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Attorneys for Plaintiff, on a representative basis and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF 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 BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing:
Date: October 17, 2023
Time: 8:30 a.m.
Dept.: 24

Complaint Filed: January 14, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law practice. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history - a \$12.5 million-dollar court approved settlement, which followed
18 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
19 50 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
26 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 159 current and former non-exempt (hourly paid) employees employed by Defendant in California at any time during the Class Period of January 14, 2018, through February 15, 2023.

8. As set forth in the Declaration of the Administrator, the Net Settlement Amount is approximately \$149,738.19, after the deductions set forth in the chart below:

<i>Gross Settlement Amount</i>	\$ 310,075.00
Attorneys' Fees (1/3)	\$ 103,358.33
Litigation Costs	\$ 10,978.48
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 149,738.19

9. The process of mailing the Notice Packets was very successful, as all Class Notices were determined to be deliverable.

10. The response from the Class Members was overwhelmingly positive, as no Class Member has objected to or opted out of the settlement.

11. As discussed at length in Plaintiff's motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is favorable to the Class and the release is narrowly limited to the claims alleged.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 100% of the Class has elected to participate and no objections were submitted thus far, the presumption of fairness is justified.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations submitted in support thereof, Defendant vigorously contested Plaintiff's claims, and Plaintiff

1 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
2 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
3 that it is desirable that the action be fully and finally settled in the manner and upon the terms
4 and conditions set forth in the Settlement Agreement in order to limit further expense,
5 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
6 the operation of Defendant's business without further expensive litigation and the distraction and
7 diversion of its personnel with respect to matters at issue. All parties took into account the
8 uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The
9 parties determined that it is desirable and beneficial to both the Class and Defendant that this
10 case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The
11 recoveries contemplated by the Settlement represent a good result for the Class, fairly
12 proportioned to the likely risk-adjusted recovery in litigation.

13 **ADEQUACY OF COUNSEL AND**
14 **REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

15 14. As set forth above, I have handled over 250 class and representative actions, have
16 been appointed as class counsel and have successfully resolved over half of those cases, and
17 many others remain pending and will successfully resolve in the future while recovering
18 hundreds of millions of dollars for my clients and Class Members. This is substantially better
19 than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class
20 Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which
21 found that only one-third of class actions are successful, compared to two-thirds that are defeated
22 and result in no payment to the class members.¹

23 15. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, my office paid all costs including filing fees, court costs, research fees,
26 and mediation costs. There was never a guarantee that we would recoup those expenditures.

27
28 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 16. It has been my experience that the benchmark for attorney fee awards in
2 California state cases is one-third of a common settlement fund, which the CA Supreme Court
3 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
4 Counsel is seeking a fee of \$103,358.33, which is one-third of the Settlement Amount.

5 17. There are several additional factors why I believe that the Court should award
6 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
7 resulted in a common fund settlement amount of \$310,075, whereby the Class Members will
8 receive approximately \$941.75 on average and up to a maximum of \$2,586.82 for those
9 employees that worked the entire Class Period. This is an very good result in light of the
10 disputed nature of the claims alleged. This result was achieved by the work and success of my
11 office, who negotiated the settlement after extensive litigation, discovery, preparation,
12 investigation, mediation, and substantial work thereafter.

13 18. Second, Plaintiff faced significant risks going forward with the litigation. As
14 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
15 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
16 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
17 going forward with this litigation, and it would have taken several more years to realize any
18 recovery in this action along with the possibility of post-trial appeals.

19 19. Third, Class Counsel are experienced class action litigators. This experience and
20 expertise, combined with the high quality of work performed in this case, resulted in the
21 settlement achieved in this case.

22 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
23 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
24 substantial amount of time, money, and resources, and have done so since the inception of this
25 case without any payment or compensation. If Plaintiff had lost this case, we would have
26 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
27 my office, which is a small firm. If, despite these hardships and risks, the best my office could
28 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for

1 the hardships and serious risks we faced litigating this contingency case, and would not be
2 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
3 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
4 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
5 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
6 only one-third of class actions are successful, compared to two-thirds that are defeated and result
7 in no payment to the class members.

8 21. Fifth, the request for attorney's fees in the amount of one-third of the common
9 fund falls well within the norms accepted by state and federal courts in California in comparable
10 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
11 recovery under the common fund doctrine was recently approved by the California Supreme
12 Court in *Laffitte, supra*, 1 Cal.5th 480, 503.

