

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (Cal. Bar No. 287811)

2 *david@tomorrowlaw.com*

Diego Aviles (Cal. Bar No. 315533)

3 *diego@tomorrowlaw.com*

Sara Ehsani-Nia (Cal. Bar No. 326501)

4 *sara@tomorrowlaw.com*

8484 Wilshire Boulevard, Suite 500

5 Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, ANGELA DURAN,  
7 on behalf of herself and all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF TULARE**

10  
11 ANGELA DURAN, on behalf of himself and  
all others similarly situated,

12 Plaintiff,

13 v.

14 FRESH SELECT, LLC, a California limited  
15 liability corporation; and DOES 1 through  
16 100, inclusive,

17 Defendant.

CASE NO.: VCU284892

[Assigned to the Hon. Bret Hillman in  
Dept. 7]

**CLASS ACTION**

**FIRST AMENDED JOINT  
STIPULATION RE: CLASS ACTION  
AND REPRESENTATIVE ACTION  
SETTLEMENT**

Action Filed: October 22, 2020  
Trial Date: None Set

18 This Joint Stipulation re: Class Action and Representative Action Settlement  
19 ("Settlement" or "Agreement" or "Settlement Agreement") is made by, between and among  
20 plaintiff Angela Duran ("Plaintiff"), individually and on behalf of the Settlement Class, as  
21 defined below, on the one hand; and Defendant Fresh Select, LLC., ("Fresh Select"),  
22 ("Defendant"), on the other hand, in the lawsuit entitled *Angela Duran v. Fresh Select, LLC.* filed  
23 in Tulare County Superior Court, Case No. VCU284892 (the "Action"). Plaintiff and Defendant  
24 shall be, at times, collectively referred to as the "Parties." This Agreement is intended by the  
25 Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth herein,  
26 based upon and subject to the terms and conditions of this Agreement.

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1     **1. DEFINITIONS**

2           A.     **“Action”** means *Angela Duran v. Fresh Select LLC.*, filed in Tulare County  
3 Superior Court, Case No. VCU284892

4           B.     **“Aggrieved Employees”** means Class Members working for Defendant during  
5 the “PAGA Period,” as defined below.

6           C.     **“Class Counsel”** means David D. Bibiyan, Diego Aviles and Sara Ehsani-Nia of  
7 Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term  
8 “Plaintiff’s Counsel.”

9           D.     **“Class Period”** means the period from October 22, 2016 through the date of  
10 preliminary approval.

11          E.     **“Court”** means the Superior Court of the State of California for the County of  
12 Tulare.

13          F.     **“Defendant”** shall refer to defendant Fresh Select, LLC.

14          G.     **“Employer Taxes”** means employer-funded taxes and contributions imposed on  
15 the wage portions of the Individual Settlement Payments under the Federal Insurance  
16 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes  
17 and contributions required of employers, such as for unemployment insurance.

18          H.     **“Final Approval Date”** means the later of: (1) the date the Court signs an Order  
19 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an  
20 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals  
21 have been filed, the date on which they have been resolved or exhausted.

22          I.     **“General Release”** means the general release of claims by Plaintiff, which is in  
23 addition to her limited release of claims as a Participating Class Member and Aggrieved  
24 Employee.

25          J.     **“Gross Settlement Amount”** means a non-reversionary fund in the sum of Nine  
26 Hundred Thousand Dollars and Zero Cents (\$900,000.00),<sup>1</sup> which shall be paid by Defendant  
27

28                 <sup>1</sup> As the same may be increased in accordance with Paragraph 16, below.

1 thirty (30) days after final approval, and from which all payments for the Individual Settlement  
2 Payments to Participating Class Members, PAGA Payments to Aggrieved Employees and the  
3 Court-approved amounts for attorneys' fees and reimbursement of litigation costs and expenses  
4 to Class Counsel, Settlement Administration Costs, a Service Award to Plaintiff, and the payment  
5 made to the Labor and Workforce Development Agency ("LWDA") for resolution of Plaintiff's  
6 cause of action for civil penalties under the Labor Code Private Attorneys' General Act, codified  
7 at Labor Code Section 2698, *et seq.* ("PAGA"), interest and certain taxes shall be paid. It  
8 expressly excludes Employer Taxes, which shall be paid by Defendant separate and apart from  
9 the Gross Settlement Amount.

10 **K. "Individual PAGA Payment"** means a payment to an Aggrieved Employee of  
11 his or her share of the PAGA Payment.

