived of premium wages, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to *California Labor Code* section 226.7, and IWC Wage Order No. 4-2001.

82. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Provide Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395)

83. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein, as if fully plead.

84. Under California Code of Regulations, Title 8, section 3395(d)(1), "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg. Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.*

85. "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel need to do so to protect themselves from overheating." Cal. Code of Reg. Title 8, § 3395(d)(3). "Such access to shade shall be permitted at all times." *Id.*

86. Defendant and/or DOES fail to permit access to shade and preventative cool down rest and/or recovery periods to Plaintiff and the Class members when the temperature reached

eighty (80) degrees Fahrenheit. Specifically, Plaintiff and the Class members work in areas such as Sacramento County in California during the summer and autumn months, when temperatures frequently exceed eighty (80) degrees Fahrenheit. However, Defendant and/or DOES do not allow and encourage Plaintiff and the Class members to take preventative cool-down rest recovery periods in shaded areas when the applicable temperatures are reached. Thus, Defendant and/or DOES fail to permit, allow, or encourage Plaintiff and the Class members to take preventative cool down recovery periods in the shade to protect against overheating when the temperature exceeds eighty (80) degrees Fahrenheit.

87. Defendant and/or DOES fail to utilize any alternative procedures for providing access to shade or equivalent protection to Plaintiff and the Class members. Defendant and/or DOES fail to implement other cooling measures in lieu of shade at least as effective as shade in allowing employees to cool.

88. Because of Defendant's and/or DOES' demanding policies on task completion times, Plaintiff and those similarly situated felt that breaking to exercise their rights to take recovery period breaks would sacrifice their jobs with Defendant and/or DOES.

89. Throughout the statutory period, Defendant's and/or DOES' uniform policies and practices resulted in Plaintiff and the Class Members not receiving recovery periods.

90. Throughout the statutory period, Defendant and/or DOES valued productivity over providing recovery periods and, because of this, recovery periods were not priorities to Defendant and/or DOES.

91. Throughout the statutory period, Defendant's and/or DOES' policies promoting productivity subjugated Plaintiff's and those similarly situated's rights to recovery periods.

92. Therefore, Defendant and/or DOES failed to provide preventative cool down rest and/or recovery periods to Plaintiff and the Class members in accordance with California Code of Regulations, Title 8, section 3395.

93. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks to represent have been deprived of premium wages, in amounts to be determined at trial,

1 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
2 fees and costs, pursuant to Labor Code section 226.7.

3 94. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
4 below.

5 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay**

6 **Reporting Time Wages**

7 95. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
8 and every other paragraph in this Complaint herein as if fully plead.

9 96. IWC Wage Order 4-2001(5) requires employers to pay "reporting time pay." Each
10 workday an employee is required to report to work, but is not put to work or is furnished
11 with less than half of his or her usually or scheduled day's work, must be paid for half of
12 the usual or scheduled day's work, but in no event less than two hours nor more than four
13 hours, at his or her regular rate of pay. If an employee is required to report to work a second
14 time in any one workday and is furnished less than two hours of work on the second
15 reporting, he or she must be paid for two hours at his or her regular rate of pay.

16 97. Defendant and/or DOES require Plaintiff and the Class Members to report to work and
17 Plaintiff and the Class Members would report to work, but for less than half of their usual
18 day's work. For instance, Defendant and/or DOES would have Plaintiff report to work on
19 his off days and perform tasks that would last for about a half hour. On those days, Plaintiff
20 would not receive a half-day's worth of wages or two hours worth of wages, which violates
21 section 5 of Industrial Welfare Commission Order No. 4-2001.

22 98. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
23 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
24 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
25 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant
26 and/or DOES to fully perform their obligations under state law, all to their respective
27 damage in amounts, according to proof at trial.

28 99. As a direct result of Defendant's and/or DOES' policy of illegal wage theft, Plaintiff and

1 those similarly situated have been damaged in an amount to be proven at trial.

2 100. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
3 below.

4 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Knowing and**
5 **Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab.**
6 **Code §§ 226, 246, 1174, 1175; IWC Wage Order No. 4-2001; Cal. Code Regs., Title 8, § 11040)**

7 101. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
8 and every other paragraph in this Complaint herein as if fully plead.

9 102. *California Labor Code* section 226(a) requires Defendant and/or DOES to, inter alia,
10 itemize in wage statements and accurately report the total hours worked and total wages
11 earned. Defendant and/or DOES have knowingly and intentionally failed to comply with
12 *California Labor Code* section 226, subdivision (a), on each and every wage statement
13 provided to Plaintiff and members of the proposed Class.

14 103. *California Labor Code* section 1174 requires Defendant and/or DOES to maintain and
15 preserve, in a centralized location, records showing the daily hours worked by and the
16 wages paid to its employees. Defendant and/or DOES have knowingly and intentionally
17 failed to comply with *California Labor Code* section 1174. The failure of Defendant and/or
18 DOES, and each of them, to comply with *California Labor Code* section 1174 is unlawful
19 pursuant to *California Labor Code* section 1175.

20 104. Defendant and/or DOES fail to maintain accurate time records - as required by IWC Wage
21 Order No. 4-2001(7), and *California Code of Regulations* Title 8 section 11040 - showing,
22 among other things, when the employee begins and ends each work period, the total daily
23 hours worked in itemized wage statements, total wages, bonuses and/or incentives earned,
24 and all deductions made.

25 105. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor
26 in excess of the normal work period shall be paid no later than the payday for the next
27 regular payroll period.” An employer complies with *California Labor Code* section 226(a)
28 “if hours worked in excess of the normal work period during the current pay period are

1 itemized as corrections on the paystub for the next regular pay period. Any corrections set
2 out in a subsequently issued paystub shall state the inclusive dates of the pay period for
3 which the employer is correcting its initial report of hours worked.”

4 106. Defendant and/or DOES have knowingly and intentionally failed to provide Plaintiff and
5 the Class Members with accurate itemized wage statements which show: “(1) gross wages
6 earned, (2) total hours worked by the employee, . . . (4) all deductions, provided that all
7 deductions made on written orders of the employee may be aggregated and shown as one
8 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
9 paid, (7) the name of the employee and only the last four digits of his or her social security
10 number or an employee identification number other than a social security number, (8) the
11 name and address of the legal entity that is the employer and, if the employer is a farm
12 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
13 legal entity that secured the services of the employer, and (9) all applicable hourly rates in
14 effect during the pay period and the corresponding number of hours worked at each hourly
15 rate by the employee[.]” Cal. Lab. Code § 226(a).

16 107. Defendant and/or DOES have knowingly and intentionally failed to comply with
17 *California Labor Code* section 226(a) by failing to list all of the required information on
18 each and every wage statement provided to Plaintiff and Class Members.

19 108. Additionally, by virtue of its failure to pay for all time worked, Defendant and/or DOES
20 knowingly and intentionally did not correctly itemize the gross wages earned, total hours
21 worked, net wages earned, and number of hours worked at each hourly rate on wage
22 statements provided to Plaintiff and the Class Members as *California Labor Code* section
23 226, subsection (a), requires in every pay period during the period of the relevant statute
24 of limitations.

25 109. As outlined above, Defendant and/or DOES have a continuous policy of not paying
26 Plaintiff and the Class Members for all hours worked. Defendant and/or DOES pay on a
27 flat fee basis. Each job earns Plaintiff and the Class Members a set, flat amount. That flat
28 amount, however, does not pay for things such as drive time. As Defendant and/or DOES

mandate Plaintiff and the Class Members have their own vehicle that can handle enough weight to perform the work, requires them to transport tools and ladders, that drive time is compensable hours worked. Defendant and/or DOES also do not pay for all hours worked in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out paperwork.

110. In addition, Defendant and/or DOES fail to pay all meal and rest period premiums owed to Plaintiff and the Class Members for Defendant's and/or DOES' failure to provide lawful meal and rest periods.

111. Defendant and/or DOES also fail to provide Plaintiff and Class Members with written notice that sets forth the amount of sick leave available for use, either in employees' itemized wage statements or in a separate writing provided to employees on the designated pay date.

112. As a result of the knowing and intentional failure by Defendant and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the Class Members have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

113. As a direct result of Defendant's and/or DOES' unlawful acts, Plaintiff and the Class he intends to represent have been damaged and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to *California Labor Code* section 226.

114. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay All Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-203)

115. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

116. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant and/or DOES, Defendants and/or DOES did not timely pay him all straight time wages owed at the time of his termination.

- 1 117. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
2 and/or DOES, Defendant and/or DOES did not timely pay him all overtime wages owed at
3 the time of his termination.
- 4 118. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
5 and/or DOES, Defendants and/or DOES did not timely pay him meal, rest, and/or recovery
6 period premiums owed at the time of his termination.
- 7 119. Numerous members of the Class are no longer employed by Defendant and/or DOES. They
8 were either fired or they quit Defendant's and/or DOES' employ. Defendant and/or DOES
9 did not pay all timely wages owed at the time of their termination. Defendant and/or DOES
10 did not pay all premium wages owed at the time of their termination.
- 11 120. *California Labor Code* sections 201 and 202 provide that if an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately, and if an employee quits his or her employment, his or her wages shall
14 become due and payable no later than seventy-two (72) hours thereafter, unless the
15 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which
16 case the employee is entitled to his or her wages at the time of quitting.
- 17 121. During the relevant time period, Defendant and/or DOES intentionally and willfully fail to
18 pay Plaintiff's and the Class Members' who are no longer employed by Defendant and/or
19 DOES their wages that were earned and unpaid within seventy-two (72) hours of their
20 leaving Defendant's and/or DOES' employ in violation of *California Labor Code* sections
21 201 and 202.
- 22 122. *California Labor Code* section 203 provides that, if an employer willfully fails to pay,
23 without abatement or reduction, in accordance with *California Labor Code* sections 201,
24 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages
25 of the employee shall continue at the same rate, for up to thirty (30) days from the due date
26 thereof, until paid or until an action therefore is commenced.
- 27 123. Defendant and/or DOES fail to provide Plaintiff and formerly employed Class Members
28 all their final wages at their time of termination in accordance with *California Labor Code*

1 sections 201 and 202.

