

**Final Approval of Class Action Settlement**  
**Department SSC-9**  
**Hon. Elaine Lu**

**FILED**  
Superior Court of California  
County of Los Angeles  
**09/12/2024**

**Priscilla Aguilar, et al. v. Owens-Brockway Glass Container, Inc.**

**Case No.: 21STCV33017**

Hearing: September 12, 2024

David W. Slayton, Executive Officer / Clerk of Court

By:                     L. Ennis                     Deputy

**FINAL RULING**

The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$3,700,000, non-reversionary. (¶5.1)
- B. The Net Settlement Amount ("Net") is the GSA minus the following:
  - o **\$1,233,333.33 (33.33%) [reduced]** for attorney fees to Class Counsel, James Hawkins APLC (¶5.4);
  - o **\$24,074** for attorney costs to Class Counsel (*Ibid.*);
  - o a reduced enhancement payment of **\$25,000 [\$7,500** to each of Named Plaintiffs Richard Nunez and Julian Haro, and **\$5,000** to each of Named Plaintiffs Juan Madera and Priscilla Aguilar] (¶5.5);
  - o **\$15,000** for settlement administration costs to CPT Group, Inc. (¶3.2); and
  - o **\$225,000** (75% of \$300,000 PAGA penalty) to the LWDA (¶5.7).
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.
- D. Plaintiffs' release of Defendants from claims described herein.

Within 14 days, Plaintiff's counsel shall file a proposed Order and Judgment, consistent with this ruling containing all requisite terms, including the class definition, release language, and a statement of the number and identity of class members who requested exclusion.

By November 14, 2024, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **February 11, 2026**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

The Court hereby sets a Non-Appearance Case Review for **February 18, 2026**, 8:30 a.m., Department 9.

**BACKGROUND**

This is a wage and hour class action. Defendant Owens-Brockway Glass Container, Inc manufactures and sells glass containers. On September 8, 2021, Plaintiffs filed a putative wage-and-hour class action lawsuit against Defendant (the “Class Complaint”). The Class Complaint asserts causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to timely pay wages owed upon separation from employment; (6) failure to furnish accurate itemized wage statements; (7) violation of the unfair competition law; and (8) failure to reimburse necessary expenses.

Defendant filed a Notice of Removal to the Central District of California pursuant to 28 U.S.C. §§ 1441, 1446, and 1453, asserting jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d).

On November 15, 2021, Plaintiffs filed a separate Private Attorneys General Act of 2004, Labor Code § 2698, et seq. (“PAGA”) representative action lawsuit against Defendant (the “PAGA Complaint”).

Counsel represents that prior to the mediation, Defendant provided data, which included a representative sampling of time and pay data. Specifically, Defendant provided more than 1,600 pages of time and pay data, as well as Plaintiffs’ personnel files, policies and procedures, and shift schedules.

The Parties attended a full day of mediation on January 12, 2023, with Paul Grossman, Esq., of Paul Hastings LLP. The Parties agreed in principle to a settlement and negotiated the full terms between January 12, 2023 and April 18, 2023. A copy of the of the *Joint Stipulation of Class Action Settlement and Release of Claims* (the “Settlement Agreement”) was filed with the Court on April 28, 2023 attached to the Declaration of James R. Hawkins (“Hawkins Decl.”) ISO Prelim, as Exhibit 1.

On August 21, 2023, the Court issued a checklist of items for counsel to address. In response, on November 7, 2023 Counsel filed additional briefing and an *Amended Joint Stipulation of Class Action Settlement and Release of Claims* (“Amended Settlement Agreement”) attached to the Supplemental Declaration if James R. Hawkins (“Hawkins Supp. Decl.”) ISO Prelim, as Exhibit 1.

The Court granted Preliminary Approval on December 14, 2023. Notice was given to the Class Members as ordered (see Declaration of Irvin Garcia (“Garcia Decl.”).) Now before the Court is the Motion for Final Approval of the proposed class action settlement.

