

1 Robert S. Arns, State Bar No. 65071 (rsa@arnslaw.com)
Jonathan E. Davis, State Bar No. 191346 (jed@arnslaw.com)
2 Shounak S. Dharap, State Bar No. 311557 (ssd@arnslaw.com)
Katherine A. Rabago, State Bar No. 333374 (kar@arnslaw.com)

3 **ARNS DAVIS LAW**
515 Folsom St, 3rd Floor
4 San Francisco, CA 94109
Tel: (415) 495-7800
5 Fax: (415) 495-7888

6 Anthony L. Label, State Bar No. 205920 (al.team@veenfirm.com)
7 Theo Emison, State Bar No. 209183 (t.emison@veenfirm.com)
Steven A. Kronenberg, State Bar No. 215541 (al.team@veenfirm.com)

8 **THE VEEN FIRM, P.C.**
20 Haight Street
9 San Francisco, CA 94102
Tel: (415) 673-4800
10 Fax: (415) 771-5845

11 *Attorneys for Plaintiffs*

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 IN RE BOTANIC TONICS LITIGATION

Master File No. 3:23-cv-01460-VC

16 This Document Relates to All Actions

17 **[PROPOSED] ORDER GRANTING**
18 **PLAINTIFFS' MOTION FOR**
19 **PRELIMINARY APPROVAL OF**
20 **CLASS SETTLEMENT AS**
21 **MODIFIED**

Judge: Hon. Vince Chhabria
Dept: Courtroom 4, 17th Flr.

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28 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT**
Master File No. 3:23-cv-01460-VC

1 Plaintiffs have moved for preliminary approval of a proposed class settlement which would
2 resolve the Plaintiffs' class action claims brought under California law, New York law, New Jersey
3 law, and California state common law. Upon consideration of the motion, the Settlement
4 Agreement, and the exhibits thereto, the Court GRANTS preliminary approval of the Settlement,
5 finding specifically as follows.¹

6
7 **I. Jurisdiction**

8 1. The Court preliminarily finds that it has jurisdiction over the subject matter of this
9 action and personal jurisdiction over the parties and the members of the Settlement Class described
10 below.

11 **II. Preliminary Approval of the Settlement**

12 2. Pursuant to the Settlement Agreement, the Defendants have agreed to pay a gross
13 Class Settlement Fund of \$8,750,000 in cash, in exchange for customary releases.

14 3. Having considered the motion for preliminary approval, the Settlement Agreement,
15 and the exhibits thereto, the Court preliminarily finds that the Settlement is fair, adequate, and
16 reasonable, and in the best interests of the Settlement Class. This finding is supported by, among
17 other things, the complex legal and factual posture of the Action, the fact that the Settlement is the
18 result of arm's length negotiations presided over by a neutral mediator, and settlement benefits
19 being made available to Settlement Class Members.

20 **III. Rule 23 Requirements**

21 4. The Court preliminarily finds that the prerequisites for a class action under Rule
22 23(a) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of
23 all members thereof is impracticable; (b) there are questions of law and fact common to the Class
24 Members; (c) the claims of the Class Representatives are typical of the claims of the Class

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26
27 ¹ Unless otherwise defined herein, all terms used in this Order that are defined terms in the
Settlement Agreement have the same meaning as set forth in the Settlement Agreement.

1 Members; and (d) the Class Representatives will fairly and adequately represent the interests of
2 the Class Members.

3 5. The Court further preliminarily finds that the prerequisites for class certification
4 under Rule 23(b)(3) have been satisfied in that (i) questions of law and fact common to the Class
5 Members predominate over any questions affecting only individual Class Members; and (ii) a class
6 action is superior to other available methods for the fair and efficient adjudication of the
7 controversy.

8 6. The analysis under Rule 23(e)(2) requires the Court to consider a “list of core
9 concerns” before approving class settlement. Fed. R. Civ. P. 23(e)(2), 2018 Adv. Comm. Notes.
10 The two procedural concerns are whether plaintiffs and their counsel have adequately represented
11 the class, and whether the proposed settlement was negotiated at arm’s length. Fed. R. Civ. P.
12 23(e)(2)(A)-(B). The two substantive concerns are whether the relief provided for the class is
13 adequate, and whether the proposed settlement treats class members equitably relative to one
14 another. Fed. R. Civ. P. 23(e)(C)-(D).

15 7. Rule 23(e)(2)(A) is satisfied because the Plaintiffs and Class Counsel have
16 vigorously represented the Class.

17 8. Rule 23(e)(2)(B) is satisfied because the Settlement was negotiated at arm’s length
18 by informed counsel acting in the best interests of their respective clients, and with the close
19 participation of a mediator.