2 124. As outlined above, Defendant and/or DOES have a continuous policy of not paying
3 Plaintiff and the Class Members for all hours worked. Defendant and/or DOES pay on a
4 flat fee basis. Each job earns Plaintiff and the Class Members a set, flat amount. That flat
5 amount, however, does not pay for things such as drive time. As Defendant and/or DOES
6 mandate Plaintiff and the Class Members have their own vehicle that can handle enough
7 weight to perform the work, requires them to transport tools and ladders, that drive time is
8 compensable hours worked. Defendant and/or DOES also do not pay for all hours worked
9 in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out
10 paperwork.

11 125. Additionally, Defendant and/or DOES fail to pay all meal, rest, and recovery period
12 premiums owed to Plaintiff and Class Members.

13 126. Defendant's and/or DOES' failure to pay Class Members who are no longer employed by
14 Defendant and/or DOES all wages that were earned and unpaid at the time of termination
15 or within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ is in
16 violation of *California Labor Code* sections 201 and 202.

17 127. Defendant and/or DOES fail to pay Plaintiff and Class Members a sum certain at the time
18 of their termination or within seventy-two (72) hours of their resignation and have failed
19 to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of *California*
20 *Labor Code* section 203, Plaintiff and Class Members are entitled to a penalty in the amount
21 of their daily wage, multiplied by thirty (30) days.

22 128. Defendant's and/or DOES' failure to pay said wages to Plaintiff and members of the Class
23 he seeks to represent, was willful in that Defendant and/or DOES and each of them knew
24 the wages to be due, but failed to pay them.

25 129. As a consequence of Defendant's and/or DOES' willful conduct in not paying wages owed
26 at the time of separation from employment, Plaintiff and members of the proposed Class
27 are entitled to thirty (30) days' worth of wages as a penalty under *California Labor Code*
28 section 203, together with interest thereon and attorneys' fees and costs.

1 130. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
2 below.

3 **NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to**
4 **Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 4-2001; Cal.**
5 **Code Regs., Title 8, § 11040)**

6 131. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
7 and every other paragraph in this Complaint herein as if fully plead.

8 132. *California Labor Code* section 2082 provides: “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions
11 of the employer.... [which] shall include[s] all reasonable costs, including, but not limited
12 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

13 133. Under *California Labor Code* section 221, “[i]t shall be unlawful for any employer to
14 collect or receive from an employee any part of wages theretofore paid by said employer
15 to said employee.”

16 134. Plaintiff and the Class Members incurred expenses necessary for the discharge of their
17 duties without receiving reimbursement from Defendant and/or DOES. For instance, in
18 order “[t]o transport the shed kits,” Defendant and/or DOES mandate that Plaintiff and the
19 Class Members “will need a full-sized truck capable of carrying the weight of 1 or more
20 shed kits, or a size/weight appropriate trailer.” At a minimum, Defendant and/or DOES
21 mandate “reliable transportation to/from the job site and the ability to bring your own tools,
22 ladders, and compressor.” Thus, Defendant and/or DOES mandate Plaintiff and the Class
23 Members use their own car at their own expense to perform the necessary functions of the
24 job. Plaintiff and the Class Members are not reimbursed for the costs of the vehicle, such
25 as, but not limited to, insurance, maintenance, fuel, and mileage. Defendant and/or DOES
26 mandate Plaintiff and the Class Members have minimum levels of insurance that name
27 Defendant and/or DOES as an additional insured. Defendant and/or DOES also mandate
28 Plaintiff and the Class Members bear the expenses for their tools, such as hand tools,

ladders, roofing/framing guns, compressors, and hoses. Defendant and/or DOES also mandate the use of personal phones. Defendant and/or DOES reimburse Plaintiff and the Class Members for none of these expenses in violation of *California Labor Code* section 221, and 2802.

135. *California Labor Code* section 2802(a) entitles Defendant and/or DOES to reimbursement for said necessary expenditures, plus interest and expenses.

136. Defendant and/or DOES have failed to indemnify or in any manner reimburse Plaintiff and Class Members for these expenditures and losses.

137. By requiring Plaintiff and Class Members to pay expenses and cover losses that they incurred in direct consequence of the discharge of their duties for Defendant and/or DOES and/or in obedience of Defendant's and/or DOES' direction, Defendant and/or DOES have violated and continues to violate *California Labor Code* section 2802.

138. As a direct and proximate result of Defendant's and/or DOES' conduct, Plaintiff and Class Members have suffered substantial losses according to proof, as well as pre-judgment interest, costs, and attorneys' fees for the prosecution of this action, which losses are compensable under *California Labor Code* section 2802.

139. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

TENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)

140. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

141. Defendant and/or DOES failure to pay all straight time and overtime wages earned, failure to provide compliant meal, rest, and/or recovery periods, and/or premium pay compensation in lieu thereof, failure to itemize and keep accurate records, failure to pay all wages due at time of termination, and failure to reimburse all necessary business expenses incurred, as alleged herein, constitutes unlawful activity prohibited by *California Business and Professions Code* section 17200, et seq.

1 142. The actions of Defendant and/or DOES in failing to pay Plaintiff and members of the
2 proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent,
3 and deceptive business practices, within the meaning of *California Business and*
4 *Professions Code* section 17200, et seq.

5 143. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
6 practices in order to prevent future damage, for which there is no adequate remedy at law,
7 and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as
8 members of the general public actually harmed and as a representative of all others subject
9 to Defendant and/or DOES unlawful acts and practices.

10 144. As a result of their unlawful acts, Defendant and/or DOES have reaped and continue to
11 reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks to represent.
12 Defendant and/or DOES should be enjoined from this activity and made to disgorge these
13 ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to
14 *California Business and Professions Code* section 17203. Plaintiff is informed and
15 believes, and thereon alleges, that Defendant and/or DOES are unjustly enriched through
16 their policy of not all wages owed to Plaintiff and members of the proposed Class.

17 145. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
18 proposed class are prejudiced by Defendant's and/or DOES' unfair trade practices.

19 146. As a direct and proximate result of the unfair business practices of Defendant and/or DOES,
20 and each of them, Plaintiff, individually and on behalf of all employees similarly situated,
21 are entitled to equitable and injunctive relief, including full restitution and/or disgorgement
22 of all wages and premium pay which have been unlawfully withheld from Plaintiff and
23 members of the proposed Class as a result of the business acts and practices described
24 herein and enjoining Defendant and/or DOES from engaging in the practices described
25 herein.

26 147. The illegal conduct alleged herein is continuing, and there is no indication that Defendant
27 and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if
28 Defendant and/or DOES are not enjoined from the conduct set forth in this Complaint, they

1 will continue the unlawful activity discussed herein.

2 148. Plaintiff further requests that the Court issue a preliminary and permanent injunction
3 prohibiting Defendant and/or DOES from continuing to not pay Plaintiff and the members
4 of the proposed Class all earned but unpaid wages as discussed herein.

5 149. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
6 below.

7 **V. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment as follows:

9 A. That the Court determine that this action may be maintained as a class action;

10 B. For compensatory damages, in an amount according to proof at trial, with interest
11 thereon;

12 C. For economic and/or special damages in an amount according to proof with interest
13 thereon;

14 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
15 with interest thereon;

16 E. For compensation for all time worked;

17 F. For compensation for not being provided paid meal periods;

18 G. For compensation for not being provided paid rest breaks;

19 H. For compensation for not being provided paid recovery periods;

20 I. For damages and/or monies owed for failure to comply with itemized employee wage
21 statement provisions;

22 J. For reimbursement of business expenses incurred;

23 K. For all waiting time penalties owed;

24 L. That Defendant and/or DOES be found to have engaged in unfair competition in
25 violation of sections 17200 et seq. of the *California Business and Professions Code*;

26 M. That Defendant and/or DOES be ordered and enjoined to make restitution to the Class
27 due to their unfair competition, including disgorgement of their wrongfully withheld
28 wages pursuant to *California Business and Professions Code* sections 17203 and

17204;

N. That an order of specific performance of all penalties owed be issued under *California Business and Professions Code* sections 17202;

O. That Defendant and/or DOES be enjoined from continuing the illegal course of conduct, alleged herein;

P. That Defendant and/or DOES further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the *California Business and Professions Code*;

Q. That Defendant and/or DOES be enjoined from further acts of restraint of trade or unfair competition;

R. For attorneys' fees;

S. For liquidated damages;

T. For interest accrued to date;

U. For costs of suit and expenses incurred herein; and

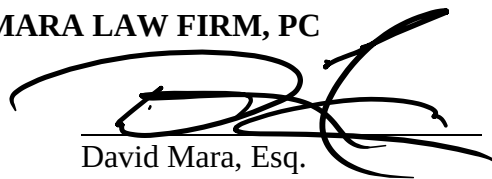
V. For any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: May 17, 2024

MARA LAW FIRM, PC



David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff Juan Garcia on behalf of himself, all others similarly situated, and on behalf of the general public

EXHIBIT 3

10/02/2024

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9 Attorneys for Plaintiff JUAN GARCIA on behalf of himself,
all others similarly situated, and on behalf of the general public

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JUAN GARCIA on behalf of himself,
13 all others similarly situated, and on
behalf of the general public,

14 Plaintiff,

15 v.

