

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (SBN #068687)

4 Kyle R. Nordrehaug (SBN #205975)

5 Aparajit Bhowmik (SBN #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858) 551-1223

9 Facsimile: (858) 551-1232

10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA CLARA**

13
14 KENNETH NGUYEN, on behalf of the State
15 of California, as a private attorney general, and
16 as an individual, on behalf of himself and on
behalf of all persons similarly situated,

17 Plaintiff,

18 v.

19 PORT PLASTICS, INC., a California
20 Corporation; and DOES 1 through 50,
inclusive,

21 Defendants.
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CASE NO.: 22CV394401

[Consolidated with Case No. 22CV394403]

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

Hearing Date: September 25, 2024

Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner

Dept.: 19

Action Filed: February 15, 2022

Trial Date: Not set

1 The motion of Plaintiff Kenneth Nguyen (“Plaintiff”) for an order finally approving the
2 class action settlement of this action between Plaintiff and Defendant Port Plastics, Inc.
3 (“Defendant”) came on for hearing on September 25, 2024 before the Honorable Thoedore C.
4 Zayner.

5 The motion is GRANTED, as set forth below.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Class Action
11 and PAGA Settlement Agreement (the “Agreement”).

12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of Santa Clara, and over all Parties to this litigation,
14 including the Class.

15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of Three Hundred Fifty
17 Thousand Dollars (\$350,000), which was increased by \$22,826.75 due to the escalator to the final
18 amount of \$372,826.75, and the terms set forth in the Agreement are fair, reasonable, and
19 adequate.

20 4. The Court further finds that the Settlement was the result of arm’s length
21 negotiations conducted after Class Counsel had adequately investigated the claims and became
22 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
23 Settlement, the significant risks relating to certification, liability, and damages issues, and the
24 assistance of an experienced mediator in the settlement process, among other factors, support the
25 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

26 **Preliminary Approval of the Settlement**

27 5. On June 11, 2024, the Court granted preliminary approval of the Agreement. At
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1 this same time, the Court approved conditional certification of the Class for settlement purposes
2 only. The Court also approved the form and method of the Class Notice, appointed Plaintiff as the
3 Class Representative, appointed Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit
4 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class,
5 and appointed ILYM Group as the Administrator.

6 **Notice to the Class**

7 6. In compliance with the Preliminary Approval Order, the Class Notice Packet was
8 mailed by first class mail to members of the Class at their last known addresses on or about July
9 10, 2024. Mailing of the Class Notice to their last known addresses was the best notice practicable
10 under the circumstances and was reasonably calculated to communicate actual notice of the
11 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
12 fully and accurately informed the Class Members of all material elements of the proposed
13 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
14 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
15 laws of the State of California, the United States Constitution, due process and other applicable
16 law. The Class Notice fairly and adequately described the Settlement and provided Class
17 Members adequate instructions and a variety of means to obtain additional information.

18 7. The Response Deadline for opting out of the Class or submitting written objections
19 to the Settlement was September 9, 2024, which Response Deadline was extended by 14 days in
20 the event of a re-mailing. There was an adequate interval between notice and the deadline to
21 permit Class Members to choose what to do and act on their decision. A full opportunity has been
22 afforded to the Class Members to participate in this hearing, and all Class Members and other
23 persons wishing to be heard have been heard. Class Members also have had a full and fair
24 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
25 Court determines that all Class Members who did not timely and properly submit a request for
26 exclusion in accordance with the Agreement are bound by the Settlement and this Final Approval
27 Order and Judgment.

1 **Fairness Of Settlement**

2 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
3 48 Cal.App.4th 1794, 1801 (1996).

4 a. The settlement was reached through arm's-length bargaining between the
5 parties during an all-day mediation before Louis Marlin, a respected and experienced mediator of
6 wage and hour class actions. There has been no collusion between the parties in reaching the
7 proposed settlement.

8 b. Plaintiff's investigation and discovery have been sufficient to allow the
9 Court and counsel to act intelligently.

10 c. Counsel for both Parties are experienced in similar employment class action
11 litigation. All counsel recommended approval of the Agreement.

