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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 21 2021

S. Salazar *LSJ*

10 Attorneys for Plaintiff BRIAN DUNN, as an individual and on behalf of all employees similarly
11 situated,

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF RIVERSIDE**

14 BRIAN DUNN, as an individual and on
15 behalf of all employees similarly situated,

16 Plaintiff,

17 v.

18 BACKYARD PRODUCTS, LLC., a
19 Delaware limited liability company;
20 BACKYARD STORAGE SOLUTIONS,
21 LLC., a Delaware limited liability
22 company; BACKYARD SERVICES,
23 LLC, a Delaware Limited Liability
24 Company; and DOES 1 through 50,
25 inclusive,

26 Defendants.

Case No.: RIC1901927

CLASS ACTION

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Assigned for all purposes to:
Hon. Sunshine S. Sykes, Dept.:6

Date: September 15, 2021
Time: 8:30 a.m.
Dept: 6
Res. Id.: Set by the Court

Complaint Filed: March 18, 2019
Trial Date: None Yet Set

SG
OCT 25 2021
R

1 **[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

2 On September 15, 2021, Plaintiff BRIAN DUNN's ("Plaintiff") Motion for Final
3 Approval of Class Action Settlement ("Motion") pursuant to California Rules of Court, Rule
4 3.769, came on for hearing in Department 6 of the Superior Court of California, County of
5 Riverside, as set forth in the Joint Stipulation and Settlement Agreement and Amendment to the
6 Agreement. The Joint Stipulation and Settlement Agreement filed as Exhibit A to the Declaration
7 of Kevin Mahoney in Support of Plaintiff's Motion and Motion for Preliminary Approval of Class
8 Actions Settlement filed on August 11, 2020 and the Amendment to the Settlement Agreement
9 filed as Exhibit D to the Supplemental Declaration of Kevin Mahoney in Support of Plaintiff's
10 Motion and Motion for Preliminary Approval of Class Actions Settlement filed on December 18,
11 2020 ("Settlement Agreement"). The Settlement Agreement is also concurrently filed jointly as
12 Exhibit A to the Declaration of Kevin Mahoney in support of Plaintiff's Motion for Final
13 Approval of Class Action Settlement. All terms used herein shall have the same meaning as
14 defined in the Settlement Agreement. Plaintiff and Defendants Backyard Products, LLC,
15 Backyard Storage Solutions, LLC, and Backyard Services, LLC ("Defendants") are jointly
16 referred to as "Parties."

17 In accordance with the Second Amended Order Granting Plaintiff's Motion for
18 Preliminary Approval of Class Action Settlement entered by the Court on March 26, 2021, Class
19 Members have been given notice of the terms of the Settlement and the opportunity to submit a
20 request for exclusion, object to any of the terms of the Settlement or comment. The Court, having
21 fully reviewed and considered the Settlement, supporting papers filed by the Parties, and the
22 evidence received by the Court in conjunction with the Motion for Preliminary Approval and
23 supplemental documents, and Motion for Final Approval of the Settlement, the Court grants final
24 approval of the Settlement and **HEREBY MAKES THE FOLLOWING**
25 **DETERMINATIONS, ADJUDGES, AND ORDERS:**

26 1. The Court has jurisdiction over the subject matter of the action and over all Parties
27 to the action, including all Class Members. Pursuant to this Court's Preliminary Approval Order,
28 signed on March 26, 2021, the Notice of Class Action Settlement and Employment Information
and Dispute Form ("Notice") were sent to each Class Member by First Class U.S. mail. The

1 Notice informed Class Members of (1) appropriate information about the nature of this Action,
2 the definition of the Class, the identity of Class Counsel, and the essential terms of the Settlement;
3 (2) appropriate information about Plaintiff and Class Counsel's forthcoming applications for the
4 enhancement payment to the Class Representative and the Class Counsel attorneys' fees and
5 litigation costs award; (3) appropriate information about how the proceeds of the Settlement will
6 be distributed, and about Class Members' rights to appear through counsel, if they desire; (4)
7 appropriate information about how to object to the Settlement, if a Class Member chooses to do
8 so; (5) appropriate instructions as to how to obtain additional information regarding this Action
9 and the Settlement; and (6) where to access any judgment entered in this case following final
10 approval. Adequate periods of time were provided by each of these procedures. No member of
11 the Class presented written objections to the proposed Settlement as part of this notice process or
12 stated an intention to appear at the final approval hearing. Pursuant to the Court's March 26,
13 2021 Order, the 60-day Response Deadline has lapsed. No Class Member presented written
14 objections to the Settlement as part of the notice process or stated an intention to appear at the
15 final approval hearing.