12 **L. "Individual Settlement Payment"** means a payment to a Participating Class  
13 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to  
14 which he or she may be entitled if he or she is also an Aggrieved Employee.

15 **M. "Individual Settlement Share"** means the gross amount of the Net Settlement  
16 Amount that a Settlement Class Member is eligible to receive based on the number of Weekly  
17 Pay Periods that he or she worked as a Settlement Class Member during the Class Period if he or  
18 she does not submit a timely and valid Request for Exclusion, excluding any PAGA Payment to  
19 which he or she may be entitled if he or she is also an Aggrieved Employee.

20 **N. "LWDA Payment"** means the payment to the LWDA for its seventy-five percent  
21 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid  
22 from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and  
23 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties ("PAGA Payment"), of which  
24 Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA  
25 (*i.e.*, the LWDA Payment) and Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00)  
26 will be paid to Aggrieved Employees on a *pro rata* basis based on the number of Weekly Pay  
27 Periods each works during the PAGA Period.

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1           **O. "Net Settlement Amount"** means the portion of the Gross Settlement Amount  
2 that is available for distribution to Participating Class Members after deductions for the Court-  
3 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award  
4 of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA  
5 Payment, and the PAGA Payments.

6           **P. "PAGA Payment"** is the \$2,500 sum available to be made to Aggrieved  
7 Employees in addition to their Individual Settlement Share should they elect not to opt out of the  
8 Settlement.

9           **Q. "PAGA Period"** means the period from July 27, 2019 through the date of  
10 preliminary approval.

11           **R. "Participating Class Members"** means all Settlement Class Members who do  
12 not submit a timely and valid Request for Exclusion.

13           **S. "Parties"** shall refer to Plaintiff and Defendant collectively.

14           **T. "Plaintiff"** shall refer to Plaintiff Angela Duran.

15           **U. "Preliminary Approval Date"** means the date on which the Court enters an  
16 Order granting preliminary approval of the Settlement.

17           **V. "Released Parties"** shall mean Defendant and each of its past, present, and future  
18 respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and  
19 assigns, and each of these entities' past or present directors, officers, employees, partners,  
20 members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and  
21 personal or legal representatives.

22           **W. "Response Deadline"** means the deadline for Settlement Class Members to mail  
23 any Requests for Exclusion, Objections, or Weekly Pay Period Disputes to the Settlement  
24 Administrator, which is sixty (60) calendar days from the date that the Class Notice is first mailed  
25 in English and Spanish by the Settlement Administrator. The date of the postmark shall be the  
26 exclusive means for determining whether a Request for Exclusion, Objection, or Weekly Pay  
27 Period Dispute was submitted by the Response Deadline.

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1           X.    **“Request for Exclusion”** means a written request to be excluded from the  
2 Settlement Class pursuant to Section 9.C below.

3           Y.    **“Service Award”** means monetary amount to be paid to Plaintiff of up to Seven  
4 Thousand, Five Hundred Dollars and Zero Cents (\$7,500) which, subject to Court approval, will  
5 be paid out of the Gross Settlement Amount.

6           Z.    **“Settlement Administration Costs”** means all costs incurred by the Settlement  
7 Administrator in administration of the Settlement, including, but not limited to, translating the  
8 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English  
9 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and  
10 associated taxes and withholdings, providing declarations, generating Individual Settlement  
11 Payment checks and related tax reporting forms, doing administrative work related to unclaimed  
12 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’  
13 fees and reimbursement of litigation costs and expenses, to Plaintiffs for their Service Awards,  
14 and to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections  
15 and related information, and any other actions of the Settlement Administrator as set forth in this  
16 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs  
17 are estimated not to exceed \$13,750. If the actual amount of the Settlement Administration Costs  
18 is less than \$13,750, the difference between \$13,750 and the actual Settlement Administration  
19 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs  
20 exceed \$13,750 then such excess will be paid solely from the Gross Settlement Amount and  
21 Defendant will not be responsible for paying any additional funds in order to pay these additional  
22 costs.

23           AA.   **“Settlement Administrator”** means the Third-Party Administrator chosen by  
24 Plaintiff that will be responsible for the administration of the Settlement including, without  
25 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement  
26 Payments to be made by Defendant from the Gross Settlement Amount and related matters under  
27 this Agreement.

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1           **BB. “Settlement Class”, “Settlement Class Members” or “Class Members”** means  
2 all current and former non-exempt, hourly paid employees who worked in California for Fresh  
3 Select, LLC. at any time during the Class Period.