20 9. Rule 23(e)(2)(C) is satisfied because the relief provided for the Class takes into
21 account the costs, risks and delay of trial while also providing significant relief for the class
22 because the gross settlement represents most of the total back wages as estimated by Class Counsel,
23 excluding penalties, for Settlement Class Members. At the same time, the Settlement avoids
24 expensive, protracted, and potentially risky litigation.

25 10. Rule 23(e)(2)(D) is satisfied as the Settlement treats Class Members equitably by
26 providing them recovery based on the time they spent working for Defendant. Thus, the Settlement
27 treats each Class Member in a fair and equitable manner in alignment with the risks assessed by

1 Class Counsel in connection with prevailing at class certification and trial. Each Settlement Class
2 Member will receive a share based upon the number of hours worked.

3 **IV. Class Representative and Class Counsel**

4 11. The Court preliminarily appoints Named Plaintiffs Romulo Torres, Sam
5 Rosenfeld, Paul Teitler, and Christopher Corday as Class Representatives.

6 12. Under Federal Rule of Civil Procedure 23, the following attorneys and firms are
7 preliminarily appointed as Class Counsel:

8 Shounak S. Dharap
9 Katherine A. Rabago
10 The Arns Davis Law Firm
11 515 Folsom St., 3rd Fl
12 San Francisco, CA 94109
13 Telephone: (415) 495-7800
14 Facsimile: (415) 495-7888

Joel Smith
Jeremy Krivoshey
Smith Krivoshey PC
166 Geary Street, #1500-1507
San Francisco, CA 94108
Telephone: (415) 839-7000

14 Anthony Label
15 Theo Emison
16 The Veen Firm, LLP
17 20 Haight Street
18 San Francisco, CA 94102
19 Telephone: (415) 673-4800
20 Fax: (415) 771-584

Matthew Mendelsohn
Mazie Slater Katz & Freeman, LLC
103 Eisenhower Parkway, 2nd Fl
Roseland, NJ 07068
Telephone: (973) 228-9898

Neal Deckant
Bursor & Fisher, PA
1990 North California Blvd. 9th Fl
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700

21 **V. Notice and Administration**

22 13. The Court appoints RG2 Settlement Administrator to perform the functions and
23 duties of the Settlement Administrator set forth in the Settlement Agreement—including
24 effectuating the notice program—and to provide such other administration services as are
25 reasonably necessary to facilitate the completion of the Settlement.

26 14. The Court has carefully considered the notice program set forth in the Settlement
27 Agreement. The Court finds that the notice program constitutes the best notice practicable under

1 the circumstances and satisfies the requirements of Rule 23(c)(2), and the requirements of due
2 process.

3 15. The Court thus approves the notice program and the form, content, and
4 requirements of the Notice described in and attached as an exhibit to the Settlement Agreement.
5 The Settlement Administrator shall cause the notice program to be completed according to the
6 deadline described in the Settlement Agreement.

7 16. All costs of providing Notice to the Settlement Class and administering
8 distributions from the Settlement Fund shall be paid out of the Class Settlement Fund, as provided
9 by the Settlement Agreement.

10 **VI. Claims and Exclusions**

11 17. Each and every member of the Settlement Class shall be bound by all
12 determinations and orders pertaining to the Settlement, including the release of all claims to the
13 extent set forth in the Settlement Agreement, unless such persons request exclusion from the
14 Settlement in a timely and proper manner, as hereinafter provided.

15 18. Any Settlement Class Member wishing to opt out from the Settlement shall mail
16 or email a written, personally signed statement (“Opt-Out Statement”) to the Settlement
17 Administrator that states substantially as follows: (a) the name and case number of the Action;
18 (b) the full name, address, and mobile telephone number of the person requesting exclusion; and
19 (c) a statement that he/she does not wish to participate in the Settlement.

20 19. To be effective, the Opt-Out Statement must be emailed or mailed to the Settlement
21 Administrator, postage prepaid and postmarked no later than ninety days after the entry of this
22 Order.

23 20. Any Settlement Class Member who submits a timely and valid Opt-Out Statement
24 shall not: (i) be bound by any orders or judgments entered in this matter; (ii) be entitled to benefits
25 or relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement
26 Agreement; or (iv) be entitled to object to the Settlement or appeal from any order of the Court.

1 21. All Settlement Class Members who do not submit an Opt-Out Statement pursuant
2 to the Settlement Agreement will be deemed to have accepted its settlement terms and will forever
3 waived their right to opt out of the Settlement Class.

4 22. The Settlement Administrator will promptly provide all Parties with copies of any
5 Opt-Out Statements, and Class Counsel shall file with the Court a list of Settlement Class Members
6 who have timely and validly submitted Opt-Out Statements to the Settlement Administrator prior
7 to the Final Approval Hearing.