16 2. For purposes of this Final Approval Order and Judgment, the Court confirms
17 certification of the Class defined as follows: all persons who are or were retained by Defendants
18 BACKYARD PRODUCTS, LLC, BACKYARD STORAGE SOLUTIONS, LLC, and
19 BACKYARD SERVICES, LLC (collectively, "Defendants") to install Defendants' products as
20 independent contractors and who performed services in the State of California during the Class
21 Period. ("Class" and "Class Member"). The Class Period is March 18, 2015 through August 31,
22 2020.

23 3. One (1) Class Member submitted a timely and valid Request for Exclusion form
24 and therefore is not part of the Class. The name of the Class Member is: Ryan Mongeon.

25 4. The Court finds and determines that the Notice and the notice procedure afforded
26 adequate protections to Class Members and permit the Court to make an informed decision
27 regarding final approval of the Settlement based on the responses of Class Members. The Court
28 finds and determines that the Notice provided in this case was the best notice practicable, which
satisfied the requirements of law and due process as to all persons entitled to such notice.

1
2 5. The Court further finds and determines that the terms of the Settlement are fair,
3 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
4 provisions of the Settlement, including the release of claims contained therein, should be and
5 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
6 according to its terms. A Class Member who did not file and serve an objection in the manner and
7 by the deadline specified in the Notice and the Objection Form is deemed to have waived all
8 objections and is foreclosed from making any objections to the Settlement, whether by appeal or
9 otherwise.

10 6. Any Class Member who elected to opt-out of the Class in the manner and within
11 the time limits specified in the Class Notice and Request for Exclusion Form: (1) shall not have
12 any rights under the Settlement; (2) shall not be entitled to receive any compensation under the
13 Settlement; (3) shall not have standing to submit any objection to the Settlement; and (4) shall
14 not be bound by the Settlement.

15 7. Except for the one (1) Class Member who elected to opt-out of the Class in the
16 manner and within the time limits specified in the Notice and Request for Exclusion Form, all
17 Class Members, shall be deemed to be within the Class for all purposes under the Settlement, and
18 shall be bound by the terms and conditions of the Settlement, including all orders issued pursuant
19 thereto.

20 8. The Released Parties are released and discharged from any and all liability with
21 respect to the Released Claims as provided in the Settlement.

22 9. The Class members have agreed to release all "Released Claims." "Released
23 Claims" means the claims that Plaintiff, the other Participating Class Members have stated in the
24 complaint and those based upon the facts alleged in the complaint are fully and forever
25 irrevocably released, in exchange for the consideration provided for by this Agreement. "Released
26 Parties" means Defendants their officers, directors, employees, and agents.

27 10. The Court further finds and determines that the terms of the Settlement resolve
28 and settle all of Plaintiff's Release of Claims as provided in the Settlement, with the release
precluding him from instituting, commencing, or continuing to prosecute, directly or indirectly,

1 as an individual or collectively, representatively, derivatively, or on behalf of himself, or in any
2 other capacity of any kind whatsoever, any action in this Court, any other state court, any other
3 similar proceeding, against any Released Party that asserts any claims that are Plaintiff's Released
4 Claims under the terms of the Settlement. Plaintiff release excludes any release of claims not
5 permitted to be released by law.

6 11. The Court finds and determines that (a) the individual settlement payments to be
7 paid to the Class Members and (b) payment to the California Labor and Workforce Development
8 Agency ("L WDA") as civil penalties under the California Labor Code Private Attorneys General
9 Act of 2004, as amended, California Labor Code sections 2699 et seq., as provided for by the
10 Settlement are fair and reasonable. The Court hereby grants final approval to, and orders the
11 payment of, those amounts to be made to the Class Members and to the LWDA, in accordance
12 with the terms of the Settlement.