13 22. For all of the above reasons, a common fund fee award here in the amount of one-
14 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

15 23. At my office, this case was primarily handled by my senior associate attorney,
16 Peter Carlson, while I performed the role of the supervising attorney. As set forth in his
17 declaration, Mr. Carlson works exclusively with me on employment law matters and has been in
18 practice for 9 years. He bills at the hourly rate of \$575/hour. I have been in practice for 22
19 years, with most of those years handling complex litigation and for over the last 15 years, my
20 practice has almost entirely consisted of handling class action wage and hour matters. My billing
21 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
22 handle complex class action litigation, if not somewhat lower.

23 24. The hourly rates above are comparable to those of other attorneys with equal or
24 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
25 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year
26 attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer
27 Real Rate Report ("Real Rate Report"), provides directly applicable information in this regard.
28 The Real Rate Report is based on an enormous and statistically significant compilation of data.

For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. In 2018, for the southern California area, which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

25. The table below includes a summary of the hours worked by Mr. Carlson and me, plus an estimated 30 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the Settlement Administrator and defense counsel to finalize this matter. Thus, the actual aggregated lodestar between the attorneys that have worked on this case is approximately \$124,305 resulting in a *negative multiplier*, which is summarized in the following table:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	22	\$775	77 ²	\$59,675
Peter Carlson (Senior Associate – LML)	Handling Attorney	9	\$575	112.4	\$64,630
Grand Total for All Attorneys					\$124,305

The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

1 26. In the course of prosecuting this action, Class counsel have incurred expenses that
2 were incidental and necessary to the effective representation of the Class. These expenses
3 included but were not limited to: court filings, messenger services, postage, fax transmission
4 expenses, transportation, mediator fees, and other incidental expenses directly related to this
5 action. The Settlement Agreement provided up to \$20,000 in costs. Through final approval, my
6 office incurred \$10,978.48 in litigation costs (see Exhibit “B” attached hereto), which is the
7 amount requested. The saving will be placed in the Net Settlement Amount for payment to the
8 Class Members. Defendant does not oppose this request for costs.

9 **REASONABLENESS OF REQUESTED SERVICE AWARD**

10 27. I also believe that the service award of \$10,000 to Plaintiff is fair and warranted
11 for the reasons outlined in his declaration and in the motion. He came forward and worked
12 directly with my office in analyzing the claims and documents, providing valuable information.
13 (See his declaration for supporting information.) Indeed, his participation was an essential
14 element of Defendant’s desire to mediate and of the pre and post mediation analysis that allowed
15 Class Counsel to settle the case. He also took on various risks, including the risk that he could
16 have been ordered to pay Defendant’s costs if he lost and the risk of retaliation and being black-
17 balled in the industry. He also provided a full release of all claims. Defendant does not oppose
18 the requested service award.

19 **SUBMISSION TO THE LWDA**

20 28. The Motion and declarations, including the Settlement Agreement, have
21 concurrently been submitted to the LWDA. (See Exhibit “C”).

22 **EXHIBITS AND CONCLUSION**

23 29. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
24 “A.”

25 30. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement
26 of my firm’s litigation costs.

27
28 ² Includes an estimated 30 hours that will be expended in finalizing the motion, attending the hearing, working with
the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

31. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "C."

32. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys fees, costs, and service award.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 21, 2023, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendant Formulation Technology Incorporated

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]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Class Action Settlement Agreement and Release of Claims is entered into by and

1 between Plaintiff Nicholas Tosta, individually and on behalf of all others similarly situated, and
2 on behalf of the State of California, and Defendant Formulation Technology Incorporated and is
3 approved by their respective counsel of record, subject to the terms and conditions hereof and the
4 Court's approval.

5 **A. Definitions**

6 1. "Action" or "Lawsuit" means and refers to the case entitled *Nicholas Tosta v.*
7 *Formulation Technology Incorporated, et al.*, Stanislaus County Superior Court, Case No. CV-
8 22-000189.

9 2. "Administrator" means and refers to Phoenix Class Action Administration
10 Solutions, the third-party class action settlement administrator agreed to by the Parties, that will
11 provide the Notice to the Class Members and distribute the settlement amounts as described in
12 this Agreement.

13 3. "Administration Costs" means the costs payable from the Settlement Amount to
14 the Administrator for administering this Settlement, including, but not limited to, printing,
15 distributing, and tracking documents for this Settlement, tax reporting, and deposit of the
16 employee and employer share of payroll taxes, unclaimed property due diligence, reporting and
17 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
18 declarations, as requested by the Parties. The Administration Costs shall be paid from the
19 Settlement Amount, including, if necessary, any such costs in excess of the amount represented
20 by the Administrator as being the maximum costs necessary to administer the Settlement.

21 4. "Aggrieved Employee(s)" means all current and former non-exempt (hourly paid)
22 employees employed by Defendant in California at any time during the PAGA Period.

23 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
24 Action and PAGA Settlement Agreement and Release of Claims.