4           **CC. “Weekly Pay Period”** means the number of weekly pay periods that a Settlement  
5 Class Member was employed by Defendant, using hire and termination dates, in a non-exempt,  
6 hourly position during the Class Period. If a Settlement Class Member disputes his/her Individual  
7 Settlement Share, it shall be termed a “Weekly Pay Period Dispute.”

8           **2. BACKGROUND**

9           **A.**     On July 27, 2020, Plaintiff filed with the LWDA and served on Defendant a notice  
10 under Labor Code section 2699.3 (the “PAGA Notice”) stating Plaintiff intended to serve as a  
11 proxy of the LWDA to recover civil penalties for Aggrieved Employees. The PAGA Notice  
12 includes violations of law pled in the Class Action, in addition to a request for penalties for failure  
13 to comply with Labor Code sections 204, 246, 404, 432, 1174, 1198.5, and 2810.5.

14           **B.**     On October 22, 2020, when 65 days passed without any communication from the  
15 LWDA, Plaintiff filed a putative wage-and-hour class action as well as the PAGA action against  
16 Defendant in the Superior Court of California for the County of Tulare , Case Number  
17 VCU284892 (the “Action”). Plaintiff alleged that during the Class Period, with respect to herself  
18 and the Settlement Class Members, Defendant, *inter alia*, failed to pay the Settlement Class  
19 Members’ overtime wages and minimum wages. She further alleged that Defendant failed to  
20 provide compliant meal and rest periods and associated premium payments; failed to issue  
21 compliant and accurate itemized wage statements; failed to timely pay all wages due and owing  
22 at the time of termination or resignation; and engaged in unfair competition due to the alleged  
23 Labor Code violations. Moreover, as part of the Action, Plaintiff, as a proxy of the LWDA,  
24 sought PAGA civil penalties from Defendant under Labor Code sections 210, 226.3, 558, 1197.1  
25 and 2699 for the Labor Code violations set out in the PAGA Notice for herself and other  
26 Aggrieved Employees.

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1           C.     Shortly after the filing of this Action, the Parties agreed to exchange informal  
2 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,  
3 among other things: (1) hire and termination dates that allowed calculation of the number of  
4 weekly pay periods and Class Members during the Class Period, the number of Class Members  
5 separated from employment from October 22, 2017 through mediation for the purpose of  
6 calculating waiting time penalties, the number of Class Members working from July 27, 2019  
7 through mediation for the purpose of calculating PAGA penalties, and the number of Class  
8 Members working from October 22, 2019 through present for the purpose of calculating wage  
9 statement violations; (2) Class Members' contact information after administration of a *Belaire-*  
10 *West* opt-out notice by a neutral third party administrator; (3) a full production of time and  
11 payroll, with the exception of five to six months of the Class Period; and (4) Defendant's  
12 Employee Handbook.

13           D.     On August 31, 2021, the Parties participated in a mediation before Tripper  
14 Ortman, Esq., a well-regarded mediator experienced in mediating complex civil disputes. With  
15 the aid of the mediator's evaluation and after weeks of further negotiations, the Parties reached  
16 the Settlement to resolve the Action.

17           E.     Class Counsel has conducted significant investigation of the law and facts relating  
18 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is  
19 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account  
20 the sharply contested issues involved, the expense and time necessary to litigate the Action  
21 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an  
22 adverse outcome, the uncertainties of complex litigation, the information learned through  
23 informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received  
24 by the Settlement Class Members.

25           F.     Defendant has concluded that, because of the substantial expense of defending  
26 against the Action, the length of time necessary to resolve the issues presented herein, the  
27 inconvenience involved, and the concomitant disruption to its business operations, it is in its  
28 best interest to accept the terms of this Agreement. Defendant denies each of the allegations and

1 claims asserted against them in the Action. However, Defendant nevertheless desires to settle  
2 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing  
3 litigation and for the purpose of putting to rest the controversies engendered by the Action.

4 G. This Agreement is intended to and does effectuate the full, final, and complete  
5 resolution of all Released Claims of Plaintiff, Aggrieved Employees, and Settlement Class  
6 Members, other than those Settlement Class Members who submit a timely and valid Request  
7 for Exclusion.

8 **3. JURISDICTION**

9 The Court has jurisdiction over the Parties and the subject matter of the Action. The  
10 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the  
11 applicable statutes. After the Court has granted Final Approval of the Settlement and entered  
12 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment  
13 pursuant to California Rule of Court, rule 3.769, subdivision (h).