16 BACKYARD PRODUCTS LLC; and
DOES 1-100,

17 Defendants.
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Case No. **24CV019984**

**PLAINTIFF'S PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") COMPLAINT FILED
PURSUANT TO CALIFORNIA LABOR CODE §
2698, ET. SEQ.**

1. Violation of the PAGA for Failure to Pay
Straight Time Wages;
2. Violation of the PAGA for Failure to Pay All
Overtime Wages Owed;
3. Violation of PAGA for Failure to Provide Meal
Periods;
4. Violation of PAGA for Failure to Provide Rest
Periods;
5. Violation of PAGA for Failure to Provide
Recovery Periods;
6. Violation of the PAGA for Failure to Pay
Reporting Time Wages;
7. Violation of PAGA for Failure to Pay Wages
Due at Termination of Employment;
8. Violation of PAGA for Knowing and
Intentional Failure to Comply with Itemized
Employee Wage Statements; and
9. Violation of PAGA for Failure to
Reimburse/Illegal Deductions.

DEMAND FOR JURY TRIAL

1 Plaintiff JUAN GARCIA (hereinafter referred to as “Plaintiff”), on behalf himself and all other
2 non-exempt, hourly employees who worked for Defendant and/or DOES in California (hereinafter
3 referred to as the “Aggrieved Employees”), files this Complaint against Defendant Backyard Products
4 LLC (hereinafter referred to as “Defendant” or “BACKYARD PRODUCTS”) and/or DOES 1-100.

5 **I. INTRODUCTION**

6 1. This is a representative action seeking recovery of penalties under the California Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et.
8 seq., against Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to
9 bring a lawsuit on behalf of himself and other current and former workers to address an
10 employer’s violations of the *California Labor Code*.

11 2. Defendant and/or DOES boasts on its website that they “make America’s backyard a
12 destination they love through designing, manufacturing and installing cutting-edge sheds, pre-
13 fab studios, magical playsets and beautiful outdoor structures.” Backyard Products, Careers:
14 What We Do, <https://www.backyardproducts.com/career/> (last accessed September 19, 2024).

15 3. In fulfillment of its business of “installing cutting-edge sheds, pre-fab studios, magical playsets
16 and beautiful outdoor structures,” Defendant and/or DOES hired Plaintiff and other similarly
17 situated workers it misclassified as independent contractors, to perform installations and
18 delivery work in California, including Sacramento County.

19 4. At all times mentioned herein, Defendant and/or DOES have conducted business in
20 Sacramento County and elsewhere within California.

21 5. Defendant and/or DOES have maintained uniform policies that violate the wage and hour
22 rights of Plaintiff and similarly situated workers in the manner complained of herein.

23 6. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of Defendant
24 and/or DOES who were misclassified as independent contractors as alleged herein. Plaintiff
25 seek penalties on behalf of himself and all other Aggrieved Employees of Defendant and/or
26 DOES as provided herein. This Complaint also seeks attorneys’ fees and costs under the
27 PAGA, *California Labor Code* section 2699(g)(1).

28 ///

1 **II. JURISDICTION AND VENUE**

2 7. The Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff
3 performed work for Defendant and/or DOES in California. Plaintiff, and each of the Aggrieved
4 Employees, worked for Defendant and/or DOES, and/or its operating divisions and
5 subsidiaries, within the State of California. Plaintiff and the Aggrieved Employees were
6 misclassified by Defendant and/or DOES as independent contractors. Plaintiff and each of the
7 Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the
8 date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency
9 (LWDA).

10 8. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
11 and/or DOE operate industrial facilities, employ hourly employees, conduct business, and
12 commit *California Labor Code* violations within Sacramento County and California. Each
13 Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes.
14 The unlawful acts alleged herein have a direct effect on Plaintiff and the other Aggrieved
15 Employees situated within the State of California and within Sacramento County.

16 9. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendant
17 and/or DOES pursuant to the PAGA. Plaintiff, as personal representative of the general public,
18 will and do seek to recover any and all penalties for each and every violation shown to exist or
19 to have occurred during the one (1) year period before Plaintiff provided notice to the LWDA
20 of their intent to bring this action, in an amount according to proof, as to those penalties that
21 are otherwise only available to public agency enforcement actions. Funds recovered will be
22 distributed in accordance with the PAGA, with at least seventy-five (75) percent of the
23 penalties recovered being reimbursed to the State of California and the LWDA.

24 10. There is no federal question at issue as the issues herein are based solely upon California
25 statutes and law, including the *California Labor Code*, *IWC Wage Orders*, *Code of Civil*
26 *Procedure*, and *Civil Code*.

27 11. The California Superior Court also has jurisdiction in this matter because the penalties sought
28 exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,

1 according to proof. Defendant and/or DOES either own, maintain offices, transact business,
2 have an agent or agents, and/or otherwise are found within the County of Sacramento,
3 California.

4 **III. THE PARTIES**

5 **A. Plaintiff**

6 12. Throughout the relevant time period, Plaintiff was and is a resident of California. During the
7 relevant time period, Plaintiff performed work for Defendant and/or DOES in California and
8 performed work in Sacramento County. Plaintiff was misclassified by Defendant and/or DOES
9 as independent contractors.

10 13. Plaintiff Juan Garcia was employed by Defendant and/or DOES until on or about April 19,
11 2024.

12 14. Plaintiff and the Aggrieved Employees performed work in the State of California for Defendant
13 and/or DOES.

14 15. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent by
15 Plaintiff Juan Garcia to the LWDA and Defendant on May 6, 2024. This notice demonstrates
16 that Plaintiff Juan Garcia is an aggrieved employee and has standing to bring a representative
17 action on behalf of the LWDA and as a private attorney general. The violations alleged in this
18 notice also form the basis for the allegations herein. No notice of cure by Defendant and/or
19 DOES was provided and no notice of investigation was received from the LWDA in the
20 statutorily proscribed sixty-five (65) day period since the mailing of the notices of the
21 action. Accordingly, Plaintiff Juan Garcia files this action as a “Representative Action” as
22 authorized by *Labor Code* section 2699.3(a)(2)(C).

23 **B. Defendants**

24 16. Defendant and/or DOES boast on their website that they “make America’s backyard a
25 destination they love through designing, manufacturing and installing cutting-edge sheds, pre-
26 fab studios, magical playsets and beautiful outdoor structures.”

27 17. Defendant and/or DOES operate out of locations in California.

28 18. Defendant and/or DOES utilize workers such as Plaintiff to perform services of its customers

- 1 in California.
- 2 19. Defendant and/or DOES classify Plaintiff and the Aggrieved Employees as independent
3 contractors.
- 4 20. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
5 the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on
6 information and belief alleges that said Defendants are now, and/or at all times mentioned in
7 this Complaint were doing business in the State of California and/or throughout the United
8 States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is
9 legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this
10 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.
- 11 21. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects
12 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
13 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
14 attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized
15 the acts of each of the remaining Defendants.
- 16 22. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,
17 agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of
18 Defendants and/or DOES at all times.
- 19 **IV. GENERAL ALLEGATIONS**
- 20 23. During all, or a portion, of the one (1) year period before Plaintiff filed notice of their claims
21 with the LWDA, Plaintiff and each of the Aggrieved Employees worked for Defendant and/or
22 DOES in the State of California.
- 23 24. Defendant and/or DOES boasts on its website that they “make America’s backyard a
24 destination they love through designing, manufacturing and installing cutting-edge sheds, pre-
25 fab studios, magical playsets and beautiful outdoor structures.”
- 26 25. In fulfillment of its business of “installing cutting-edge sheds, pre-fab studios, magical playsets
27 and beautiful outdoor structures,” Defendant and/or DOES hired Plaintiff, and other similarly
28 situated workers it misclassified as independent contractors, to perform installations and

- 1 delivery work in California, including Sacramento County.
- 2 26. As this installation work Plaintiff and similarly situated workers Defendant and/or DOES
- 3 misclassified as independent contractors is within the usual course of Defendant's and/or
- 4 DOES' business, Plaintiff and similarly situated workers were employees and misclassified as
- 5 independent contractors under *California Labor Code* section 2775.
- 6 27. Defendant and/or DOES controlled the manner and means of work Plaintiff and similarly
- 7 situated employees misclassified as independent contractors performed. Thus, Plaintiff and
- 8 similarly situated misclassified employees were not free from the control and direction of
- 9 Defendant and/or DOES in connection with the performance of the work, but under the
- 10 contract for the performance of the work and in fact.
- 11 28. Plaintiff and similarly misclassified employees were also not normally engaged in an
- 12 independently established trade, occupation, or business.
- 13 29. Plaintiff and similarly misclassified employees did not independently make the decision to go
- 14 into business for themselves.
- 15 30. Plaintiff and similarly misclassified employees did not take the usual steps to establish and
- 16 promote themselves as independent business people, such as through incorporation, licensure,
- 17 advertisements, routine offerings to provide the services of the independent business to the
- 18 public or to a number of potential customers, and the like.
- 19 31. Therefore, Defendant and/or DOES are unable to satisfy any of the elements of the ABC test
- 20 codified at *California Labor Code* section 2775.
- 21 32. In the alternative, because Defendant and/or DOES retain the right to control the manner and
- 22 means of Plaintiff' and similarly misclassified employees' work, Plaintiff and similarly
- 23 situated employees are employees under the right-to-control test and are entitled to all
- 24 protections afforded employees under the Wage Order and *California Labor Code*.
- 25 33. Throughout the relevant time period, Defendant and/or DOES have maintained uniform
- 26 policies that violate the wage and hour rights of Plaintiff and similarly situated misclassified
- 27 employees in the manner complained of herein.
- 28 34. Plaintiff brings this action on behalf of himself and all Aggrieved Employees defined as all

1 individuals who worked for Defendant and/or DOES in the State of California and were
2 classified by Defendant and/or DOES as independent contractors at any time beginning one
3 year prior to the date Plaintiff sent notice to the LWDA.