### **SETTLEMENT CLASS DEFINITION**

- “Class” refers to all persons who are employed or have been employed by Defendant in California as hourly-paid or non-exempt employees at any time during the time period from March 8, 2017 through April 30, 2023. (¶1.3)
  - “Class Period” refers to the period of March 8, 2017 through April 30, 2023. (¶1.7)
- “PAGA Member” refers to all persons who are or have been employed by Defendant in California as an hourly-paid or non-exempt employee at any time during the time period from March 17April 6, 2020 to April 30, 2023. (¶1.24)
  - “PAGA Period” refers to the period of April 6, 2020 through April 30, 2023. (¶1.11)
- Defendant has represented that the workweek equivalents between March 8, 2017 and December 19, 2022 are approximately 154,522. If the actual number of workweek equivalents during this timeframe

exceeds 154,522 by more than 10% (i.e., more than 169,975 workweeks), the overall Gross Settlement Amount will be increased by the percentage beyond the 10%, and the attorneys' fees shall be calculated as a percentage of the adjusted Gross Settlement Amount. (§5.2)

- The total number of pay periods worked for the 1,104 Participating Class Members is 166,999. (Garcia Decl., ¶14.) Therefore, the escalator was not triggered.

- The parties stipulate to class certification for settlement purposes only. (§2.4.)

### **TERMS OF SETTLEMENT AGREEMENT**

The essential terms are as follows:

- The Gross Settlement Amount ("GSA") is **\$3,700,000**, non-reversionary. (§5.1)
- The Net Settlement Amount ("Net") (**\$2,080,000**) is the GSA minus the following:
  - Up to **\$1,295,000** (35%) for attorney fees (§5.4);
  - Up to **\$25,000** for litigation costs (*Ibid.*);
  - Up to **\$60,000** (**\$15,000 x 4**) for a Service Payment to the Named Plaintiffs (§5.5);
  - Up to **\$15,000** for settlement administration costs (§3.2); and
  - Payment of **\$225,000** (75% of \$300,000 PAGA penalty) to the LWDA. (§5.7)
- Defendants will pay their share of taxes separate from the GSA. (§1.16)
- There is no claim form requirement. (Notice p. 3)
- Individual Settlement Payment Calculation: each Settlement Class member shall receive a proportionate settlement share based upon the pro-rata number of Pay Periods they worked during the Class Period, the numerator of which is the Settlement Class member's total Pay Periods during the Class Period, and the denominator of which is the total Pay Periods worked by all Settlement Class members who worked during the Class Period [i.e., (individual Pay Periods ÷ total Pay Periods by all Settlement Class members)]. Partial Pay Periods will be rounded up. The Settlement Administrator will calculate the number of Pay Periods that each Class Member worked during the Class Period. (§5.8.1)
  - Tax Allocation: 33% as wages and 33% as interest and 33% as penalties. (§5.11)
- PAGA Payments: Each PAGA Member's Individual PAGA Payment is equal to the PAGA Pay Period Rate multiplied by his or her individual PAGA Pay Periods pursuant to the records of Defendant. (§5.7)
- Any Request for Exclusion must be postmarked not more than sixty (60) calendar days after the postmark date of the initial mailing of the Notice of Class Action Settlement and Notice of Settlement Award. (§4.2.1) The same deadline applies to objections (§4.3.1) and pay period disputes (§3.1). Class Members to whom the Notice of Class Action Settlement And Notice of Settlement Award is resent after having been returned undeliverable to the Settlement Administrator shall have an additional seven (7) calendar days to exercise any rights with regard to the Settlement Agreement as set forth below, following the postmark date of the remailing. (§4.1)
  - Defendant has the right, at its sole option, to withdraw from this Settlement Agreement if the number of Class Members opting out exceeds five percent (5%) of the total number of Class Members. (§4.2.3)
- Funding of Settlement: Defendant shall deposit into an the QSF established by the Settlement Administrator the Gross Settlement Amount and the employer's share of payroll taxes within fifteen (15) calendar days after the Effective Date. (§5.13)
- Uncashed Settlement Checks: A reminder postcard will be mailed to all Class Members who have not cashed their checks within ninety (90) calendar days. Any check not cashed within 180 calendar days will be void. The amount of any Individual Settlement Payments that remain undeliverable or uncashed 180 calendar days after the postmarked date of the initial mailing of the Individual Settlement Payments shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class

Member in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384(b). (¶5.12)