25 6. "Class" is defined all current and former non-exempt (hourly paid) employees
26 employed by Defendant in California at any time during the Class Period.

27 7. "Class Member(s)" refers to individual members of the Class.

28 8. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &

Lauby LLP.

9. “Class Data” means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Administrator on one spreadsheet which shall include, for each Class Member, the individual’s full name; last known address; Social Security Number; total Weeks Worked during the PAGA Period and the Class Period.

10. “Class Period” is deemed to be any time during the period of January 14, 2018, through February 15, 2023.

11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Nicholas Tosta.

12. “Complaint” refers to the operative class and PAGA representative action complaint filed in the Stanislaus County Superior Court on January 14, 2022.

13. “Court” (or “Judge”) means the California Superior Court, County of Stanislaus.

14. “Defendant” means and refers to Formulation Technology Incorporated.

15. “Defendant’s Counsel” or “Defense Counsel” means and refers to Jackson Lewis, P.C.

16. “Effective Date” means the latest of the following dates: (i) if no Class Member timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, then the date of final resolution of that appeal or other collateral attack (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

17. “Escalator Clause:” Defendant represents that there are approximately 120 Class Members, who collectively worked a total of approximately 12,000 Workweeks during the Class Period. If the total count of 12,000 Workweeks (as contained in the Class Data) increases by more than 10% of this number (*i.e.*, above 13,200 Workweeks), then the Settlement Amount shall increase by \$25.00 for each Workweek above 13,200.

1 18. “Final Approval” refers to the order of the Court granting final approval of this
2 Settlement Agreement and entering a judgment approving this Agreement on substantially the
3 terms provided herein or as may be modified by subsequent agreement of the Parties.

4 19. “Individual Class Payment” refers to each Participating Class Members share of
5 the Net Settlement Amount, as further discussed in Paragraph 47(c) below.

6 20. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
7 PAGA Penalties, as further discussed in Paragraph 47(c) below.

8 21. “Settlement Amount” is \$300,000.00, subject to the Escalator Clause and
9 exclusive of Defendant’s obligation to fund its share of payroll taxes, as further discussed in
10 Paragraph 48(c) below.

11 22. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b)
12 below.

13 23. “Notice” means the notice of proposed class settlement that will be sent to the
14 Class Members and which will advise each Class Member of the settlement and his or her
15 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
16 setting of a Final Approval Hearing.

17 24. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the
18 Class Members.

19 25. “Objecting Class Member” means a Class Member, other than Plaintiff, who
20 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c)
21 below.

22 26. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
23 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
24 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
25 as the Individual PAGA payment allocated to each Aggrieved Employee.

26 27. “PAGA Period” is deemed to be any time during the period of January 14, 2021,
27 through February 15, 2023.

28 28. “Participating Class Member” means any and all Class Members who are deemed

1 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
2 valid Requests for Exclusion.

3 29. “Parties” or “Settling Parties” mean Plaintiff and Defendant, collectively.

4 30. “Preliminary Approval Date” means the date the Court approves the Settlement
5 Agreement and enters the Preliminary Approval Order.

6 31. “Preliminary Approval Order” means the judicial Order to be entered by the
7 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
8 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
9 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
10 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
11 and costs. Provided that the motion is consistent with the terms herein, Defendant will not object
12 to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to review
13 and comment upon the motion before it is filed.

14 32. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
15 benefit of the Participating Class Members and Aggrieved Employees, and from which the
16 settlement payments shall be made.

17 33. “Released Class Claims” or “Class Claims” by the Participating Class Members
18 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
19 and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum
20 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to
21 provide rest breaks, (e) failure to failure to timely pay wages upon separation of employment, (f)
22 failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and
23 (j) all other claims for statutory penalties based on the facts or claims alleged in the Complaint.

24 34. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims
25 that Plaintiff alleged against the Released Parties, on behalf of himself and the State of
26 California, based on the facts stated in the Complaint in the Action and in the LWDA notice
27 letter, including all PAGA claims seeking civil penalties that premised upon (a) failure to pay
28 minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d)

1 failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon
2 separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all
3 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code
4 §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. The time period governing
5 the Released PAGA Claims shall be any time during the PAGA Period.

6 35. “Released Parties” means Defendant, and its parents, subsidiaries, directors,
7 owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past
8 and present, and each of them and anyone acting in concert with foregoing.

9 36. “Release” shall mean the release and discharge of the Released Class Claims by
10 Plaintiff and all Participating Class Members and their assignees.

11 37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)
12 below.

13 38. “Service Payment” or “Service Award” means the amount approved by the Court
14 to be paid to Class Representative Nicholas Tosta in addition to his Individual Class Payment as
15 a Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

16 39. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any
17 and all work weeks during the Class Period during which the Class Member worked at least one
18 day for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all
19 weeks worked during the PAGA Period during which the Aggrieved Employee worked at least
20 one day for Defendant.