4 35. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with
5 respect to the issues or in any other way.

6 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
7 **PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).**

8 36. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
9 as if fully pled.

10 37. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the
11 Aggrieved Employees for all hours worked.

12 38. It is fundamental that an employer must pay its employees for the time worked. *California*
13 *Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code*
14 section 223 prohibits the payment of less than a statutory or contractual wage scale. *California*
15 *Labor Code* sections 1194-1197.1 prohibit the payment of less than the minimum wage.
16 *California Labor Code* section 224 only permits deductions from wages when the employer is
17 required or empowered to do so by state or federal law or when the deduction is expressly
18 authorized in writing by the employee for specified purposes that do not in effect reduce the
19 agreed upon wage.

20 39. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting
21 individually as an officer, agent, or employee of another person, who pays or causes to be paid
22 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
23 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
24 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

25 40. Plaintiff and those similarly situated Aggrieved Employees were employed by Defendant
26 and/or DOES at all relevant times. Defendant and/or DOES were required to compensate
27 Plaintiff for all hours worked and were prohibited from making deductions that had the effect
28 of reducing the agreed upon wage.

1 41. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved
2 Employees for all hours worked. Defendant and/or DOES pay on a flat fee basis. Each job
3 earns Plaintiff and the Aggrieved Employees a set, flat amount. That flat amount, however,
4 does not pay for things such as drive time. As Defendant and/or DOES mandate Plaintiff and
5 the Aggrieved Employees have their own vehicle that can handle enough weight to perform
6 the work, requires them to transport tools and ladders, that drive time is compensable hours
7 worked. Defendant and/or DOES also does not pay for all hours worked in its piece-rate pay
8 structure, such as fueling vehicles, responding to calls, or filling out paperwork.

9 42. Further, Defendant and/or DOES also fail to keep accurate time records of Plaintiff' and the
10 Aggrieved Employees' time as a result of its continuous policies or practices of not paying
11 them for all hours worked as discussed above. Defendant and/or DOES do not have any record
12 of these hours worked.

13 43. Failing to pay for all hours worked while under Defendant's and/or DOES' control and/or
14 while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees
15 being deprived of straight time wages.

16 44. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
17 unpaid wages, and lost interest on such wages, and expenses.

18 45. Plaintiff and the Aggrieved Employees were employed by Defendant and/or DOES at all
19 relevant times. Defendant and/or DOES were required to compensate Plaintiff and the
20 Aggrieved Employees for all hours worked and were prohibited from making deductions that
21 had the effect of reducing the agreed upon wage.

22 46. Defendant and/or DOES commit the acts alleged herein knowingly and willfully, with the
23 wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees.
24 Defendant and/or DOES act with malice or in conscious disregard of Plaintiff' and the
25 Aggrieved Employees' rights.

26 47. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the
27 State of California and were classified by Defendant and/or DOES as independent contractors.

28 48. Plaintiff, as former worker of Defendant and/or DOES who Defendant and/or DOES

misclassified as independent contractors and failed to pay all wages, are aggrieved employees with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

49. Plaintiff, as representative of the people of the State of California, seeks any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

50. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

51. In the alternative, Plaintiff, as aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA for Failure to Pay All Overtime Wages Owed

52. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully pled.

53. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

- 1 54. *California Labor Code* section 510 dictates that any work in excess of 12 hours in one day
2 shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
3 In addition, any work in excess of eight hours on any seventh day of a workweek shall be
4 compensated at the rate of no less than twice the regular rate of pay of an employee.
- 5 55. Defendant and/or DOES fail to pay overtime when employees worked over eight (8) hours per
6 day and when employees worked over forty (40) hours per week. Defendant and/or DOES fail
7 to pay Plaintiff and the Aggrieved Employees for all hours worked, including hours worked
8 over eight (8) hours in a day and forty (40) hours in a week.
- 9 56. Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours worked
10 because Defendant and/or DOES fail to pay them overtime wages for all overtime hours
11 worked. This resulted in the Plaintiff and the Aggrieved Employees not being paid all overtime
12 wages owed to them.
- 13 57. Defendant and/or DOES have a continuous policy of failing to pay Plaintiff and Aggrieved
14 Employees for all hours worked, including those hours worked over eight (8) hours in a day
15 and forty (40) hours in a week. Defendant and/or DOES have a continuous policy of failing to
16 pay overtime when employees worked over eight (8) hours per day and when employees
17 worked over forty (40) hours per week. Because Defendant and/or DOES fail to pay them
18 overtime wages for all overtime hours worked, Plaintiff and Aggrieved Employees were
19 deprived of wages for all overtime hours worked, which resulted in Plaintiff and the Aggrieved
20 Employees not being paid all overtime wages owed to them.
- 21 58. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved
22 Employees for all hours worked.
- 23 59. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved
24 Employees for all hours worked. Defendant and/or DOES pay on a flat fee basis. Each job
25 earns the Plaintiff and the Aggrieved Employees a set, flat amount. That flat amount, however,
26 does not pay for things such as drive time. As Defendant and/or DOES mandate Plaintiff and
27 the Aggrieved Employees have their own vehicle that can handle enough weight to perform
28 the work, requires them to transport tools and ladders, that drive time is compensable hours

1 worked. Defendant and/or DOES also do not pay for all hours worked in its piece-rate pay
2 structure, such as fueling vehicles, responding to calls, or filling out paperwork. Plaintiff and
3 the Aggrieved Employees are not paid for this time, and when they work over eight (8) hours
4 in a shift or 40 hours in a week, these unpaid hours must be compensated at an overtime rate.

5 60. Plaintiff and those similarly situated Aggrieved Employees were employed by Defendant
6 and/or DOES at all relevant times. Defendant and/or DOES were required to compensate
7 Plaintiff and the Aggrieved Employees for all overtime hours worked and were prohibited from
8 making deductions that had the effect of reducing the agreed upon wage.

9 61. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
10 unpaid wages, and lost interest on such wages, and expenses.

11 62. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the
12 State of California and were classified by Defendant and/or DOES as independent contractors.

13 63. Plaintiff, as representative of the people of the State of California, will seek any and all
14 penalties otherwise capable of being collected by the Labor commission and/or the Department
15 of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

16 64. Plaintiff, as representative of the people of the State of California, will seek all penalties
17 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
18 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
19 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
20 222, 223 and 510.

21 65. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
22 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
23 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
24 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
25 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
26 *California Labor Code* section 2699(f)(2).

27 66. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
28 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for

violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA for Failure to Provide Meal Periods (California Labor Code §2698 et. seq.).

67. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully pled.

68. Under *California Labor Code* section 512, and IWC Wage Order 4-2001(11), no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

69. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes.

70. Under *California Labor Code* section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

71. Defendant and/or DOES breached the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, Defendant and/or DOES fails to provide Plaintiff and the Aggrieved Employees with meal periods within the first five (5) continuous hours of work. Defendant and/or DOES do not provide meal periods, because they rely on their unlawful misclassification of Plaintiff and the Aggrieved Employees as independent contractors. As part

of its independent contractor misclassification regime, Defendant and/or DOES turn a blind eye on whether Plaintiff and the Aggrieved Employees actually take meal periods in accordance with *Labor Code* section 512 or Wage Order 4-2001, section 11. Defendant and/or DOES fail to perform its obligation to relieve Plaintiff and the Aggrieved Employees of all duty and control during meal periods and fail to actively provide or offer meal periods of not less than 30-minutes to Plaintiff and the Aggrieved Employees.

72. Defendant and/or DOES have a consistent policy and/or practice of not providing second meal periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the Aggrieved Employees are required to work shifts greater than ten (10) hours long but never received second meal periods in shifts over ten (10) hours long.

73. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendant and/or DOES willfully violate the provisions of *California Labor Code* sections 226.7 and 512, and IWC Wage Order No. 4-2001.

74. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Aggrieved Employees have been deprived of premium wages and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys' fees, and costs.

75. Defendant's and/or DOES' conduct violates applicable IWC Wage Order 4-2001 and *California Labor Code* sections 226.7 and 512(a).

76. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the State of California and were classified by Defendant and/or DOES as independent contractors.