13 12. The Court further grants final approval to and orders that the following payments
14 be made in accordance with the terms of the Settlement:

15 a. Attorney Fee Award of two hundred eleven thousand six hundred sixty-six dollars
16 and sixty-seven cents (\$211,666.67) and Cost Award of thirteen thousand two
17 hundred twenty-three dollars and ninety-two cents (\$13,223.92). The remaining
18 amount from the anticipated twenty thousand dollars (\$20,000.00) for costs will
19 become part of the Net Fund Value for distribution to Participating Class
20 Members;

21 i. Pursuant to the fee-split agreement, of the two hundred eleven thousand
22 sixty-six dollars and sixty-seven cents (\$211,666.67) Mahoney Law
23 Group, APC shall receive sixty-six thousand, six hundred sixty dollars
24 (\$137,583.34) and Work Lawyers, PC shall receive seventy-four thousand,
25 eighty-three dollars and thirty-three cents (\$74,083.33);

26 ii. Mahoney Law Group, APC shall receive twelve thousand, four hundred
27 eighty dollars and seventeen cents (\$12,480.17) in expense reimbursement;
28 Work Lawyers PC shall receive seven hundred forty-three dollars and
seventy-five cents (\$743.75) in expense reimbursement.

- b. Class Representative Incentive Payment of seven thousand five hundred dollars (\$7,500.00) to Plaintiff Brian Dunn for his service as a class representative;
- c. Seven thousand five hundred dollars (\$7,500.00) for Settlement Administrator Cost to Phoenix Class Action Solutions;
- d. Ten thousand dollars (\$10,000.00) in PAGA penalties, 75% (or \$7,500) to the LWDA and 25% (or \$2,500) to be distributed among Eligible Aggrieved Individuals.

13. The Settlement shall proceed as directed in the Settlement, and no payments pursuant to the Settlement shall be distributed until after the "Effective Final Settlement Date" (defined in the Settlement Agreement). Without affecting the finality of this Final Approval Order and Judgment in any way, the Court reserves continuing and exclusive jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, consummation and enforcement of this Final Approval Order and Judgment and the terms of this Settlement pursuant to California Rule of Court 3.769(h).

14. No later than thirty (30) calendar days after the Effective Date, Defendants shall pay the Gross Fund Value of six hundred thirty-five thousand dollars (\$635,000.00). Within fourteen (14) calendar days after the Settlement is funded or the Effective Final Settlement Date, whichever is later, the Settlement Administrator shall pay all payments due under the Settlement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Incentive Award, the PAGA payment, and the Administration costs in the amounts mentioned above.

15. Each Participating Class Member will receive a proportionate share of the Net Fund Value that is equal to (i) the number of installations performed based on the Class data provided by Defendants to the Settlement Administrator, divided by (ii) the total number of installations performed by all Participating Class Members based on the same Class data, which is then multiplied by the Net Fund Value. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of installations that he or she completed.

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1 16. The Settlement Administrator shall ensure that each envelope containing the
2 individual settlement payment to each Class Member shall bear the notation, "YOUR CLASS
3 ACTION SETTLEMENT CHECK IS ENCLOSED."

4 17. Participating Class Members must cash or deposit their Individual Settlement
5 Share checks within one hundred and eighty (180) calendar days after the checks are mailed to
6 them. The Individual Settlement Share checks are negotiable for ninety (90) days. If any checks
7 are not negotiated, redeemed or deposited within sixty (60) days after mailing, the Settlement
8 Administrator will send a reminder postcard indicating that unless the check is redeemed or
9 deposited in the next one hundred twenty (120) days, it will expire, and offer to replace the check
10 if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of
11 the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two
12 hundred (200) calendar days after the checks are mailed, pay the amount of the Individual
13 Settlement Share to the shall be transferred to the California's Secretary of State - Unclaimed
14 Property Fund under the unclaimed property laws in the name of the Class Member/Eligible
15 Aggrieved Employee. With regard to the payments to Eligible Aggrieved Employees, any
16 unclaimed funds after 180 days shall be turned over by the Settlement Administrator, with
17 information for each Eligible Aggrieved Individual who failed to timely cash his/her settlement
18 check, to the California State Controller's Office: Unclaimed Property Department in the name
19 of the Eligible Aggrieved Individual.

20 18. If any of the Class Members are current employees of Defendants and their
21 settlement payment is returned to the Settlement Administrator as being undeliverable, and the
22 Settlement Administrator is unable to locate a valid mailing address, the Settlement Administrator
23 shall arrange with Defendants to have those settlement payments delivered to the employees at
24 their place of employment.