21 **B. General Terms**

22 40. On January 14, 2022, Plaintiff filed a putative class and representative PAGA
23 action in the Stanislaus County Superior Court, alleging Class Claims and PAGA Claims,
24 including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
25 provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages
26 each period and upon separation of employment, (f) failure to provide accurate itemized wage
27 statements, (g) unfair and unlawful competition

28 41. Defendant denies Plaintiff’s claims and allegations and contends that the Action is

not suitable for class certification.

42. The Class Representative believes he can proceed with the representative and class claims, that the Action is meritorious, and that class certification is appropriate.

43. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including a sampling of payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

44. On February 15, 2023, Plaintiff and Defendant participated in a full-day mediation with Glenn Lerman, Esq., a well-respected wage-and-hour mediator. At the conclusion of mediation and extensive arms-length negotiations, the Parties reached a global settlement and entered into a Memorandum of Understanding.

45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

46. Stipulation for Class Certification. For settlement purposes only, Defendant will stipulate that the Class Members described herein who do not Request Exclusion from the Class may be conditionally certified as a Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part

of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for the Settlement Amount, subject to the Escalator Clause and Defendant's obligation to separately pay its share of payroll taxes on the wage portion of the Individual Class Payments, which is the maximum amount that will be paid by Defendant and includes Individual Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, Administration Costs, and PAGA Penalties.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to the Class.

(c) The Individual Class Payment for each Class Member will be calculated by the Administrator using the Class Data provided by Defendant as follows. Compensable workweeks will be all Weeks Worked by the Class Members during the Class Period. The dollars per compensable work week will be calculated by dividing the total Weeks Worked by Class Members into the Net Settlement Amount to determine a per work week value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by a Participating Class Member during the Class Period to determine the distribution for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the

1 Administrator shall proportionately increase the Individual Class Payments for each Participating
2 Class Member so that the amount actually distributed to Participating Class Members equals
3 100% of the Net Settlement Amount.

4 (d) Allocation of Individual Class Payments: The Individual Class Payments
5 to Participating Class Members will be allocated as follows: 20% will be allocated as wages
6 subject to withholding of all applicable local, state and federal taxes; and 80% will be allocated
7 for interest and statutory penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210,
8 226) from which no taxes will be withheld. The Administrator will issue to each Participating
9 Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect
10 to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

11 (e) Service Payment to Class Representative: The amount, if any, awarded to
12 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
13 exceed \$10,000, in exchange for the service that Plaintiff performed on behalf of the Class.
14 Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of
15 the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in
16 connection with this payment. Plaintiff shall be solely and legally responsible to pay all
17 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
18 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
19 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
20 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
21 Class Members.

22 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
23 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
24 Settlement Amount, plus reasonable litigation costs not to exceed \$15,000 ("Attorney's Fees and
25 Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys'
26 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
27 paid from the Settlement Amount, and, except for this award, Defendant shall have no further
28 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court

1 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
2 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
3 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
4 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
5 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
6 Court.

7 (g) Administration Costs: The fees and other charges of the Administrator
8 will be paid from the Settlement Amount, not to exceed \$6,000, unless (1) the Escalator Clause
9 is triggered (whereby any reasonable increase in Administration Costs shall be paid from the
10 increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all
11 Parties and the Court.

12 (h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA
13 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
14 amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
15 Private Attorney General Act of 2004 ("PAGA") and \$7,500 (25%) will form the Individual
16 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
17 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
18 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
19 Settlement.

20 (i) Tax Liability: Class Counsel and Defendant make no representations as to
21 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the
22 Class Members are not relying on any statement or representation by Class Counsel or Defendant
23 in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and
24 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
25 their respective Individual Class Payments and Individual PAGA Payments, described herein.
26 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
27 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
28 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes

1 set forth in this Section may be modified in a manner to bring Defendant into compliance with
2 any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand
3 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
4 on their respective payments described herein.

5 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
6 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
7 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
8 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
9 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
10 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
11 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
12 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
13 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
14 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
15 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
16 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
17 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
18 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
19 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
20 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
21 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
22 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
23 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
24 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
25 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
26 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
27 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
28 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

(k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Participating Class Members and Aggrieved Employees will not have to make a claim in order to receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of Individual Class Payment or Individual PAGA Payments will be made directly to each Participating Class Member and Aggrieved Employee. The Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

(l) Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and will so represent same to the Court.

D. Release by the Participating Class Members

48. Upon entry of the Final Approval Order and Defendant funding of the Settlement Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiff and the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period.

49. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

50. Class Representative, on behalf of himself and the Class, acknowledges and agrees that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Class, acknowledges and agrees that Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent part as follows: “An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

E. Release of PAGA Claims

51. Upon entry of the Final Approval Order and Defendant’s funding of the

1 Settlement Amount, Plaintiff – in his individual capacity and on behalf of the State of California
2 and LWDA – shall completely release and discharge the Released Parties from the Released
3 PAGA Claims for the PAGA Period.

4 52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
5 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
6 releasing the Released PAGA Claims.

7 53. It is the intent of the Parties that the Final Approval Order shall have full
8 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

9 **F. Release by Plaintiff and Class Representative**

10 54. Class Representative does hereby, for himself and his spouses, heirs, successors,
11 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
12 personal representatives, and assigns forever and completely release and discharge the Released
13 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
14 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
15 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
16 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
17 from the beginning of time through the execution of this Stipulation, whether known or
18 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
19 upon, or relating to Class Representative's employment with Defendant or the remuneration for
20 or termination of such employment (the "Class Representative's Claims").

21 55. Without limiting the generality of the foregoing, this general release by Plaintiff
22 includes all federal, state and local statutory claims, federal and state common law claims
23 (including but not limited to those for contract, tort and equity), including without limitation the
24 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
25 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
26 Standards Act, the Employment Retirement Security Income Act of 1974, the California
27 Constitution, the California Fair Employment and Housing Act, the California Unfair
28 Competition Act (California Business and Professions Code section 17200 et seq.), and the

1 California Labor Code.

2 56. Plaintiff agrees that there is a risk that any injury that he may have suffered by
3 reason of the Released Parties' relationship with him might not now be known, and there is a
4 further risk that said injuries, whether known or unknown at the date of this Settlement
5 Agreement, might possibly become progressively worse, and that as a result thereof further
6 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
7 discharge the Released Parties, and understands that by the execution of this Settlement
8 Agreement no further claims for any such injuries that existed at the time of the execution of this
9 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
10 period from the beginning of time to the execution of this Settlement Agreement.

11 57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
12 Section 1542 of the Civil Code of the State of California and does so understanding and
13 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
14 of the State of California states:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
16 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
17 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
18 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
19 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
20 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
21 OR RELEASED PARTY.

22 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
23 full and complete release and discharge of all parties, Class Representative expressly
24 acknowledges that this Settlement Agreement is intended to include in its effect, without
25 limitation, all claims that Class Representative knew of, as well as all claims that he does not
26 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
27 period from the beginning of time to the execution of this Settlement Agreement, and that this
28 Settlement Agreement contemplates the extinguishment of any such Class Representative's
Claims. Notwithstanding the above, the general release by Class Representative shall not extend
to claims for workers' compensation benefits (including Workers Comp. Case ADJ 11781204),

claims for unemployment benefits, or other claims that may not be released by law.

G. Interim Stay of Proceedings

58. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as is necessary to effectuate the Settlement.

H. Notice Process

59. Appointment of Administrator. The Parties have agreed to the appointment of the Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Class Payment and Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

60. Disputes Regarding Administration. Any and all disputes relating to administration of the Settlement by the Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

61. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Administrator. The Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Administrator will remain

1 confidential and will not be used or disclosed to anyone, except as required by applicable tax
2 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
3 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
4 Counsel from communicating with Class Members regarding the Action and Settlement.

5 62. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
6 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
7 calculation of all payments to be paid from the Settlement Amount, including the estimated
8 Individual Class Payments to each Class Member and Individual PAGA Payments to each
9 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
10 the name). In the event that the total Workweeks worked by all Class Members triggers the
11 Escalator Clause, the Administrator shall notify the Parties of the increased Settlement Amount,
12 and related increased payments from the Settlement Amount, including increased Attorneys'
13 Fees and Costs and any increased Administration Costs, all of which shall be subject to Court
14 approval.

15 63. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
16 to the Class Members, by first class mail, in English, within ten (10) calendar days following the
17 Administrator's receipt of the Class Data. The Administrator shall use standard devices,
18 including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are
19 returned.

20 64. Returned Notice Packets. The Administrator will take steps to ensure that the
21 Notice is received by all Class Members, including utilization of the National Change of Address
22 Database maintained by the United States Postal Service to review the accuracy of and, if
23 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
24 updated address is located within ten (10) calendar days following both the Administrator
25 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical
26 to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out)
27 request or objection must be returned by the later of the Response Deadline or fifteen (15) days
28 after the remailing of the Notice.

1 65. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
2 if an envelope has not been returned to Administrator by the Response Deadline that the Class
3 Member received the Notice.

