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Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

NICHOLAS TOSTA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FORMULATION TECHNOLOGY
INCORPORATED, a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CV-22-000189
*[Assigned to Hon. Sonny S. Sandhu, Dept 24, for
all purposes]*

**DECLARATION OF PETER J. CARLSON
IN SUPPORT OF MOTION FOR FINAL
APPROVAL**

I, Peter J. Carlson, state and declare:

1. I am an attorney duly licensed to practice law in the State of California and am a senior associate at Lauby, Mankin & Lauby LLP, attorneys of record for Plaintiff Nicholas Tosta ("Plaintiff"). I am fully familiar with the facts of this case and submit this declaration in support of Plaintiff's Motion for Final Approval. The matters set forth herein are based upon my personal knowledge and, if called upon as a witness, I could and would give competent testimony with respect to the matters contained herein.

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1 QUALIFICATION OF COUNSEL

2 1. I graduated from the University of Oregon School of Law in May 2013 and have
3 been a member, in good standing, of the State Bar of California since January 2014. I am
4 licensed to practice before all courts of the State of California and am admitted to practice in the
5 United States District Court for the Central District of California. I have litigated cases in various
6 courts and counties in California, including successful appellate briefing and argument.

7 2. I began working at Fernandez & Lauby LLP (the predecessor of Lauby, Mankin
8 & Lauby LLP) in March 2016 and, since that time, my practice has consisted solely of
9 representing employees. The vast majority of my cases have been litigated as class actions,
10 representative PAGA actions, or a combination of the two.

11 3. I have been the handling attorney on approximately 158 class actions and/or
12 representative PAGA actions. And, on these cases, myself and/or my firm have been appointed
13 Class Counsel on nearly 100 of those cases, and have helped negotiate settlements totaling over
14 \$90,000,000 for my clients, the employees, and the State of California.

15 4. I was the handling attorney for the second largest PAGA-only settlement in
16 California's history – a \$12.5 million-dollar court approved settlement, which followed extensive
17 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
18 company (*Garcia v. Macy's*, San Bernardino Superior Court Case No. CIVDS1516007).

19 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
20 2018, I was the handling attorney on a PAGA-only case in Orange County where my firm
21 succeeded on a motion for summary adjudication and litigated through trial to obtain a \$425,000
22 judgment for over 1,600 aggrieved employees. Also, in 2019, I was the handling attorney for my
23 firm on a class action against Walmart, where we obtained class certification on behalf of over
24 5,000 employees. After extensive litigation, the matter went to trial, and the jury returned a
25 verdict of approximately \$6.1 million on the meal period claims.

26 6. In 2022 and 2023, I was also selected as a Super Lawyers Rising Star.

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1 **HOURS INCURRED**

2 7. I have spent 112.4 hours working on this action and have kept contemporaneous
3 records of these billable hours. This includes: significant pre-filing work; legal research
4 regarding nuanced and issues unique to this matter; drafting the letter to the LWDA to begin the
5 exhaustion of administrative remedies; drafting the operative class action and PAGA complaint;
6 review and analysis of a voluminous documentation and data prior to mediation to verify and
7 value the claims herein; analyzing all relevant documents and data and drafting a mediation brief
8 and damage model; and work on the approval processes.

9 **HOURLY RATE**

10 8. My billing rate is \$575 per hour, and this rate is usual and customary for class
11 action and/or PAGA practitioners with my level of expertise and experience.

12 9. This rate is consistent with Plaintiff and Defense attorneys who handle complex
13 class action litigation, if not somewhat lower. Indeed, the perfect starting point for analyzing the
14 reasonableness of this rate is the Wolters Kluwer Real Rate Report (the “Real Rate Report”).

15 10. Importantly, the Real Rate Report is not based on self-reported numbers, surveys,
16 sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual
17 hours and fees that law firms billed to clients. In this regard, the Real Rate Report is “a much
18 better reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS*
19 *Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group,*
20 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1085 (holding that rates should be premised upon
21 precisely this form of independent, “objective” rate data that reflects “fair market” rates actually
22 billed to clients “in the community for similar work”). Additionally, the Real Rate Report is
23 based on an enormous and statistically significant compilation of data which is compiled to
24 provide the hourly rates actually billed by partners and associates in metropolitan areas.

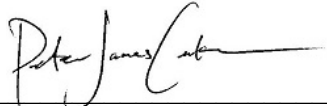
25 11. For the Los Angeles area, which is a logical and reasonable comparison to this
26 geographical marketplace given the overlap of counsel, the median rate for associates is \$576.00
27 per hour, with the upper quartile rate at \$770.00 per hour. The Real Rate Report also notes that
28 the median and upper quartile rates for associates with 7 or more years of experience are \$520

1 and \$789, respectively. Being that I have been in practice for over 9 years, my experience falls
2 squarely within the confines of that range, at a rate lower than those in the Real Rate Report.

3 12. My requested rate is also reasonable, consistent, and less than the rate found in the
4 Laffey Matrix (www.laffeymatrix.com), which indicates that the benchmark rate for an attorney
5 that graduated law school in 2013 is \$733 per hour.

6 13. My hourly rate has been approved by various courts in California, including the
7 following non-exhaustive list of recent settlements for which I have been the handling attorney:
8 *Elizarraras v. Future Foam*, Orange County Superior Court, Case No. 30-2020-01152286-CU-
9 OE-CXC (Sept. 13, 2022) (\$1,200,000 wage-and-hour class and PAGA settlement approved
10 with lodestar cross-check of \$575 rate); *Arevalos v. Americor Funding*, Orange County Superior
11 Court, Case No. 30-2019-01068606-CU-OE-CXC (Aug. 16, 2022) (\$2,212,500 wage-and-hour
12 class and PAGA settlement approved with lodestar cross-check of \$575 rate); *Guzman v.*
13 *Deckers Outdoor*, Riverside County Superior Court, Case No. CVRI2100707 (Sept. 30, 2022)
14 (\$950,000 wage-and-hour class and PAGA settlement approved with lodestar cross-check of
15 \$575 rate); *Finger v. Professional Registry Holdings, LLC, et al.*, Riverside Superior Court, Case
16 No. CVRI2101956 (June 28, 2022) (\$500,000 wage-and-hour class and PAGA settlement
17 approved with lodestar cross-check of \$575 rate); *Woods, et al. v. Just In Time Cargo, Inc.*, San
18 Bernardino Superior Court, Case No. CIVDS200750 (June 8, 2022) (\$450,000 wage-and-hour
19 class and PAGA settlement approved with lodestar cross-check of \$575 rate); *Torres, et al. v.*
20 *ePac Los Angeles, LLC, et al.*, San Bernardino Superior Court, Case No. CIVDS2017140 (April
21 19, 2022) (wage-and-hour class and PAGA settlement approved with lodestar cross-check of
22 \$575 rate); *Carrillo v. BluSky Restoration Contractors LLC*, San Bernardino Superior Court,
23 Case No. CIVSB2105793 (June 29, 2022) (\$360,000 PAGA-only settlement approved with
24 lodestar cross-check of \$575 rate)

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed on September 15, 2023, at Riverside, California.

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28 By: 
Peter J. Carlson