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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. Judge Sonny S. Sandhu, Dept
24, for all purposes]*

[PROPOSED] ORDER:

- 1) PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT;**
- 2) CONDITIONALLY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- 3) DIRECTING DISTRIBUTION TO THE
CLASS OF THE SETTLEMENT
NOTICE AND EXPLANATION FORM;
AND**
- 4) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

Complaint filed: January 14, 2022

1 Having reviewed and read the Class and Representative Action Settlement Agreement
2 and Release of Claims (the “Settlement Agreement”) between Plaintiff Nicholas Tosta and
3 Defendant Formulation Technology Incorporated (collectively, the “Parties”), as well as the
4 Memorandum of Points and Authorities in Support of the Unopposed Motion for Preliminary
5 Approval of Class Action Settlement, the documents submitted in support of the motion, and all
6 supporting legal authorities and documents, IT IS HEREBY ORDERED:

7 1. The Court GRANTS preliminary approval of the Settlement based upon the terms
8 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
9 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
10 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
11 review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of
12 arms-length negotiations conducted after the Parties adequately investigated and became familiar
13 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
14 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

15 2. For settlement purposes only, the Court finds that the proposed Class is
16 ascertainable and that there is a sufficiently defined community of interest among the Class
17 Members in questions of law and fact. The Court, therefore, conditionally certifies the following
18 Class, for settlement purposes only:

19 All current and former non-exempt (hourly paid) employees
20 employed by Defendant in California at any time during the Class
21 Period

22 3. Additionally, the “Aggrieved Employees” are defined to include: “all current and
23 former non-exempt (hourly paid) employees employed by Defendant in California at any time
24 during the PAGA Period.”

25 4. As set forth in the Settlement Agreement and as relevant to Class and Aggrieved
26 Employees definitions: (a) “Class Period” means the period of January 14, 2018, through
27 February 15, 2023, and (b) “PAGA Period” means the period of January 14, 2021, through
28 February 15, 2023.

1 5. The class action settlement set forth in the Settlement Agreement between
2 Plaintiff and Defendant is preliminarily approved as it appears to be proper, to fall within the
3 range of a fair, reasonable and adequate settlement, and to be presumptively valid, subject only
4 to any objections that may be raised at the Final Approval Hearing.

5 6. For settlement purposes only, the Court appoints Plaintiff Nicholas Tosta as Class
6 Representative, and Brian Mankin and Peter Carlson as Class Counsel.

7 7. The Court approves Phoenix Class Action Administration Solutions to act as the
8 Administrator.

9 8. The Court approves, as to form and content, the Notice and finds that the Notice
10 satisfies the requirements of California Rule of Court, rules 3.766 and 3.769, subd. (f), and fairly
11 appraises the Class Members of the terms of the final approval hearing date, the proposed
12 settlement terms and of their options, including: (1) the nature of the action, the definition of the
13 Class, the identity of Class Counsel, and the essential terms of the Settlement; (2) Plaintiff's and
14 Class Counsel's applications for the Class Representative Service Payment, and Class Counsel's
15 request for attorneys' fees and costs; (3) a formula used to determine the Class Member's
16 estimated Individual Class Payment and Individual PAGA Payment; (4) Settlement Class
17 Members' rights to appear through counsel if they desire; (5) how to object to the Settlement or
18 submit an opt-out request if a Class Member wishes to do so; and (6) how to obtain additional
19 information regarding the action and the Settlement. Counsel for the Parties are authorized to
20 correct any typographical errors and make clarifications, to the extent the same are found or
21 needed, so long as such corrections do not materially alter the substance of the documents.

22 9. The Court approves the procedure for Class Members to participate in, request
23 exclusion from or object to, and preserve appeal rights as set forth in the Settlement Agreement
24 and the Notice.

25 10. The Court finds that the deadlines and method set forth in the Settlement
26 Agreement for the mailing of the Notice meet the requirements of due process, provide the best
27 notice practicable under the circumstances, constitute due and sufficient notice to all persons
28 entitled to notice, and otherwise satisfy the requirements of California law and due process.

1 11. The Court directs the Administrator to perform address verification measures and
2 mail the Notice by first class mail to the Class Members not later than 10 days after it receives
3 the “Class Data” as defined in the Settlement Agreement and to otherwise carry out the
4 Settlement according to the terms of the Settlement Agreement and in conformity with this
5 Order. The Parties are also ordered to carry out the Settlement according to the terms of the
6 Settlement Agreement.

7 12. All Class Members shall be deemed to participate in the Settlement, although any
8 Class Member who wishes to comment on or object to the Settlement or who elects not to
9 participate in the Settlement has until forty-five (45) days after the mailing of the Class Notice to
10 submit an objection or Request to be Excluded, pursuant to the procedures set forth in the Notice.

11 13. The Court approves the handling of unclaimed funds set forth in the Settlement
12 Agreement, specifically that any unclaimed funds in the Administrator’s account as a result of a
13 failure to timely cash a settlement check shall be issued to the State Controller’s Office in the
14 name of the Class Member, as set forth in the Settlement Agreement.

15 14. The following dates shall govern for purposes of this settlement:

June 7, 2023	Preliminary Approval (PA) hearing
July 5, 2023 <i>24 days after PA</i>	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
August 19, 2023 <i>45 days after mailing Notice</i>	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff’s Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD - Approx. October 16, 2023 <i>130 days after PA</i>	Final Approval Hearing.

15. A final approval hearing shall be held in this Court on _____, 2023 at _____ a.m. to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of Attorneys' Fees and Costs Award to Class Counsel; and (3) the amount of the Service Payment to the Class Representative. The Court may continue or adjourn the final approval hearing without further notice to the Class.

16. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the Settlement, attorneys' fees, litigation costs, Class Representative's Service Payment, Administration Costs, and payment to LWDA for PAGA penalties prior to the Final Approval hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

17. Neither this Order, the Settlement Agreement, nor any document referred to therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement may be construed as, or may be used as an admission by or against Defendant or any of the other Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant or any of the other Released Parties and shall not be offered in evidence in any action or proceeding against Defendant or any of the Released Parties in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Order, the Settlement Agreement, or any related agreement or release.

18. The Court may, for good cause shown, extend any of the deadlines set forth in this Order.

19. In the event that the Settlement Agreement does not receive final approval or the Effective Date of the Settlement does not occur, this Order shall be rendered null and void and shall be vacated.

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1 20. Pending the Final Approval hearing, all proceedings in this action, other than
2 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
3 Order, are stayed.

4 21. Counsel for the parties are hereby authorized to utilize all reasonable procedures
5 in connection with the administration of the Settlement which are not materially inconsistent
6 with either this Order or the terms of the Settlement.

7
8 Date: _____

Hon. Sonny S. Sandhu