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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF COUNTY OF STANISLAUS
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11 NICHOLAS TOSTA, individually, on a
12 representative basis, and on behalf of all
others similarly situated;

13 Plaintiff,

14 vs.
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16 FORMULATION TECHNOLOGY
17 INCORPORATED, a California Corporation;
and DOES 1 through 20, inclusive;

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

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF JUDGMENT**

Complaint Filed: January 14, 2022
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1 Plaintiff Nicholas Tosta's ("Plaintiff" or "Class Representative") Motion for Final
2 Approval of the Settlement (the "Final Approval Motion") as set forth in the Class Action and
3 PAGA Settlement Agreement and Release of Claims ("Settlement Agreement") came for a
4 hearing in Department 24 of the above-entitled court. The Final Approval Motion was
5 unopposed by Defendant Formulation Technology Incorporated ("Defendant").

6 Having considered the Final Approval Motion, the Settlement Agreement, the
7 Declarations, and all other materials properly before the Court and having conducted an inquiry
8 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement
9 Agreement was entered by all parties in good faith, and the Settlement Agreement is approved.
10 Due and adequate notice having been given to the Class, and the Court having considered the
11 Settlement Agreement, all papers filed and proceedings had herein and all oral and written
12 comments received regarding the proposed settlement, and having reviewed the record in this
13 Action, and good cause appearing,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

15 1. The Court, for purposes of this Judgment and Order ("Judgment"), refers to all
16 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

17 2. The Court has jurisdiction over the subject matter over this Action, the Class
18 Representative, the Class Members, and Defendant.

19 3. The Court finds that the distribution of the Class Notice, as provided for in the
20 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
21 under the circumstances to all Class Members and fully met the requirements of California law
22 and due process under the California and United States Constitution. Based on evidence and
23 other material submitted, the actual notice to the class was adequate.

24 4. The Court finds that the instant Action presented a good faith dispute of the
25 claims alleged, and the Court finds in favor of settlement approval.

26 5. The Released Class Claims on behalf of the Participating Class Members
27 included:
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1 a. all claims stated in the operative Complaint and those based solely upon the
2 facts in the Complaint, including: (a) failure to pay minimum wages, (b)
3 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure
4 to provide rest breaks, (e) failure to failure to timely pay wages upon
5 separation of employment, (f) failure to provide accurate itemized wage
6 statements, (g) unfair and unlawful competition, and (j) all other claims for
7 statutory penalties based on the facts or claims alleged in the Complaint.

8 6. The Released PAGA Claims on behalf of the Aggrieved Employees included.

9 a. all claims for civil penalties under the California Labor Code Private
10 Attorneys General Act of 2004, Labor Code § 2698 *et seq.*, that Plaintiff
11 alleged against the Released Parties, on behalf of Aggrieved Employees and
12 State of California, based on the facts stated in the Complaint in the Action
13 and in the LWDA notice letter, including all PAGA claims seeking civil
14 penalties that premised upon (a) failure to pay minimum wages, (b) failure to
15 pay overtime wages, (c) failure to provide meal periods, (d) failure to provide
16 rest breaks, (e) failure to failure to timely pay wages each period and upon
17 separation of employment, (f) failure to provide accurate itemized wage
18 statements, and (g) all other claims for civil penalties recoverable under the
19 Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts
20 or claims alleged in the Complaint (the “Released PAGA Claims”).

21 7. There were no Objections and no Requests for Exclusion to the Settlement. Thus,
22 all Class Members are Participating Class Members, who are entitled to an Individual Class
23 Payment pursuant to the Settlement and this Judgment. Likewise, all Aggrieved Employees are
24 entitled to an Individual PAGA Payment, constituting a pro rata share of PAGA Penalties.

25 8. The Court approves the Settlement, as set forth in the Settlement Agreement and
26 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling
27 Parties. The Parties are directed to perform in accordance with the terms set forth in the
28 Settlement Agreement.

1 9. The Parties are to bear their own costs, except as otherwise provided in the
2 Settlement Agreement.

3 10. For purposes of effectuating this Order and Judgment, this Court has certified the
4 following class: “all current and former non-exempt (hourly paid) employees employed by
5 Defendant in California at any time during the Class Period of January 14, 2018, through
6 February 15, 2023.” The Court deems this definition sufficient for purposes of California Rules
7 of Court, rule 3.765(a).

8 11. With respect to the Class and for purposes of approving this Settlement, this Court
9 finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
10 joinder of all members is impracticable; (b) there are questions of law or fact common to the
11 Class Members, and there is a well-defined community of interest among the Class Members
12 with respect to the subject matter of the Action; (c) the claims of the Class Representative are
13 typical of the claims of the Class Members; (d) the Class Representative has fairly and
14 adequately protected the interests of the Class Members; (e) a class action is superior to other
15 available methods for an efficient adjudication of this controversy; and (f) the counsel of record
16 for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the Plaintiff
17 in his individual and representative capacity and for the Class.

18 12. By this Judgment, the Class Representative shall release, relinquish, and
19 discharge, and each of the Participating Class Members shall be deemed to have, and by
20 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
21 discharged all Released Class Claims, as defined in the Settlement Agreement.