4 66. Disputes Regarding Class Data. Class Members are deemed to participate in the
5 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
6 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
7 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
8 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
9 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
10 in California than Defendant's records show by timely submitting evidence to the Administrator.
11 Defendant's records will be presumed determinative absent reliable evidence to rebut
12 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
13 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
14 meet and confer in good faith about the evidence to determine the Class Member's actual
15 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
16 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
17 Court to render a final decision. Class Members and Aggrieved Employees will have until the
18 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

19 67. Declaration of Due Diligence. The Administrator shall provide counsel for the
20 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
21 diligence and proof of mailing with regard to the mailing of the Notice.

22 68. Class Members' Rights. Each Class Member will be fully advised of the
23 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
24 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
25 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
26 in accordance with the following guidelines:

27 (a) Requests for Exclusion from Class. Any Class Member, other than
28 Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to

1 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
2 should state:

3 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE
4 FORMULATION TECHNOLOGY LAWSUIT. I UNDERSTAND
5 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
6 CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
7 PAYMENT FROM THIS LAWSUIT.”

8 To be valid, any Request for Exclusion must include the full name, address, telephone
9 number, last four digits of the social security number or date of birth, and signature of the Class
10 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
11 Administrator at the specified address set forth in the Notice. Any such Request must be made in
12 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
13 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
14 Member who timely requests exclusion in compliance with these requirements: (i) will not have
15 any rights under this Agreement, including the right to object, appeal or comment on the
16 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
17 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
18 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
19 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
20 Payment. All Parties and their counsel, including Defendant’s respective members, member
21 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
22 directly or indirectly, through any means.

23 (b) Binding Effect on Participating Class Members. All Participating Class
24 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
25 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
26 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
27 Settlement.

28 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who

1 does not submit a valid and timely Request for Exclusion may object to the terms of this
2 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
3 objection which must be postmarked by the Response Deadline at the address set forth in the
4 Notice. Such objection shall include the Objecting Class Member's full name, address,
5 telephone number, last four digits of the social security number or date of birth, signature, and
6 dates of employment with Defendant, in addition to the case name and number, the basis for the
7 objection, including any legal support and each specific reason in support of the objection, as
8 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
9 represented by counsel, the name and address of his or her counsel. The Administrator shall
10 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
11 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
12 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
13 eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not
14 be responsible for any fees, costs, or expenses incurred by an Objecting Class Member and/or his
15 or her counsel related to any objections to the Settlement. Submitting an objection does not
16 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
17 becoming a party of record by timely and properly intervening or filing a motion to vacate the
18 judgment under Code of Civil Procedure § 663.

19 (d) Failure to Object. Any Class Member who does not timely and properly
20 become a party of record by intervening or filing a motion to vacate the judgment waives any
21 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
22 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
23 under California Code of Civil Procedure section 473, and extraordinary writs.

24 (e) Responses to Objections. Counsel for the Parties may file a response to
25 any objections submitted by an Objecting Class Member at least five (5) court days before the
26 date of the Final Approval Hearing.

27 (f) Class Members will have until the Response Deadline to object or submit
28 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose

jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

69. Funding of the Settlement Amount. Defendant shall deposit the Settlement Amount, plus Defendant's share of payroll taxes owed on Individual Class Payments, with the Administrator within fifteen (15) days after the Effective Date.

70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the Settlement Amount by Defendant, the Administrator shall mail the Individual Class Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and will pay itself the Administration Costs.

71. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash their settlement checks. The release will be binding upon all Participating Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Administrator within 180 days of mailing, the Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

(a) If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the

1 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
2 name of the Class Member.

3 (b) If any Aggrieved Employee's check is not cashed within the time periods
4 noted above, the check will be void and a stop-payment will be issued, and the Administrator
5 shall issue the unclaimed funds to the California State Controller's Office in the name of the
6 Aggrieved Employee.

7 **I. Duties of the Parties Prior to the Court's Approval**

8 72. Promptly after execution of this Agreement, Plaintiff will move the Court for
9 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
10 accomplishing the following:

- 11 (a) Approving as to form and content the proposed Notice;
- 12 (b) Directing the mailing of the Notice by first class mail to the Class
13 Members;
- 14 (c) Preliminarily approving this Settlement;
- 15 (d) Preliminarily certifying the class for purposes of this Settlement;
- 16 (e) Advising the LWDA of the proposed Settlement; and
- 17 (f) Scheduling the Final Approval Hearing on the issue of whether this
18 Settlement should be finally approved as fair, reasonable and adequate.