14 **4. STIPULATION OF CLASS CERTIFICATION**

15 The Parties stipulate to the certification of the Settlement Class under this Agreement for  
16 purposes of settlement only. If for any reason the settlement does not become effective,  
17 Defendant reserves the right to contest certification of any class for any reason and reserves all  
18 available defenses to the claims in the Action.

19 **5. MOTION FOR PRELIMINARY APPROVAL AND DECLARATION OF**  
20 **FINANCIAL STRAIN**

21 Plaintiff will move for an order granting preliminary approval of the Settlement,  
22 approving and directing the mailing of the proposed Notice of Class Action Settlement ("Class  
23 Notice") attached hereto as Exhibit "A", conditionally certifying the Settlement Class for  
24 settlement purposes only, and approving the deadlines proposed by the Parties for the submission  
25 of Requests for Exclusion, Weekly Pay Period Disputes, and Objections, the papers in support  
26 of Final Approval of the Settlement, and any responses to Objections or opposition papers to the  
27 Motion for Final Approval.

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1     **6.     STATEMENT OF NO ADMISSION**

2             a.     Defendant denies any wrongdoing of any sort and further deny any liability to  
3 Plaintiff and the Settlement Class with respect to any claims or allegations asserted in the Action.  
4 This Agreement shall not be deemed an admission by Defendant of any claims or allegations  
5 asserted in the Action. Except as set forth elsewhere herein, in the event that this Agreement is  
6 not approved by the Court, or any appellate court, is terminated, or otherwise fails to be  
7 enforceable, Plaintiff will not be deemed to have waived, limited or affected in any way any  
8 claims, rights or remedies, or defenses in the Action, and Defendant will not be deemed to have  
9 waived, limited, or affected in any way any of its objections or defenses in the Action. The  
10 Parties shall be restored to their respective positions in the Action prior to the entry of this  
11 Settlement. Defendant and the Released Parties (defined below) deny that they have engaged in  
12 any unlawful activity, have failed to comply with the law in any respect, have any liability to  
13 anyone under the claims asserted in the Action, or that but for the Settlement a class should be  
14 certified in the Action. This Agreement is entered into solely for the purpose of compromising  
15 highly disputed claims. Nothing in this Agreement is intended or will be construed as an  
16 admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by  
17 Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was  
18 meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the  
19 Action will have no bearing on, and will not be admissible in connection with, any litigation  
20 (other than solely in connection with effectuating the Settlement pursuant to this Agreement).  
21 Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or  
22 wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically  
23 disclaim any such liability or wrongdoing. Moreover, it is not, and it should not be construed as,  
24 any admission of fact or law in this matter or any other matter that a class action is appropriate.  
25 The Parties have entered into this settlement with the intention of avoiding further disputes and  
26 litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall  
27 be construed as an admission by Plaintiffs that Plaintiffs' claims do not have merit or that class  
28 action is inappropriate.

1     **7.     RELEASE OF CLAIMS**

2             **A.     Release by All Participating Class Members.**

3             Effective only upon the entry of an Order granting Final Approval of the Settlement, entry  
4 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross  
5 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and  
6 all Participating Class Members release the Released Parties of all claims against the Released  
7 Parties asserted in the Complaint filed in the Action, or any and all claims that may be asserted  
8 against the Released Parties based on the factual allegations in the Complaint filed in the Action,  
9 as follows: For the duration of the Class Period, the release includes: (a) all claims for failure to  
10 pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to  
11 provide compliant meal and rest periods and associated premium pay; (d) all claims for the failure  
12 to timely pay wages; (e) failure to timely pay all wages due upon termination or resignation; (f)  
13 all claims for non-compliant wage statements; and (g) all claims asserted through California  
14 Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced  
15 in the Complaint ("Class Released Claims"). For Aggrieved Employees, the release includes,  
16 for the duration of the PAGA Period, all claims released during the Class Period, as well as all  
17 claims for civil penalties under PAGA arising out of Labor Code Sections 210, 226.3, 558,  
18 1197.1, and 2699 based on the factual allegations and Labor Code sections alleged to have been  
19 violated in the Complaint, which includes, without limitation, Labor Code sections 200, 201,  
20 202, 203, 204, 226, 246, 404, 432, 510, 512, 558, 1174, 1194, 1197, 1198.5 2699, 2802 and  
21 2810.5 ("PAGA Released Claims" and, collectively with Class Released Claims, "Released  
22 Claims").