77. Plaintiff, as a worker who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

78. Plaintiff, as representative of the people of the State of California, will seek all penalties

otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7 and 512.

79. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

80. In the alternative, Plaintiff, as aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to *California Labor Code* Section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the PAGA for Failure to Provide Rest Periods (California Labor Code §2698 et. seq.).

81. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully pled.

82. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

83. At all times mentioned herein, Defendant and/or DOES have failed to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

84. Defendant and/or DOES have a consistent policy and/or practice of not providing duty free, net-ten minute, paid rest periods to Plaintiff and all Aggrieved Employees and/or providing

1 compensation in lieu thereof.

2 85. Defendant and/or DOES have a continuous policy and practice that fails to provide Plaintiff
3 and the Aggrieved Employees with rest periods “at the rate of ten (10) minutes net rest time
4 per four (4) hours or major fraction thereof.” Specifically, Defendant and/or DOES do not
5 provide Plaintiff and the Aggrieved Employees with rest periods consisting of ten (10) minutes
6 net rest time, nor do they provide them with a rest period per four (4) hours worked or major
7 fraction thereof. Defendant and/or DOES simply rely on its misclassification and do not
8 authorize and permit rest periods in accordance with California Labor Code and Wage Order,
9 section 11.

10 86. Additionally, Defendant and/or DOES breached the legal duty to provide rest periods to
11 employees by imposing a continuous and consistent policy of requiring Plaintiff and the
12 Aggrieved Employees to work through their rest periods to satisfy the demanding workload
13 duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the Aggrieved
14 Employees of the right to be completely free from employer control under California law.

15 87. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
16 day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for
17 these unprovided rest periods, as alleged above, Defendant and/or DOES willfully violate the
18 provisions of *California Labor Code* section 226.7.

19 88. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the
20 State of California and were classified by Defendant and/or DOES as independent contractors.

21 89. Plaintiff, as non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
22 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
23 has satisfied all prerequisites to serve as representatives of the general public to enforce
24 California’s labor laws, and the penalty provisions identified in *California Labor Code* section
25 2699.5 for violations of *California Labor Code* section 226.7.

26 90. Plaintiff, as non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest
27 periods, is an aggrieved employees with standing to bring an action under the PAGA. Plaintiff
28 satisfied all prerequisites to serve as a representative of the general public to enforce

California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

91. Plaintiff, as representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7.

92. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

93. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the PAGA for Failure Provide Recovery Periods (California Labor Code §2698 et. seq.).

94. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully pled.

95. Under California Code of Regulations, Title 8, section 3395(d)(1), "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg. Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully

- 1 in the shade without having to be in physical contact with each other.” *Id.*
- 2 96. “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade
3 when they feel need to do so to protect himself from overheating.” Cal. Code of Reg. Title 8,
4 § 3395(d)(3). “Such access to shade shall be permitted at all times.” *Id.*
- 5 97. Defendant and/or DOES have failed to permit access to shade and preventative cool down rest
6 and/or recovery periods to Plaintiff and the Aggrieved Employees when the temperature
7 reached eighty (80) degrees Fahrenheit. Specifically, Plaintiff and the Aggrieved Employees
8 work in areas such as Sacramento County in California during the summer and autumn months,
9 when temperatures frequently exceed eighty (80) degrees Fahrenheit. However, Defendant
10 and/or DOES does not allow and encourage Plaintiff and the Aggrieved Employees to take
11 preventative cool-down rest recovery periods in shaded areas when the applicable temperatures
12 are reached. Thus, Defendant and/or DOES have failed to permit, allow, or encourage Plaintiff
13 and the Aggrieved Employees to take preventative cool down recovery periods in the shade to
14 protect against overheating when the temperature exceeds eighty (80) degrees Fahrenheit.
- 15 98. Defendant and/or DOES have failed to utilize any alternative procedures for providing access
16 to shade or equivalent protection to Plaintiff and the Aggrieved Employees. Defendant and/or
17 DOES fail to implement other cooling measures in lieu of shade at least as effective as shade
18 in allowing employees to cool.
- 19 99. Because of Defendant’s and/or DOES’ demanding policies on task completion times, Plaintiff
20 and those similarly situated felt that breaking to exercise their rights to take recovery period
21 breaks would sacrifice their jobs with Defendant and/or DOES.
- 22 100. Throughout the statutory period, Defendant’s and/or DOES’ uniform policies and practices
23 resulted in Plaintiff and the Aggrieved Employees not receiving recovery periods.
- 24 101. Throughout the statutory period, Defendant and/or DOES valued productivity over providing
25 recovery periods and, because of this, recovery periods were not priorities to Defendant and/or
26 DOES.
- 27 102. Throughout the relevant time period, Defendant’s and/or DOES’ policies promoting
28 productivity subjugated Plaintiff’ and those similarly situated’s rights to recovery periods.

1 103. Therefore, Defendant and/or DOES failed to provide preventative cool down rest and/or
2 recovery periods to Plaintiff and the Aggrieved Employees in accordance with California Code
3 of Regulations, Title 8, section 3395.

4 104. By failing to provide recovery periods required by law, and by failing to provide compensation
5 for these unprovided recovery periods, as alleged above, Defendant and/or DOES have
6 willfully violated the provisions of *California Labor Code* section 226.7.

7 105. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the
8 State of California and were classified by Defendant and/or DOES as independent contractors.

9 106. Plaintiff, as non-exempt employee who was unlawfully deprived of recovery periods, is an
10 aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied
11 all prerequisites to serve as a representative of the general public to enforce California's labor
12 laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for
13 violations of *California Labor Code* section 226.7.

14 107. Plaintiff, as non-exempt employee who was unlawfully deprived of recovery periods, is an
15 aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all
16 prerequisites to serve as representative of the general public to enforce California's labor laws,
17 and the penalty provisions identified in *California Labor Code* section 2699.5.

18 108. Plaintiff, as representative of the people of the State of California, will seek all penalties
19 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
20 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
21 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
22 226.7.

23 109. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as aggrieved employee, on behalf
24 of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties:
25 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial
26 violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for
27 each Aggrieved Employee per pay period for each subsequent violation, per *California Labor*
28 *Code* section 2699(f)(2).

1 110. In the alternative, Plaintiff, as aggrieved employee, on behalf of himself and other Aggrieved
2 Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations
3 pursuant to this chapter or any provisions regulating hours and days of the week of the
4 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

5 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
6 **PAGA for Failure to Pay Reporting Time Wages (California Labor Code §2698 et. seq.).**

7 111. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
8 as if fully pled.

9 112. IWC Wage Order 4-2001(5) requires employers to pay “reporting time pay.” Each workday
10 an employee is required to report to work, but is not put to work or is furnished with less than
11 half of his or her usually or scheduled day’s work, must be paid for half of the usual or
12 scheduled day’s work, but in no event less than two hours nor more than four hours, at his or
13 her regular rate of pay. If an employee is required to report to work a second time in any one
14 workday and is furnished less than two hours of work on the second reporting, he or she must
15 be paid for two hours at his or her regular rate of pay.

16 113. Defendant and/or DOES require Plaintiff and the Aggrieved Employees to report to work and
17 Plaintiff and the Aggrieved Employees would report to work, but for less than half of their
18 usual day’s work. For instance, Defendant and/or DOES would have Plaintiff report to work
19 on their off days and perform tasks that would last for about a half hour. On those days, Plaintiff
20 would not receive a half-day’s worth of wages or two hours worth of wages, which violates
21 section 5 of Industrial Welfare Commission Order No. 4-2001.

22 114. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the
23 State of California and were classified by Defendant and/or DOES as independent contractors.

24 115. Plaintiff, as a former worker of Defendant and/or DOES who Defendant and/or DOES was
25 misclassified as independent contractor and failed to pay reporting time wages, is an aggrieved
26 employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites
27 to serve as representative of the general public to enforce California’s labor laws, and the
28 penalty provisions identified in *California Labor Code* section 2699.5.

1 116. Plaintiff, as representative of the people of the State of California, seeks any and all penalties
2 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
3 Standards Enforcement (“DLSE”). This includes each of the following, as set forth in
4 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any
5 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

6 117. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
7 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
8 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
9 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
10 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
11 *California Labor Code* section 2699(f)(2).

12 118. In the alternative, Plaintiff, as aggrieved employee, on behalf of himself and other Aggrieved
13 Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations
14 pursuant to this chapter or any provisions regulating hours and days of the week of the
15 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

16 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
17 **PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor**
18 **Code §2698 et. seq.).**

19 119. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
20 as if fully pled.

21 120. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay,
22 in a timely manner, wages owed to Plaintiff and the Aggrieved Employees who left
23 Defendant’s and/or DOES’ employ or who were terminated.

24 121. Plaintiff and the Aggrieved Employees who ended their employment with Defendant and/or
25 DOES during the last year were entitled to be promptly paid all lawful compensation, and other
26 premiums, as required by *California Labor Code* sections 201 through 203.

27 122. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer
28 discharges an employee, the wages earned and unpaid at the time of discharge are due and

payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

123. Defendant and/or DOES have failed to provide Plaintiff and formerly employed Aggrieved Employees all their final wages at their time of termination in accordance with *California Labor Code* sections 201 and 202.

124. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay the Aggrieved Employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

125. Defendant and/or DOES have a continuous policy of not providing final wages to employees who are fired at the time of termination or who quit within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

126. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked. Defendant and/or DOES pay on a flat fee basis. Each job earns Plaintiff and the Aggrieved Employees a set, flat amount. That flat amount, however, does not pay for things such as drive time. As Defendant and/or DOES mandate Plaintiff and the Aggrieved Employees have their own vehicle that can handle enough weight to perform the work, requires them to transport tools and ladders, that drive time is compensable hours worked. Defendant and/or DOES also do not pay for all hours worked in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out paperwork.

127. Additionally, Defendant and/or DOES fail to pay all meal and rest period premiums owed to Plaintiff and Aggrieved Employees.

128. Defendant's and/or DOES' failure to pay Plaintiff and the Aggrieved Employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, at the time of termination or within seventy-two (72) hours of their leaving Defendant's and/or

DOES' employ, is in violation of *California Labor Code* sections 201 and 202.

129. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the wages shall not continue for more than thirty (30) days.

130. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the State of California and were classified by Defendant and/or DOES as independent contractors.

131. Plaintiff, as non-exempt employee who Defendant and/or DOES fail to pay all wages at the time of termination, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

132. Plaintiff, as representative of the people of the State of California, seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 201 through 203.

133. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as aggrieved employee, on behalf of himself and the other Aggrieved Employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

134. In the alternative, Plaintiff, as aggrieved employee, on behalf of himself and other Aggrieved Employees, seek penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and 558(a)(2).

///

EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).

135. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully pled.

136. *California Labor Code* section 226(a) requires Defendant and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

137. *California Labor Code* section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

138. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular

payroll period.” An employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issue paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

139. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the Aggrieved Employees.

140. Additionally, by virtue of its failure to pay for all time worked, Defendant and/or DOES knowingly and intentionally did not correctly itemize the gross wages earned, total hours worked, net wages earned, and number of hours worked at each hourly rate on wage statements provided to Plaintiff and the Aggrieved Employees as *California Labor Code* section 226, subsection (a), requires in every pay period during the period of the relevant statute of limitations.

141. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked. Defendant and/or DOES pay on a flat fee basis. Each job earns Plaintiff and the Aggrieved Employees a set, flat amount. That flat amount, however, does not pay for things such as drive time. As Defendant and/or DOES mandate Plaintiff and the Aggrieved Employees have their own vehicle that can handle enough weight to perform the work, requires them to transport tools and ladders, that drive time is compensable hours worked. Defendant and/or DOES also do not pay for all hours worked in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out paperwork.

142. In addition, Defendant and/or DOES knowingly and intentionally did not include all meal and rest period premiums owed on wage statements. Defendant and/or DOES therefore knowingly and intentionally fail to itemize all meal and rest period premiums owed on Plaintiff’ and the Aggrieved employees’ wage statements throughout the relevant statute of limitations.

143. Defendant and/or DOES also fail to provide Plaintiff and Aggrieved Employees with written

notice that sets forth the amount of sick leave available for use, either in employees' itemized wage statements or in a separate writing provided to employees on the designated pay date.

144. Throughout the relevant time period, because of the knowing and intentional failure by Defendant and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the Aggrieved Employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

145. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the State of California and were classified by Defendant and/or DOES as independent contractors.

146. Plaintiff, as non-exempt employee who Defendant and/or DOES fail to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

147. Plaintiff, as representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

148. Pursuant to Labor Code section 2699(f), Plaintiff, as aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

149. In the alternative, Plaintiff, as aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Reimburse/Illegal Deductions (California Labor Code §2698 et. seq.).

150. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully pled.

151. *California Labor Code* section 2082 provides: “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.... [which] shall include[s] all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

152. Under *California Labor Code* section 221, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

153. Plaintiff and the Aggrieved Employees incurred expenses in the discharge of their duties without receiving reimbursement from Defendant and/or DOES. For instance, in order “[t]o transport the shed kits,” Defendant and/or DOES mandate that Plaintiff and the Aggrieved Employees “will need a full-sized truck capable of carrying the weight of 1 or more shed kits, or a size/weight appropriate trailer.” At a minimum, Defendant and/or DOES mandate “reliable transportation to/from the job site and the ability to bring your own tools, ladders, and compressor.” Thus, Defendant and/or DOES mandate Plaintiff and the Aggrieved Employees use their own car at their own expense to perform the necessary functions of the job. Plaintiff and the Aggrieved Employees are not reimbursed for the costs of the vehicle, such as, but not limited to, insurance, maintenance, fuel, and mileage. Defendant and/or DOES mandate Plaintiff and the Aggrieved Employees have minimum levels of insurance that name Defendant and/or DOES as an additional insured. Defendant and/or DOES also mandate Plaintiff and the Aggrieved Employees bear the expenses for their tools, such as hand tools, ladders, roofing/framing guns, compressors, and hoses. Defendant and/or DOES also mandate the use of personal phones. Defendant and/or DOES reimburse Plaintiff and the Aggrieved Employees

for none of these expenses in violation of *California Labor Code* section 221, and 2802.

154. *California Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to reimbursement for said necessary expenditures, plus interest and expenses.

155. These claims are on behalf of all individuals who worked for Defendant and/or DOES in the State of California and were classified by Defendant and/or DOES as independent contractors.

156. Plaintiff, as non-exempt employee who incurred business expenses which Defendant and/or DOES failed to reimburse, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

157. Plaintiff, as representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: for violations of the *California Labor Code* section 2802.

158. Pursuant to *Labor Code* section 2699(f), Plaintiff, as aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compliant meal periods;
- C. For all statutory penalties for each pay period during which an employee was underpaid due to failure to provide compliant meal periods;

- 1 D. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
2 2699, et. seq. for failure to provide all rest periods;
- 3 E. For all statutory penalties provided under the *California Labor Code* for each pay period during
4 which an employee was underpaid due to failure to provide paid rest periods;
- 5 F. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
6 2699, et. seq. for failure to timely pay wages at separation;
- 7 G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
8 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time
9 worked;
- 10 H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
11 2699, et. seq. for failure to provide compensation at the minimum wage;
- 12 I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
13 2699, et. seq. for failure to provide accurate, itemized wage statements;
- 14 J. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
15 2699, et. seq. for failure to adopt a lawful sick pay policy;
- 16 K. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
17 2699, et. seq. for failure to reimburse business expenses; and
- 18 L. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section
19 2699(g)(1).

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a jury trial as to liability.

22 **MARA LAW FIRM, PC**

23
24 Date: October 2, 2024

Signed: 

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff JUAN GARCIA, on
behalf of himself and all others similarly
situated, and on behalf of the general public

EXHIBIT 4

David Mara
Jill Vecchi
Grace Campbell
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May 6, 2024

Via Upload to the LWDA Website and U.S. Certified Mail

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency; Backyard Products LLC

*Juan Garcia , on behalf of himself, others similarly situated aggrieved employees v. Backyard
Products LLC*

Factual Statement and Theories of Labor Code Violations

Juan Garcia is a former employee of Backyard Products LLC (“Backyard Products”). Mr. Garcia performed work for Backyard Products in Sacramento County, California. Mr. Garcia was misclassified as an independent contractor. However, Mr. Garcia was actually a non-exempt employee entitled to the protections afforded to employees under the California Labor Code and Industrial Welfare Commission Wage Orders.

Backyard Products boasts on its website that they “make America’s backyard a destination they love through designing, manufacturing and installing cutting-edge sheds, pre-fab studios, magical playsets and beautiful outdoor structures.” In fulfillment of its business of “installing cutting-edge sheds, pre-fab studios, magical playsets and beautiful outdoor structures,” Backyard Products hired Mr. Garcia, and other similarly situated workers it misclassified as independent contractors, to perform installations and delivery work in California, including Sacramento County. As this installation work Mr. Garcia and similarly situated workers Backyard Products misclassified as independent contractors is within the usual course of Backyard Products’ business, Mr. Garcia and similarly situated aggrieved workers were employees and misclassified as independent contractors under California Labor Code section 2750.3.

In addition, Backyard Products controlled the manner and means of work Mr. Garcia and aggrieved employees misclassified as independent contractors performed. Thus, Garcia and aggrieved misclassified employees were not free from the control and direction of Backyard Products in connection with the performance of the work, but under the contract for the performance of the work and in fact. Mr. Garcia and aggrieved misclassified employees were also not normally engaged in an independently established trade, occupation, or business. Garcia and aggrieved misclassified employees did not independently make the decision to go into business

for themselves. They did not take the usual steps to establish and promote themselves as independent business people, such as through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like. Therefore, Backyard Products is unable to satisfy any of the elements of the ABC test codified at California Labor Code section 2750.3. In the alternative, because Backyard Products retains the right to control the manner and means of Mr. Garcia and aggrieved misclassified employees' work, Mr. Garcia and aggrieved employees are employees under the right-to-control test and are entitled to all protections afforded employees under the wage order and labor code.

Backyard Products misclassification was wilfull within the meaning of Labor Code Section 226.8. Labor Code Section 2750.3 has been enacted since January 1, 2020. It was made patently clear by its enactment that any worker performing work within the hiring entity's usual business is an employee and not an independent contractor. It is undisputed that, as Backyard Products intimates on its website, its usual business is installations of sheds and other products that it has Garcia and aggrieved misclassified employees perform. Thus, Backyard Products has violated Labor Code section 226.8 and owes all penalties arising thereunder.