19 **J. Duties of the Parties Following Court's Final Approval**

20 73. In connection with the Final Approval Hearing provided for in this Agreement,
21 Class Counsel shall submit a proposed Final Approval Order:

- 22 (a) Approving the Settlement, adjudging the terms thereof to be fair,
23 reasonable and adequate, and directing consummation of its terms and provisions;
 - 24 (b) Approving Class Counsel's application for an award of attorneys' fees and
25 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
26 and the payment to the Administrator for costs of administering the settlement; and
 - 27 (c) Entering judgment approving settlement.
- 28

1 **K. Voiding the Agreement**

2 74. If the Court fails or refuses to issue the Final Approval Order or fails to approve
3 any material condition of this Agreement which effects a fundamental change of the Settlement,
4 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
5 option of either Party.

6 75. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
7 have no further obligations under the Settlement, including any obligation by Defendant to pay
8 the Settlement Amount, or any amounts that otherwise would have been owed under this
9 Settlement.

10 76. If the Settlement is voided or fails for any reason, any costs incurred by the
11 Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in
12 this Agreement.

13 **L. Other Terms**

14 77. Waiver. The waiver by one Party of any breach of this Agreement by another
15 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

16 78. Parties' Authority. The signatories hereto represent that they are fully authorized
17 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

18 79. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
19 accomplish the terms of this Agreement, including but not limited to, execution of such
20 documents and to take such other action as may reasonably be necessary to implement the terms
21 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
22 contemplated by this Agreement and any other efforts that may become necessary by order of the
23 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
24 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
25 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
26 preliminary and final approval of the settlement, and the final entry of judgment.

27 80. Defendant's Right to Withdraw. The Parties agree that if more than ten percent
28 (10%) of the Class Members opt out of the Settlement by submitting valid and timely Requests

1 for Exclusion as set forth in this Agreement, Defendant shall have the right in its sole discretion
2 to rescind and void this Settlement Agreement within Fourteen (14) calendar days from the day
3 the Administrator furnishes the parties with the number of valid and timely Requests for
4 Exclusion. If Defendant exercises this option, Defendant shall pay all Administration Costs
5 incurred up to that date.

6 81. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
7 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
8 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
9 cause of action or rights released and discharged by this Agreement.

10 82. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class
11 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
12 asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle
13 and compromise the matters at issue in the Complaint to avoid further substantial expense and
14 the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken
15 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
16 in the defenses that it has asserted or could assert against Plaintiff, have determined that it is
17 desirable and beneficial that Plaintiff' claims be settled in the manner and upon the terms and
18 conditions set forth in this Agreement.

19 83. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
20 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
21 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
22 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
23 Agreement with the intention of avoiding further disputes and litigation with the attendant
24 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
25 related documents such as the notices, and motions for preliminary and final approval, shall,
26 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
27 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
28 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as

part of this Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

84. No Publicity. The Parties will not publicize the Settlement or disclose it to third parties prior to the Court granting Preliminary Approval, except as required or necessary to effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and Class Representative agree that they will not discuss the Settlement with the media, any settlement and verdict reporting service, any social media postings or other Internet postings. Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of this Settlement and the related awards of attorneys' fees and costs, or to communications with Class Members or their representatives about this Settlement, including through the posting of Court-filed documents on Class Counsel's websites for access solely by the Class Members, or to prevent the Parties or their representatives from communicating with financial or legal advisors regarding the Settlement. In response to any media inquiry, Class Counsel may state only that the Action has been settled on terms mutually agreeable to the Parties.

85. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Class:

Brian J. Mankin
brian@lmlfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Kevin M. Erwin, Esq.
Kevin.Erwin@jacksonlewis.com
JACKSON LEWIS P.C.
200 Spectrum Center Drive, #500

Irvine, CA 92618
Tel: (949) 885-1360 | Fax: (949) 885-1380

86. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

87. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

88. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

89. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

90. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

1 91. Integration Clause. This Settlement Agreement contains the entire agreement
2 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
3 or contemporaneous agreements, understandings, representations, and statements, whether oral
4 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
5 hereunder may be waived except in writing.

6 92. Binding On Assigns. This Agreement shall be binding upon and inure to the
7 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
8 successors and assigns.

9 93. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
10 because the members of the Class are numerous, it is impossible or impractical to have each
11 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
12 nature of the release provided herein and such shall have the same force and effect as if this
13 Agreement were executed by each Class Member.

14 94. Counterparts. This Agreement may be executed in counterparts, and when each
15 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
16 original, and, when taken together with other signed counterparts, shall constitute one fully
17 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
18 signatures shall have the same force and effect as an original.

19
20 Dated: March 13, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

21 
22 Nick tosta (Mar 13, 2023 09:48 PDT)

Nicholas Tosta

23
24 Dated: March 14, 2023

DEFENDANT FORMULATION TECHNOLOGY INC

25 
26

27 By: Matt McBride (name)

28 President (title)

1 **APPROVED AS TO FORM:**

2 Dated: March 13, 2023

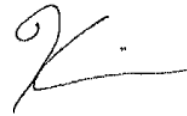
CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

3
4 

5 _____
6 Brian J. Mankin
7 Attorneys for Plaintiff

8 Dated: March 14, 2023

DEFENSE COUNSEL
JACKSON LEWIS, P.C.