22 13. The Settlement is not an admission of wrongdoing or violation by Defendant or
23 any of the other Released Parties, nor is this Judgment a finding of the validity of any claims in
24 the Action or of any wrongdoing by Defendant or any of the other Released Parties. Neither this
25 Settlement Approval Order, the Settlement, or the Judgment nor any document referred to herein,
26 nor any action taken to carry out the Settlement are, may be construed as, or may be used as an
27 admission by or against Defendant or any of the other Released Parties of any fault, wrongdoing
28 or liability whatsoever.

1 14. The Escalator Clause in the Settlement Agreement indicates if the total
2 Workweeks exceeds 13,200, then the Gross Settlement Amount shall be increased by \$25.00 for
3 each additional Workweek. Here, the total number of Workweeks was 13,603, which exceeds
4 the cap by 403 Workweeks. Therefore, the Escalator Clause was triggered and the Gross
5 Settlement Amount is increased from \$300,000 to \$310,075 (an increase of \$10,075 which is
6 arrived at by multiplying 403 x \$25.00)

7 15. The Gross Settlement Amount to be paid under the Settlement Agreement is
8 \$310,075. From this amount, Class Counsel sought attorneys fees of \$103,358.33 (one-third of
9 the Gross Settlement Amount), litigation expenses of \$10,978.48, a Service Payment for Class
10 Representative Nicholas Tosta of \$10,000, an Settlement Administration Costs of \$6,000 to
11 Phoenix Settlement Administrators, and \$22,500 to the LWDA for PAGA penalties and \$7,500
12 to the Aggrieved Employees for PAGA Penalties. Defendant does not oppose these requests. In
13 addition, and concurrently with paying the Settlement Amount, Defendant shall separately pay
14 all employer payroll taxes owed on the wage portion of the Individual Class Payments, which
15 shall be reported through the Settlement Administrator. The Court finds that the Settlement
16 Amount is fair, reasonable and adequate, and awards the payments set forth below from the
17 Settlement Amount:

- 18 A) \$103,358.33 to Class Counsel for attorneys fees;
19 B) \$10,978.48 to Class Counsel for litigation expenses;
20 C) \$10,000 to Class Representative Nicholas Tosta as a Service Payment;
21 D) \$6,000 to the Settlement Administrator, Phoenix Settlement
22 Administrators;
23 E) \$22,500 to the LWDA;
24 F) \$7,500 to the Aggrieved Employees on a pro rata basis;
25 G) After deducting the foregoing payments from the Gross Settlement
26 Amount, the remainder shall form the Net Settlement Amount payable to the
27 Participating Class Members as set forth in the Settlement Agreement and as calculated
28 by the Settlement Administrator.

1 16. The Settlement Administrator is directed to calculate the Participating Class
2 Member's Individual Class Payments and the Aggrieved Employees' Individual PAGA
3 Payments and issue all payments within in accordance with the Settlement Agreement and this
4 Order/Judgment.

5 17. Concurrently with mailing the settlement checks to the Participating Class
6 Members and Aggrieved Employees, the Settlement Administrator shall include a Notice of
7 Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the
8 check for the Participating Class Members, noting the following: "Please be advised that on
9 [insert date], 2023, the Superior Court of California for the County of Stanislaus entered
10 Judgment in the case entitled *Tosta v. Formulation Technology Incorporated*, pending in
11 Superior Court of the State of California, County of Stanislaus, Case No. CV-22-000189, on
12 behalf of all current and former non-exempt (hourly paid) employees employed by Defendant in
13 California at any time during the Class Period of January 14, 2018, through February 15, 2023."

14 18. The Class Members shall have 180 days to negotiate the settlement check from
15 the date of issuance by the Settlement Administrator. In the event that a Class Member and/or
16 Aggrieved Employee does not negotiate his/her check within this time period, the check will be
17 canceled. The value of the unclaimed funds in the Settlement Administrator's account as a result
18 of a failure to timely cash a settlement check shall be issued to the State Controller's Office for
19 the State of California in the name of the Class Member.

20 19. The following dates shall govern for purposes of this implementing this
21 Order/Judgment:

22 Date this Order is entered	The Effective Date occurs.
23 Within 30 days of the Effective Date	Defendant shall issue the payment to the 24 Settlement Administrator.
25 Within 10 days after receipt of Payment	Settlement Administrator to issue all 26 Individual Class Payments to the 27 Participating Class Members, Individual 28 PAGA Payments to the Aggrieved Employees, payment to Class Counsel for attorneys fees and litigation expenses, the Service Payment to the Class

	Representative, the payment to the LWDA for PAGA Penalties, and pay itself the Administrator Expenses Payment.
180 days after payment is issued	Deadline for Class Members to cash checks.
30 days after the 180-day check cashing deadline	Counsel to file a declaration from the Settlement Administrator setting forth the disbursements that were actually made, including any uncashed checks and status of process of forwarding unclaimed funds to the State Controller.

20. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the Class Representative, the Class Members, and Defendant for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: _____

HON. SONNY S. SANDHU
JUDGE OF THE SUPERIOR COURT