12 d. No objections were received. No requests for exclusion were received.

13 9. The consideration to be given to the Class Members under the terms of the
14 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
15 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
16 Members' claims, given the uncertainties and significant risks of the litigation and the delays
17 which would ensue from continued prosecution of the action.

18 10. The Agreement is approved as fair, adequate and reasonable and in the best
19 interests of the Class Members.

20 **Attorneys' Fees and Costs**

21 11. A Class Counsel Fees Payment award of \$124,275, and Class Counsel Litigation
22 Expenses Payment award of \$12,638.21 are reasonable, in light of the contingent nature of Class
23 Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class Counsel.
24 The requested award has been supported by Class Counsel's lodestar and billing statement.

25 **Class Representative Service Payment**

26 12. The Agreement provides for a Class Representative Service Payment of not more
27 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that the Class

1 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
2 the risks and burdens undertaken by the Plaintiff in the litigation, for the time and effort in
3 bringing and prosecuting this matter on behalf of the Class, and for the execution of the release.

4 **Administration Expenses Payment**

5 13. The Administrator shall calculate and administer the payment to be made to the
6 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
7 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Penalties,
8 issue any required tax reporting forms, calculate withholdings and perform the other remaining
9 duties set forth in the Agreement. The Administrator has documented \$5,500 for the
10 Administration Expenses Payment, and this amount is reasonable in light of the work performed
11 by the Administrator.

12 **PAGA Penalties**

13 14. The PAGA Penalties amount of \$15,000 is approved and shall be paid out of the
14 Gross Settlement Amount, 75% of which shall be allocated and paid to the LWDA and 25% of
15 which shall be distributed to the Aggrieved Employees as Individual PAGA Payments. The
16 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
17 Aggrieved Employees' 25% share of PAGA Penalties (\$3,750) by the total number of PAGA Pay
18 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
19 result by each Aggrieved Employee's PAGA Pay Periods. The Aggrieved Employees are all
20 individuals who worked for Defendant Port Plastics, Inc. in California who were classified as non-
21 exempt and/or hourly paid employees and who worked at any time during the PAGA Period,
22 which is December 9, 2020 through August 1, 2023. All Aggrieved Employees will be sent their
23 share of the PAGA Penalties and will be subject to the release of the Released PAGA Claims as
24 set forth below, whether or not they opt out of the Class Settlement.

25 **II.**

26 **ORDERS**

27 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

28 **FINAL APPROVAL ORDER AND JUDGMENT**

1 15. The certification of the Class for the purposes of settlement is confirmed. The Class
2 is defined as follows:

3 All individuals who are employed by or previously were employed by Defendant
4 Port Plastics, Inc. in California who were classified as non-exempt and/or hourly
5 paid employees and who worked at any time during the Class Period (February 15,
6 2018 through June 30, 2022).

7 16. All persons who meet the foregoing definition are members of the Class, except
8 for those individuals who timely submitted a valid request for exclusion (“opt out”) from the
9 Class. There were no individuals who requested exclusion.

10 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
11 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
12 the amounts necessary to fully pay Defendant’s share of payroll taxes in accordance with the
13 Agreement, by transmitting the funds to the Administrator no later than 15 days after the Effective
14 Date.

15 18. Class Counsel are awarded Class Counsel Fees Payment in the amount of \$124,275
16 and Class Counsel Litigation Expenses Payment in the amount of \$12,638.21. Class Counsel shall
17 not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff or
18 members of the Class.

19 19. The payment of the Class Representative Service Payment in the amount of
20 \$10,000 to the Plaintiff is approved.

21 20. The payment of \$5,500 to the Administrator as the Administration Expenses
22 Payment is approved.

23 21. The PAGA Penalties are approved and shall be allocated as set forth in the
24 Agreement.