Mr. Garcia's employment with Backyard Products ended on or about April 19, 2024

Mr. Garcia gives notice of his intent to file a lawsuit for violations of the Private Attorneys General Act of 2004 ("PAGA") for Backyard Products' failure to comply with California's wage and hour requirements on behalf of himself and similarly aggrieved employees. Those aggrieved employees include all workers who have been misclassified as independent contractors in California.

I. Backyard Products Fails to Pay All Straight Time and Minimum Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage

Backyard Products has a continuous policy of not paying Mr. Garcia and the aggrieved employees for all hours worked. Backyard Products pays on a flat fee basis. Each job earns Garcia and similarly situated aggrieved employees a set, flat amount. That flat amount, however, does not pay for things such as drive time. As Backyard Products mandates Garcia and aggrieved employees have their own vehicle that can handle enough weight to perform the work, requires them to

transport tools and ladders, that drive time is compensable hours worked. Backyard Products also does not pay for all hours worked in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out paperwork.

Backyard Products also fails to keep accurate time records of Mr. Garcia's and the aggrieved employees' time as a result of its continuous policies or practices of not paying them for all hours worked as discussed above. Backyard Products does not have any record of these hours worked.

Mr. Garcia and the aggrieved employees are informed and believe and thereon allege that Backyard Products breached the legal duty to pay full wages to Mr. Garcia and similarly aggrieved employees. Backyard Products committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Mr. Garcia and the aggrieved employees. Backyard Products acted with malice or in conscious disregard of Mr. Garcia's and the aggrieved employees' rights.

These claims are for Mr. Garcia and all similarly situated non-exempt employees who worked for Backyard Products in California.

Mr. Garcia, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 1194, 1194.2, 1197.1, and 1199.

II. Backyard Products Fails to Pay All Overtime Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight (8) hours of labor constitutes a day's work. Any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half (1.5) times the regular rate of pay for an employee.

California Labor Code section 510 dictates that any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than two (2) times the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than two (2) times the regular rate of pay of an employee.

Backyard Products failed to pay overtime when Mr. Garcia and the aggrieved employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week.

Mr. Garcia and the aggrieved employees were deprived of wages for overtime hours worked because Backyard Products failed to pay them overtime wages for all overtime hours worked. This resulted in Mr. Garcia and the aggrieved employees not being paid all overtime wages owed to them.

Backyard Products also failed to pay Mr. Garcia and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week, thus depriving Mr. Garcia and the aggrieved employees of overtime wages.

Backyard Products has a continuous policy of not paying Mr. Garcia and the aggrieved employees for all hours worked. Backyard Products pays on a flat fee basis. Each job earns Garcia and similarly situated aggrieved employees a set, flat amount. That flat amount, however, does not pay for things such as drive time. As Backyard Products mandates Garcia and aggrieved employees have their own vehicle that can handle enough weight to perform the work, requires them to transport tools and ladders, that drive time is compensable hours worked. Backyard Products also does not pay for all hours worked in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out paperwork. Mr. Garcia and the aggrieved employees are not paid for this time, and when they work over eight (8) hours in a shift or 40 hours in a week, these unpaid hours must be compensated at an overtime rate.

Mr. Garcia and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Garcia and all non-exempt employees who worked for Backyard Products in California.

Mr. Garcia, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

III. Backyard Products Failed to Provide Lawful Meal Periods

Under *California Labor Code* section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

Backyard Products breached the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, Backyard Products fails to provide Mr. Garcia and the aggrieved employees with meal periods within the first five (5) continuous hours of work. Backyard Products does not provide meal periods, because they rely on their unlawful misclassification of Garcia and

aggrieved employees as independent contractors. As part of its independent contractor misclassification regime, Backyard Partners turns a blind eye on whether Garcia and aggrieved employees actually take meal periods in accordance with Labor Code section 512 or Wage Order 4-2001, section 12. Backyard Partners fails to perform its obligation to relieve Garcia and aggrieved employees of all duty and control during meal periods and fails to actively provide or offer meal periods of not less than 30-minutes to Garcia and aggrieved employees.

Backyard Products also instituted a consistent policy/practice of not providing second meal periods to Mr. Garcia and the aggrieved employees and/or providing compensation in lieu thereof. Specifically, Mr. Garcia and the aggrieved employees are required to work shifts greater than ten (10) hours long but never received second meal periods in shifts over ten (10) hours long.

Furthermore, Backyard Products fails to keep accurate records of meal periods for Mr. Garcia and the aggrieved employees.

By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Backyard Products willfully violated the provisions of *Labor Code* sections 226.7 and 512.

These claims are for Mr. Garcia and all similarly situated non-exempt employees who worked for Backyard Products in California.

Mr. Garcia, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Garcia has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

IV. Backyard Products Failed to Provide Lawful Rest Periods

Backyard Products has had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Mr. Garcia and the aggrieved employees.

Industrial Welfare Commission Order No. 4-2001 section 11(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period....The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof.”

Backyard Products has a continuous policy and practice that fails to provide Mr. Garcia and the aggrieved employees with rest periods “at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Specifically, Backyard Products does not provide Mr. Garcia and the aggrieved employees with rest periods consisting of ten (10) minutes net rest time, nor do they provide them with a rest period per four (4) hours worked or major fraction thereof. Backyard Products simply relies on its misclassification and does not authorize and permit rest periods in

accordance with California Labor Code and Wage Order, section 11.

Additionally, Backyard Products breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Mr. Garcia and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed by Backyard Products, thereby denying Mr. Garcia and the aggrieved employees of the right to be completely free from employer control under California law.

By failing to provide rest periods for every four hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, Backyard Products willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 4-2001 section 11(A).

These claims are for Mr. Garcia and all similarly situated non-exempt employees who worked for Backyard Products in California.

Mr. Garcia, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Garcia has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 4-2001 section 18 for violations of *California Labor Code* section 226.7 and Industrial Welfare Commission Order No. 4-2001 section 11(A).

V. Backyard Products Failed to Pay Reporting Time Wages

Backyard Products required Mr. Garcia and aggrieved employees to report to work and Mr. Garcia and aggrieved employees would report to work, but for less than half of their usual day's work. For instance, Backyard Products would have Mr. Garcia report to work on his off days and perform tasks that would last for about a half hour. On those days, Mr. Garcia would not receive a half-day's worth of wages or two hours worth of wages, which violates section 5 of Industrial Welfare Commission Order NO. 4-2001.

VI. Backyard Products Failed to Pay All Wages Due at Termination and During Employment

Backyard Products willfully failed to pay, in a timely manner, wages owed to Mr. Garcia and the aggrieved employees who left Backyard Products's employ or who were terminated.

Mr. Garcia and the aggrieved employees who ended their employment with Backyard Products during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer

discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, Backyard Products intentionally and willfully failed to pay Mr. Garcia and the aggrieved employees who are no longer employed by Backyard Products their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Backyard Products's employ.

Backyard Products has a continuous policy of not providing final wages to employees who are fired at the time of termination or who quit within seventy-two (72) hours of their leaving Backyard Products's employ.

As outlined above, Backyard Products has a continuous policy of not paying Mr. Garcia and the aggrieved employees for all hours worked. Backyard Products pays on a flat fee basis. Each job earns Garcia and similarly situated aggrieved employees a set, flat amount. That flat amount, however, does not pay for things such as drive time. As Backyard Products mandates Garcia and aggrieved employees have their own vehicle that can handle enough weight to perform the work, requires them to transport tools and ladders, that drive time is compensable hours worked. Backyard Products also does not pay for all hours worked in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out paperwork.

Furthermore, through its failure to provide Mr. Garcia and the aggrieved employees with lawful meal and rest periods, Backyard Products does not pay all meal and rest period premiums owed to Mr. Garcia and the aggrieved employees at the time of termination. Backyard Products also fails to pay reporting time pay wages at time of termination.

Backyard Products's failure to pay Mr. Garcia and the aggrieved employees who are no longer employed by Backyard Products their wages, that were earned and unpaid, at the time of termination or within seventy-two (72) hours of their leaving Backyard Products' employ, is in violation of *California Labor Code* sections 201 and 202.

California Labor Code section 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the wages shall not continue for more than thirty (30) days.

These claims are for Mr. Garcia and all similarly situated non-exempt employees who worked for Backyard Products in California.

Mr. Garcia, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VII. Backyard Products's Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires Backyard Products to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Mr. Garcia and the aggrieved employees.

California Labor Code section 226 subdivision (a) requires that Backyard Products, at the time of each payment of wages, “furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

California Labor Code section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California” to itemize in wage statements and to accurately report the total hours worked and total wages earned.

In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with *California Labor Code* section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

Backyard Products has knowingly and intentionally failed to comply with *California Labor Code* section 226(a) by failing to include all of the information required by *California Labor Code* section 226(a)(1) through (9) on each and every wage statement provided to Mr. Garcia and the aggrieved employees.

Additionally, by virtue of its failure to pay for all time worked, Backyard Products knowingly and intentionally did not correctly itemize the gross wages earned, total hours worked, net wages earned, and number of hours worked at each hourly rate on wage statements provided to Mr. Garcia and the aggrieved employees as *California Labor Code* section 226, subsection (a), requires in every pay period during the period of the relevant statute of limitations.