8 **VII. Objections**

9 23. Any Settlement Class Member who does not file a timely Opt-Out Statement, but
10 who wishes to object to approval of the proposed Settlement, to the award of attorneys' fees and
11 expenses to Class Counsel, or the Service Awards to the Class Representatives must submit to the
12 Settlement Administrator a written Objection Statement in accordance with the Settlement
13 Agreement. The Court will consider objections to the Settlement, to the award of attorneys' fees
14 and expenses to Class Counsel, or to the Service Awards to the Class Representatives that are filed
15 with the Court by Class Counsel before the Final Approval Hearing.

16 24. A Settlement Class Member who has timely filed a written Objection Statement as
17 set forth above may appear at the Final Approval Hearing in person or through counsel to be heard
18 orally regarding their objection. It is not necessary, however, for a Settlement Class Member who
19 has filed a timely objection to appear at the Final Approval Hearing. Settlement Class Members
20 wishing to be heard orally in opposition to the approval of the Settlement and/or the request for
21 attorneys' fees and expenses and/or the request for Service Awards to the Class Representatives
22 will be heard if that person has submitted a timely written Objection Statement or has made a
23 showing of good cause as to why no written Objection Statement was submitted. No non-party,
24 including members of the Settlement Class who have timely opted-out of the Settlement, will be
25 heard at the Final Approval Hearing.

1 25. Any Settlement Class Member who fails to timely object in the manner specified
2 above will be deemed to have waived any objections and will be foreclosed from making any
3 objection to the Settlement, whether by appeal or otherwise.

4 **VIII. Application for an Award of Attorneys' Fees, Costs, and Incentive Awards**

5 26. Any application for Service Awards to the Class Representatives as well as any
6 application for an award of attorneys' fees and expenses to Class Counsel must be filed no later
7 than 14 calendar days before the Final Approval Hearing.

8 **IX. Final Approval Hearing**

9 27. A Final Approval Hearing will be held on June 26, 2025 for
10 the following purposes:

- 11 (a) To finally determine whether the requirements of Federal Rules of Civil
12 Procedure 23(a), (b) and (e) are met;
- 13 (b) To determine whether the judgment as provided under the Settlement Agreement
14 should be entered;
- 15 (c) To consider the application for an award of attorneys' fees and expenses of Class
16 Counsel;
- 17 (d) To consider the distribution of the Class Settlement Fund under the terms of the
18 Settlement Agreement; and
- 19 (e) To rule on such other matters as the Court may deem appropriate.

20 28. On or before 14 calendar days prior to the Final Approval Hearing, Class Counsel
21 shall file and serve a Motion for Final Approval of Settlement.

22 29. The Final Approval Hearing may be postponed, adjourned, transferred or
23 continued by order of the Court without further notice to the Settlement Class. At, or following,
24 the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in
25 accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class
26 Members.

27 30. The deadlines the parties shall adhere to are as follows:

31. Event	Date
Defendants to provide Class List to Settlement Administrator	Within 30 days after the Court’s Entry of Preliminary Approval Order (“Preliminary Approval Date”)
Notice emailed to the Settlement Class (the “Notice Distribution Date”)	Within 30 days after the Court’s Entry of Preliminary Approval Order (“Preliminary Approval Date”)
Notice published online to the Settlement Website and online forums (the “Notice Distribution Date”)	Within 30 days after the Court’s Entry of Preliminary Approval Order (“Preliminary Approval Date”)
Last day for Settlement Class Members to opt out or object to the proposed Settlement	90 days after the Court’s Entry of Preliminary Approval Order (“Preliminary Approval Date”)
Date by which Class Counsel is to file Motion for Final Approval of Settlement and Petition for Award of Attorneys’ Fees, Expenses and Service Awards	No later than 14 days prior to the Final Approval Hearing
Last day for Class Members to comment on or object to Petition for Award of Attorneys’ Fees, Expenses and Service Awards	Date of Final Approval Hearing
Final Approval Hearing	June 26, 2025 at 2:00PM via Zoom.

32. Settlement Class Members do not need to appear at the Final Approval Hearing or take any action other than affirmatively cashing their Settlement Check to indicate their approval.

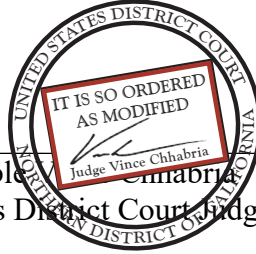
X. Further Matters

33. All discovery and other pretrial proceedings in the action are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

1 34. The Court retains jurisdiction to consider all further matters arising out of or
2 connected with the Settlement.

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4
5 IT IS SO ORDERED.

6 Dated this 5 day of March, 2025.



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9 The Honorable Vince Chhabria
10 United States District Court Judge