- The settlement administrator will be CPT Group, Inc. (¶1.32)
- Notice of Final Judgment will be posted on the Settlement Administrator’s website. (¶3.2)
- The proposed settlement was submitted to the LWDA on September 13, 2022. (*See* Proof of Service filed on April 28, 2023; *See* Proof of Service filed on November 7, 2023.)
- **Scope of the release:** Release by Settlement Class Members. By operation of the entry of the Final Approval Order and Judgment and upon funding of the Gross Settlement Amount by Defendant pursuant to Paragraph 5.13, and except as to such rights or claims as may be created by this Agreement, including, without limitations, individuals who submit a valid Request for Exclusion, each Settlement Class member, and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, will release each of the Released Parties of and from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability that were or could have been raised based on the factual allegations made in the Action through April 30, 2023. This includes, but is not limited to, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; California Industrial Commission Wage Orders, Cal. Code Regs., Title 8, Section 11040, et seq.; and Business and Professions Code Sections 17200, et seq.; and including all claims for or related to alleged failure to pay wages, overtime or double time wages, minimum and regular wages, regular rate of pay; wages timely during employment, wages timely at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work; wage statements, written notice of sick leave, payroll records and recordkeeping; unreimbursed business expenses; failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement; unfair competition; unfair business practices; conversion; class actions; representative actions; aggrieved party claims; injunctive relief; declaratory relief; accounting; punitive damages; liquidated damages; penalties of any nature (including but not limited to civil penalties, waiting-time penalties,); interest; attorneys’ fees and costs; and any other claims arising out of or related to or filed in the Action through April 30, 2023. This Release does not constitute a general waiver under California Civil Code Section 1542. (¶6.1)
  - Release By PAGA Members. By operation of the entry of the Final Approval Order and Judgment and upon funding of the Gross Settlement Amount by Defendant pursuant to Paragraph 5.13, and except as to such rights or claims as may be created by this Agreement, each PAGA Member, and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, will release each of the Released Parties of and from all claims for PAGA penalties that were or could have been raised based on the factual allegations made in the Action and in the LWDA Letter, through April 30, 2023. This includes, but is not limited to, PAGA penalties based on alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; California Industrial Commission Wage Orders, Cal. Code Regs., Title 8, Section 11040, et seq.; and includes all claims for or related to alleged failure to pay wages, overtime or double time wages, minimum and regular wages, regular rate of pay; wages timely during employment, wages timely at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work; wage statements, written notice of sick leave, payroll records and recordkeeping; unreimbursed business expenses; and any other claims arising out of or related to or filed in the Action through April 30, 2023. (¶6.2)
  - Released Parties: “Released Parties” refers to Owens-Brockway Glass Container, Inc. and each of Defendant’s respective past, present and future direct or indirect parents, subsidiaries, and

affiliates including, without limitation, Owens-Illinois, Inc. (O-I), and any other corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iv) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with any of the foregoing. (¶1.29)

- Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶6.3)

## **ANALYSIS OF SETTLEMENT AGREEMENT**

### **A. Does a presumption of fairness exist?**

The Court preliminarily found in its Order of December 14, 2023, that the presumption of fairness should be applied. No facts have come to the Court's attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

### **B. Is the settlement fair, adequate, and reasonable?**

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class and the LWDA.

#### Reaction of the class members to the proposed settlement.

Number of class members: 1,106 (Garcia Decl. ¶5.)  
Number of notice packets mailed: 1,106 (*Id.* at ¶7.)  
Number of undeliverable notices: 10 (*Id.* at ¶9.)  
Number of opt-outs: 2 (*Id.* at ¶12.) [Cory Hillis and Lucio Lemus]  
Number of objections: 0 (*Id.* at ¶10.)  
Number of participating class members: 1,104 (*Id.* at ¶14.)  
Average individual payment: \$1,813.68 (*Id.* at ¶14.)  
Highest individual payment: \$3,807.68 (*Ibid.*)  
Average PAGA payment: \$67.81 (*Id.* at ¶16.)  
Highest PAGA payment: \$152.03 (*Ibid.*)

The Court finds that the notice was given as directed and conforms to due process requirements. Given the reactions of the Class Members and the LWDA to the proposed settlement and for the reasons set forth in the Preliminary Approval order, the settlement is found to be fair, adequate, and reasonable.

### **C. Attorney Fees and Costs**

Class Counsel requests an award of **\$1,295,000** (35%) in fees and **\$24,074** in costs. (MFA at 11:5-7; 16:26-27.) The Settlement Agreement provides for up to \$1,295,000 (35%) of the settlement amount in fees and \$25,000 in costs (¶5.4).

“Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) Here, class counsel request attorney fees using the percentage method, as crosschecked by lodestar. (MFA at pp. 9-16.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) The fee request represents

approximately 35% of the gross settlement amount, which is above the average generally awarded in class actions. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated:

<b>Attorney</b>	<b>Rate</b>	<b>Hours</b>	<b>Totals</b>
James R. Hawkins	\$1,050	167.3	\$175,665.00
Christina M. Lucio	\$775	283.1	\$219,402.50
Mitchell J. Murray	\$725	212.8	\$154,280
Para-Professional	\$200	76.8	\$15,360
<b>Totals</b>	<b>740</b>		<b>\$564,707.50</b>

(Decl. of James R. Hawkins ISO Final ¶¶39-49.)

Counsel’s percentage-based fee request is higher than the unadjusted lodestar, and would represent application of a multiplier of approximately 2.29.

Here, a reduced fee of **\$1,233,333.33 (33.33%)** would represent a reasonable percentage of the total funds paid by Defendant.

As for costs, Class Counsel is requesting a cost amount of **\$24,074**. This is less than the \$25,000 cap estimated at preliminary approval, which was disclosed to Class Members and not objected to. (Garcia Decl. ¶10, Exhibit A thereto.) Costs include, but are not limited to: Mediation (\$15,000), Filing Fees (\$1,660.15), and Expert Fees (\$4,880). (Hawkins Decl. ISO Final ¶50; Exhibit 4.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the Court hereby awards **\$1,233,333.33 (33.33%) [reduced]** in fees and **\$24,074** in costs.

#### **D. Incentive Award**

The class representatives, Plaintiffs Priscilla Aguilar, Julian Haro, Juan Madera, and Richard Nunez, seek an enhancement payment of **\$60,000 (\$15,000 x 4)** for their contributions to the action. (MFA at 17:5-7.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they “should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . . .’” (*Id.* at 806-807, italics and ellipsis in original.)

Plaintiff Richard Nunez represents that his contributions to this litigation include: engaging in communications with his attorneys, searching for documents and answering questions, providing witnesses to his attorneys to interview, helping prepare his attorneys for the mediation and reviewing the settlement. He estimates spending 90 hours on the case. (Declaration of Richard Nunez ISO Final ¶9.)

Plaintiff Julian Haro represents that his contributions to this litigation include: engaging in communications with his attorneys, searching for documents and answering questions, providing witnesses to his attorneys to interview, helping prepare his attorneys for the mediation and reviewing the settlement. He estimates spending 90 hours on the case. (Declaration of Julian Haro ¶9.)

Plaintiff Juan Madera represents that his contributions to this litigation include spending “hours” discussing the facts of the case and the terms of the settlement with his attorneys. (Declaration of Juan Madera ISO Prelim ¶6.)

Plaintiff Priscilla Aguilar represents that her contributions to this litigation include: spending “hours” discussing the facts of the case and the terms of the settlement with his attorneys. (Declaration of Priscilla Aguilar ISO Prelim ¶6.)

Plaintiffs’ contributions are commendable but not exceptional. Further, Plaintiffs Madera and Aguilar’s declarations dated from preliminary approval provide no specificity whatsoever, in the form of quantification of time or the effort expended on the litigation. Based on the above, as well as the benefits obtained on behalf of the class, the Court hereby grants the enhancement payment in the reduced amount of **\$25,000** [**\$7,500** to Plaintiffs Richard Nunez and Julian Haro, and **\$5,000** to Plaintiffs Juan Madera and Priscilla Aguilar.]

**E. Settlement Administration Costs**

The settlement administrator, CPT Group, Inc., is requesting **\$15,000** for the costs of settlement administration. (Garcia Decl. ¶17.) This equals the cost of \$15,000 provided for in the Settlement Agreement (¶3.2) and disclosed to class members in the Notice, to which there were no objections. (Garcia Decl. ¶10, Exhibit A thereto.) Based on the above, the Court hereby awards costs in the requested amount of **\$15,000**.

COUNSEL FOR DEFENDANT IS ORDERED TO DOWNLOAD THE SIGNED FINAL ORDER FROM THE COURT'S WEBSITE AND TO GIVE FORMAL NOTICE TO ALL OTHER PARTIES AND TO FILE PROOF OF SERVICE OF SUCH WITHIN THREE (3) COURT DAYS.

IT IS SO ORDERED.

DATED: September 12, 2024



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Elaine Lu  
Judge of the Superior Court