25 19. Nothing in this Final Approval Order and Judgment shall preclude any action to
26 enforce the Parties' obligations under the Settlement or hereunder, including the requirement that
27 Defendants deposit funds for distribution by the Settlement Administrator to Class Members in
28 accordance with the Settlement.

1 20. The Court hereby enters final Judgment in this case in accordance with the terms
2 of the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment.

3 21. The Parties are hereby ordered to comply with the terms of the Settlement.

4 22. Neither this Final Approval Order and Judgment nor the Settlement Agreement on
5 which it is based are an admission or concession by any party of any fault, omission, liability, or
6 wrongdoing. This Order is not a finding of the validity or invalidity of any claims in this action
7 or a determination of any wrongdoing by any party. The final approval of the Parties' settlement
8 will not constitute any opinion, position, or determination of this Court, one way or the other, as
9 to the merits of the claims or defenses of any party. Upon completion of administration of the
10 Settlement, the Parties shall file a final report regarding the distribution of settlement funds and a
11 proposed amended judgment by March 24, 2022. Pursuant to C.C.P. § 384, the report shall be in
12 the form of a declaration from the Settlement Administrator or other declarant with personal
13 knowledge of the facts and to describe (i) the date checks were mailed, (ii) total number of checks
14 mailed to the Class Members, (iii) the average amount of those checks, (iv) the number of checks
15 that remain uncashed, (v) the total value of those uncashed checks, (vi) the average amount of the
16 uncashed checks, and (vii) the nature and date of the disposition of those unclaimed funds.

17 23. Within ten (10) days after the Court's entry of this Final Judgment, the Settlement
18 Administrator will give notice of entry of judgment to Settlement Class Members pursuant to
19 California Rules of Court, rules 3.771(b) by posting a notice and copy of the Final Judgment on
20 its website at the following web address: [http://www.phoenixclassaction.com/class-action-](http://www.phoenixclassaction.com/class-action-lawsuits/judgments/)
21 [lawsuits/judgments/](http://www.phoenixclassaction.com/class-action-lawsuits/judgments/) (along with the Settlement Agreement, Class Notice, and other pertinent
22 documents). The Notice shall state as follows:

23 To all Class members in the case of *Dunn v. Backyard Products, LLC, Backyard Storage*
24 *Solutions, LLC, and Backyard Services, LLC*, Riverside Superior Court Case No.
25 RIC1901927, PLEASE TAKE NOTICE that the Court has entered the following ORDER
26 GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
27 JUDGMENT, which you can view by clicking the link above. If you would like more
28 about the final approval order to the Final Judgment, please contact Class Counsel:

1 Kevin Mahoney (SBN: 235367)
2 kmahoney@mahoney-law.net
3 **MAHONEY LAW GROUP, APC**
4 249 E. Ocean Blvd., Ste. 814
5 Long Beach, CA 90802
6 Telephone: (562) 590-5550
7 Facsimile: (562) 590-8400

8 Justin Lo (SBN: 280102)
9 Justin@caworklawyer.com
10 **WORK LAWYERS PC**
11 22939 Hawthorne Blvd. Suite 202
12 Torrance, CA 90505
13 Telephone: (424) 355-8335

14 24. A non-appearance compliance hearing is set for April 7, 2022 (or
15 _____ a date more convenient for the Court), in Department 6 of the
16 Riverside County Superior Court.

17 25. This document shall constitute a Judgment for purposes of California Rule of
18 Court 3.769(h).

19 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

20 Dated: 10/15/2021

21 
22 _____
23 The Honorable Sunshine S. Sykes
24 Judge of the Superior Court

PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **August 24, 2021**, I served true copies of the following document described as: **[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**. The documents were served on the interested parties in this action, addressed as follows:

John A. Mavros, Esq. Ashton M. Riley, Esq. Fisher & Phillips LLC 2050 Main Street, Suite 1000 Irvine, CA 92614	Attorney for Defendant BACKYARD PRODUCTIONS, LLC; BACKYARD STORAGE SOLUTIONS, LLC; BACKYARD SERVICES, LLC Telephone: (949) 798-2186 Emails: ariley@fisherphillips.com jmavros@fisherphillips.com
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By e-mail: Based upon court order or an agreement of the parties to accept service by e-mail, I caused the document(s) to be sent to the persons at the electronic service addresses listed above from the email address rcastilla@mahoney-law.net. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

State: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 24, 2021**, at Long Beach, California.


Rosa Saucedo