9
10 

11 _____
12 Kevin M. Erwin, Esq.
13 Attorneys for Defendant
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EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00480 Tosta v Formulation Tech (Active Only)

Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Nicholas Tosta</u> <u>14000-00480 Tosta v Formulation Tech</u>									
01-14-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	75.00	0.00	1.00	75.00
LWDA Order Number: ORD000148700 to submit PAGA letter Case Number: LWDACM86266722									
01-19-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	464.05	0.00	1.00	464.05
OneLegal Order #17524653 to file complaint									
01-31-2022	Approved		Non-Billable	Attorney Service	Aguilera, Monica A	163.25	0.00	1.00	163.25
Bosco Inv 6580843 Serve: Formulation Technology Incorporated, a California Corporation Summons; Complaint; Civil Case Cover Sheet; ADR Court: Stanislaus County Superior Court - Civil Completed on: 01/20/2022									
02-01-2022	Approved		Non-Billable	E101 Copying	Aguilera, Monica A	0.20	0.00	38.00	7.60
38 copies @ \$0.20 for letters to LWDA and employer									
02-04-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	16.06	0.00	1.00	16.06
One Legal Order #17614545 to file POS									
02-07-2022	Approved		Non-Billable	E108 Postage	Aguilera, Monica A	16.92	0.00	1.00	16.92
Postage for Jan 2022									
03-09-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	16.21	0.00	1.00	16.21
OneLegal Order #17823696 - pay complex fees									
04-19-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	5.53	0.00	1.00	5.53
Budget Conferencing Inv 30877625 for 4/12/22 conf call									
04-29-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	16.57	0.00	1.00	16.57
OneLegal Order#18125066 - file Jt Stmt									
05-20-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	96.36	0.00	1.00	96.36
V/Court Remote Appearance fee for 5-23-22 CMC									
08-03-2022	Approved		Non-Billable	Attorney Service	Charto, Tracie	16.57	0.00	1.00	16.57
OneLegal Order #18671507 - File Ntc of Change of Address									

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00480 Tosta v Formulation
Tech (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
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Nicholas Tosta
14000-00480 Tosta v Formulation Tech

10-13-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	12.87	0.00	1.00	12.87
Onelgal Order #19063517 - submit Joint Statement for 10-24-22 CMC									
10-14-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	12.87	0.00	1.00	12.87
Onelgal Order #19103693 - resubmit CMS for 10/24/22 CMC									
10-19-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	16.73	0.00	1.00	16.73
Onelgal Order #19116408 - file CMS for 10/24/22 CMC									
10-21-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	96.35	0.00	1.00	96.35
Receipt from VCourt Remote Appearance for 10/24/22 CMC									
10-26-2022	Approved		Non-Billable	E125 Mediation fees	Chiarito, Tracie	6,600.00	0.00	1.00	6,600.00
ADR Services, Inc. Inv #22-6232-GEL-01 for 2/15/23 mediation with Glenn Lerman									
02-22-2023	Approved		Non-Billable	E119 Experts	Chiarito, Tracie	1,825.00	0.00	1.00	1,825.00
Berger Consulting Group Inv #8255									
03-29-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	37.78	0.00	1.00	37.78
Onelgal Order #20106118 - file Notice of Settlement and Stipulation to Continue CMC									
05-16-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	78.96	0.00	1.00	78.96
Onelgal Order #20420811 - file MPA									
05-16-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	13.33	0.00	1.00	13.33
Onelgal Order #20422866 - submit Court Reporter Fees									
05-16-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	48.08	0.00	1.00	48.08
Onelgal Order #20423985 - file Nlc of Paying Complex Fees and Court Reporter Fees									
06-06-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	30.35	0.00	1.00	30.35
VCourt ID #015441 for 6/7/23 MPA									
06-08-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	17.04	0.00	1.00	17.04
Onelgal Order #20559615 - file Revised Proposed PA Order									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00480 Tosta v Formulation Tech (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Nicholas Tosta</u>									
<u>14000-00480 Tosta v Formulation Tech</u>									
09-21-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	1,200.00	0.00	1.00	1,200.00
Estimated cost to file MFA and supporting documents, including complex fees									
10-17-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	95.00	0.00	1.00	95.00
Estimated cost for VCourt for MFA									
Project Total									10,978.48
Client Total									10,978.48
Grand Total									10,978.48

EXHIBIT “C”