25 22. A Participating Class Member must cash his or her Individual Class Payment check
26 within 180 days after the issuance of the checks. An Aggrieved Employee must cash his or her
27 Individual PAGA Payment check within 180 days after the issuance of the checks. If such checks
28 are not cashed within 120 days after the initial mailing of the checks, the Administrator will also

1 send the affected Participating Class Member and/or Aggrieved Employee a reminder notice
2 informing him or her that unless the check is cashed in the next 60 days, it will expire and become
3 non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the
4 check remains uncashed by the expiration of the 180 day period, the funds from such uncashed
5 checks shall be paid to the California Controller's Unclaimed Property Fund in the name of the
6 individual who failed to cash their check.

7 23. The Agreement and this Settlement are not an admission by Defendant, nor is this
8 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
9 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
10 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
11 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
12 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
13 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
14 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
15 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
16 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
17 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
18 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
19 theory of claim or issue preclusion or similar defense as to the Released Class Claims and the
20 Released PAGA Claims.

21 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
22 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
23 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
24 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
25 to individual Class Members.

26 25. If the Agreement does not become final and effective in accordance with the terms
27 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
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1 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
2 revert to their respective positions as of before entering into the Agreement, and expressly reserve
3 their respective rights regarding the prosecution and defense of this Action, including all available
4 defenses and affirmative defenses, and arguments that any claim in the Action could not be
5 certified as a class action and/or managed as a representative action.

6 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

7 26. The Court hereby enters final judgment in this case in accordance with the terms of
8 the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment.

9 27. Except as set forth in the Agreement and this Final Approval Order and Judgment,
10 Plaintiff, and all members of the Class, shall take nothing in the Action.

11 28. Pursuant to California Code of Civil Procedure section 664.6, and without affecting
12 the finality of this Judgment in any way, the Court shall retain jurisdiction to construe, interpret,
13 implement and enforce the Agreement, to hear and resolve any contested challenge to a claim for
14 settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with
15 the distribution of settlement benefits.

16 29. The Parties are authorized to agree to and to adopt such amendments, modifications
17 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
18 Final Approval Order and Judgment and do not limit the rights of the Parties or Class Members
19 under the Agreement, subject to Court approval.

20 30. Each party shall bear its own attorneys' fees and costs, except as otherwise
21 provided in the Agreement and in this Final Approval Order and Judgment.

22 31. As of the Effective Date and upon full funding of the Gross Settlement Amount and
23 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments by
24 Defendant, all Participating Class Members, on behalf of themselves and their respective former
25 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
26 release Released Parties from the Released Class Claims. The "Released Class Claims" are all
27 class claims pled or which reasonably could have been pled based on the factual allegations
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1 contained in the Operative Complaint which occurred during the Class Period, expressly excluding
2 Plaintiff's individual claims alleged in the Operative Complaint (e.g., Discrimination and
3 Retaliation in Violation of the Fair Employment and Housing Act; Wrongful Termination in
4 Violation of Public Policy). Except as expressly set forth in this Agreement, Participating Class
5 Members do not release any other claims, including claims for vested benefits, wrongful
6 termination, violations of the Fair Employment and Housing Act ("FEHA"), unemployment
7 insurance, disability, social security, workers' compensation, or claims based on facts occurring
8 outside the Class Period. The "Released Parties" are Defendant and each of its former and present
9 directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns and
10 subsidiaries.

11 32. As of the Effective Date and upon full funding of the Gross Settlement Amount and
12 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments by
13 Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
14 themselves and their respective former and present representatives, agents, attorneys, heirs,
15 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
16 The "Released PAGA Claims" are all PAGA claims pled or which reasonably could have been
17 pled based on the factual allegations contained in the Operative Complaint and Plaintiff's
18 December 9, 2021 Letter to the Labor and Workforce Development Agency which occurred
19 during the PAGA Period. The Released PAGA Claims do not include other PAGA claims,
20 underlying wage and hour claims (except as to Released Class Claims), claims for wrongful
21 termination, discrimination, unemployment insurance, disability and worker's compensation, and
22 claims outside of the PAGA Period.

23 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

24
25 Dated: _____

26 _____
27 HON. THEODORE C. ZAYNER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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FINAL APPROVAL ORDER AND JUDGMENT