As outlined above, Backyard Products has a continuous policy of not paying Mr. Garcia and the aggrieved employees for all hours worked. Backyard Products pays on a flat fee basis. Each job earns Garcia and similarly situated aggrieved employees a set, flat amount. That flat amount, however, does not pay for things such as drive time. As Backyard Products mandates Garcia and aggrieved employees have their own vehicle that can handle enough weight to perform the work, requires them to transport tools and ladders, that drive time is compensable hours worked. Backyard Products also does not pay for all hours worked in its piece-rate pay structure, such as fueling vehicles, responding to calls, or filling out paperwork.

In addition, Backyard Products failed to pay all meal and rest period premiums owed to Mr. Garcia and the aggrieved employees for Backyard Products's failure to provide lawful meal and rest periods.

Backyard Products also failed to itemize the amount of sick leave available for use on Mr. Garcia's and the aggrieved employees' wage statements in violation of *California Labor Code* section 246(i).

Throughout the statutory period, as a result of the knowing and intentional failure by Backyard Products to comply with itemized employee wage statement provisions, Mr. Garcia and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

Further, in addition to any penalties levied upon Backyard Products for its failure to comply with *California Labor Code* section 226 subdivision (a)'s requirement to provide Mr. Garcia and the aggrieved employees accurate, itemized wage statements, *California Labor Code* section 226.3 assesses additional penalties for the failure to keep the records required in subdivision (a) of Section 226. *California Labor Code* section 226 subdivision (a) requires Backyard Products to maintain records that "accurately shows all of the information required by this subdivision." Backyard Products has violated its statutory duty to maintain records for Mr. Garcia and the aggrieved employees that contain all of the information under *California Labor Code* section 226(a)(1) through (9).

These claims are for Mr. Garcia and all similarly situated non-exempt employees who worked for Backyard Products in California.

Mr. Garcia, as a non-exempt employee who Backyard Products failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Garcia has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for violations of *California Labor Code* section 226 and 226.3.

VIII. Backyard Products Failed to Reimburse Employees for Business Expenses

Section 2802(a) of the *California Labor Code* requires "[a]n employer [to] indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

Mr. Garcia and the aggrieved employees incurred expenses necessary for the discharge of their duties without receiving reimbursement from Backyard Products. For instance, in order “[t]o transport the shed kits,” Backyard Products mandates that Garcia and aggrieved employees “will need a full-sized truck capable of carrying the weight of 1 or more shed kits, or a size/weight appropriate trailer.” At a minimum, Backyard Products mandates “reliable transportation to/from the job site and the ability to bring your own tools, ladders, and compressor.” Thus, Backyard Products mandates Garcia and aggrieved employees use their own car at their own expense to perform the necessary functions of the job. Garcia and aggrieved employees are not reimbursed for the costs of the vehicle, such as, but not limited to, insurance, maintenance, fuel, and mileage. Backyard Products mandates Garcia and aggrieved employees have minimum levels of insurance that name Backyard Products as an additional insured. Backyard Products also mandates Garcia and aggrieved employees bear the expenses for their tools, such as hand tools, ladders, roofing/framing guns, compressors, and hoses. Backyard Products also mandates the use of personal phones. Backyard products reimburses Garcia and aggrieved employees for none of these expenses in violation of California Labor Code section 221, and 2802.

California Labor Code section 2802(a) entitles Mr. Garcia and the aggrieved employees to reimbursement for said necessary expenditures, plus interest and expenses.

These claims are for Mr. Garcia and all similarly situated non-exempt employees who worked for Backyard Products in California.

Mr. Garcia is an aggrieved employee with standing to bring an action under the PAGA. Furthermore, Mr. Garcia satisfies all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802(a).

IX. Backyard Products Failed to Pay Employees Twice Per Month

Section 204(a) of the *California Labor Code* required Backyard Products to pay Mr. Garcia and the aggrieved employees twice during each calendar month.

California Labor Code section 204 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

During the relevant time period, by virtue of its failure to pay for all time worked, Backyard Products intentionally and willfully failed to pay Mr. Garcia and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

As outlined above, Backyard Products has a continuous policy of not paying Mr. Garcia and the

aggrieved employees for all hours worked. Specifically, Backyard Products has a continuous and consistent policy of requiring Mr. Garcia and the aggrieved employees to work before clocking in, after clocking out, and during meal periods. Mr. Garcia and the aggrieved employees are not paid for this time.

For example, Mr. Garcia and the aggrieved employees cannot perform their work duties without tools, including, but not limited to, drills, saws, wrenches, etc. Backyard Products mandates Mr. Garcia and the aggrieved employees to purchase these tools and transport them in their personal vehicles to and from the work location each day. However, Mr. Garcia and the aggrieved employees are only paid from the time they arrive at the work location until they leave the work location at the end of the day. Mr. Garcia and the aggrieved employees are not paid for the time it takes them to drive both to the work location of the day and after finishing their tasks at the work location of the day, despite the fact that Mr. Garcia and the aggrieved employees are required by Backyard Products to commute, and transport their tools, to and from the work location in their personal vehicles.

Furthermore, when Mr. Garcia and the aggrieved employees are able to take meal periods, Mr. Garcia and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Specifically, Mr. Garcia and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by Backyard Products, thereby denying them the right to be completely free from employer control under California law. In addition, Mr. Garcia and the aggrieved employees were always on-call during their meal periods and subject to being called back to work by Backyard Products at any time. Mr. Garcia and the aggrieved employees are informed and believe and thereon allege that Backyard Products breached the legal duty to pay for all hours worked by failing to pay Mr. Garcia and similarly aggrieved employees for meal period time when Mr. Garcia and the aggrieved employees were not relieved of all duties and/or employer control.

In addition, Backyard Products failed to pay all meal and rest period premiums owed to Mr. Garcia and the aggrieved employees for Backyard Products's failure to provide lawful meal and rest periods. Finally, Backyard Products did not pay for 3 days of orientation until a month after the orientation was complete.

Backyard Products's failure to pay Mr. Garcia and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month, is in violation of *California Labor Code* section 204.

During the relevant time period, Backyard Products intentionally and willfully failed to pay Mr. Garcia and the aggrieved employees their wages, that were earned and unpaid, within the timeframes as required by *California Labor Code* section 204.

These claims are for Mr. Garcia and all similarly situated non-exempt employees who worked for Backyard Products in California.

Mr. Garcia, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department

of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of section 204.

X. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Mr. Garcia will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,

MARA LAW FIRM, PC

A large, stylized handwritten signature in black ink, appearing to be 'DM', is written over the text 'MARA LAW FIRM, PC'.

David Mara, Esq.

Jill Vecchi, Esq.

Matthew Crawford, Esq.

Attn: PAGA Administrator

California Labor and Workforce Development Agency

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

Via Web Submission

Attn: Backyard Products LLC

317 S. Main Street,

6th Floor

Ann Arbor, MI 48104

Business Address for Backyard Products LLC

Via Certified Mail

Case Name: **Juan Garcia v. Backyard Products LLC**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of: San Diego, State of California.

I am over the age of 18 and not a party to the within action; my business address is:
2650 Camino Del Rio North, Suite 302 San Diego, CA 92108

On May 6, 2024, I served the foregoing document(s) described as:

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION
2699.3**

On interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Attn: Backyard Products LLC
317 S. Main Street,
6th Floor
Ann Arbor, MI 48104
*Business Address for Backyard Products
LLC
Via Certified Mail*

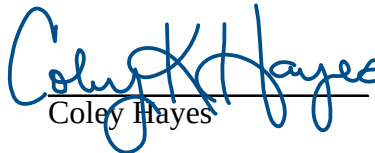
Attn: PAGA Administrator
**California Labor and Workforce
Development Agency**
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Electronic Filing

[XX] (BY UNITED STATES CERTIFIED MAIL) On May 6, 2024, I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses named above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

[XX] (BY ELECTRONIC SUBMISSION) On May 6, 2024, I caused the documents to be sent to the persons at the electronic notification addresses of the parties named above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[XX] (DECLARATION) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: May 6, 2024


Coley Hayes

Coley Hayes

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, May 6, 2024 2:56 PM
To: Coley Hayes
Subject: Thank you for submission of your PAGA Case.

5/6/2024

LWDA Case No. LWDA-CM-1026584-24

Law Firm : Mara Law Firm

Plaintiff Name : Juan Garcia

Employer: Backyard Products LLC

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT 5

Litigation Cost

Garcia v. Backyard Products LLC

Sacramento Superior Court Lead Case No. 24CV009779

7/1/25

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
5/29/2025	One Legal	Stipulation and Order	\$51.06
<i>Est</i>	<i>One Legal</i>	<i>Preliminary Approval Motion</i>	<i>\$93.99</i>
	In House	Postage	\$17.38
	In House	Photocopies (@.25)	\$0.00
	Total		\$162.43
Garcia v. Backyard Products LLC Sacramento Superior Court Consolidated Case No. 24CV019984			
<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
5/3/2024	LWDA	PAGA Fee Notice	\$75.00
	In House	Postage	\$0.00
	In House	Photocopies (@.25)	\$0.00
	Total		\$75.00
		COMBINED TOTAL	\$237.43

Juan Garcia v. Backyard Products LLC
Superior Court of Sacramento
Case No. 24CV009779

Costs Summary

Attorney Service (such as Process Serving):	\$	103.78
Court Fees:	\$	3,546.74
Mediation:	\$	12,450.00
Postage:	\$	17.46
TOTAL COSTS	\$	<u>16,117.98</u>

EXHIBIT 6