23             **B.     General Release.**

24             Effective only upon the entry of an Order granting Final Approval of the Settlement, entry  
25 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross  
26 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in addition to  
27 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases  
28 the Released Parties from all claims, demands, rights, liabilities and causes of action of every

1 nature and description whatsoever, known or unknown, asserted or that might have been asserted,  
2 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation  
3 arising out of, relating to, or in connection with any act or omission of the Released Parties  
4 through the date of full execution of this Agreement in connection with his employment or the  
5 termination thereof. With respect to the General Release, Plaintiff stipulates and agrees that,  
6 through the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final  
7 Judgment and payment to the Settlement Administrator shall have, expressly waived and  
8 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section  
9 1542 of the California Civil Code, or any other similar provision under federal or state law, which  
10 provides:

11 A general release does not extend to claims that the creditor or  
12 releasing party does not know or suspect to exist in his or her  
13 favor at the time of executing the release, and that if known by  
14 him or her, would have materially affected his or her  
15 settlement with the debtor or released party.

#### 16 **8. SETTLEMENT ADMINISTRATOR**

17 Plaintiff and Defendant, through their respective counsel, have selected Phoenix  
18 Settlement Administrators to administer the Settlement, which includes but is not limited to  
19 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class  
20 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and  
21 expenses of the Settlement Administrator, currently estimated to be \$13,750 will be paid from  
22 the Gross Settlement Amount. If the actual Settlement Administrator fees are less than \$13,750  
the difference will remain a part of the Net Settlement Amount.

#### 23 **9. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTION, AND EXCLUSION** 24 **PROCESS**

##### 25 **A. Notice to the Settlement Class Members.**

26 (1) Within twenty (20) calendar days after the Preliminary Approval Date,  
27 Defendant's Counsel shall provide the Settlement Administrator with information with respect  
28 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last

1 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social  
2 Security Number in Defendant's possession, custody, or control; and (3) the hire dates and  
3 termination dates for each Settlement Class Member ("Class List"). The Settlement  
4 Administrator shall perform an address search using the United States Postal Service National  
5 Change of Address ("NCOA") database and update the addresses contained on the Class List  
6 with the newly found addresses, if any. Within seven (7) calendar days of receiving the Class  
7 List from Defendant, the Settlement Administrator shall mail the Class Notice in English and  
8 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current  
9 mailing address information available. The Settlement Administrator shall maintain a list with  
10 names and all addresses to which notice was given, and digital copies of all the Settlement  
11 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at  
12 least four (4) years from the Final Approval Date. Such information shall be available to Class  
13 Counsel and Defendant's Counsel upon request.

14 (2) The Class Notice will set forth:

- 15 (a) the Settlement Class Member's estimated payment and the basis  
16 for it;
- 17 (b) the information required by California Rule of Court, rule 3.766,  
18 subdivision (d);
- 19 (c) the material terms of the Settlement;
- 20 (d) the proposed Settlement Administration Costs;
- 21 (e) the definition of the Settlement Class;
- 22 (f) a statement that the Court has preliminarily approved the  
23 Settlement;
- 24 (g) how the Settlement Class Member can obtain additional  
25 information, including contact information for Class Counsel;
- 26 (h) information regarding opt-out and objection procedures;
- 27 (i) the date and location of the Final Approval Hearing; and

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1 (j) that the Settlement Class Member must notify the Settlement  
2 Administrator no later than the Response Deadline if the  
3 Settlement Class Member disputes the accuracy of the number of  
4 Weekly Pay Periods as set forth on his or her Class Notice  
5 ("Weekly Pay Period Dispute"). If a Settlement Class Member  
6 fails to timely dispute the number of Weekly Pay Periods attributed  
7 to him or her in conformity with the instructions in the Class  
8 Notice, then he or she shall be deemed to have waived any  
9 objection to its accuracy and any claim to any additional settlement  
10 payment based on different data.

11 (3) If a Class Notice from the initial notice mailing is returned as  
12 undeliverable, the Settlement Administrator will attempt to obtain a current address for the  
13 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)  
14 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class  
15 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator  
16 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the  
17 Settlement Class Member. Further, any Class Notices that are returned to the Settlement  
18 Administrator with a forwarding address before the Response Deadline shall be promptly re-  
19 mailed to the forwarding address affixed thereto.

20 (4) No later than seven (7) calendar days from the Response Deadline, the  
21 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the  
22 completion of the notice process, including the number of attempts to obtain valid mailing  
23 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,  
24 and copies of all Requests for Exclusion and objections/comments received by the Settlement  
25 Administrator.

26 **B. Objections.**

27 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating  
28 Class Members) may object to the Settlement. In order for any Settlement Class Member to

1 object to this Settlement in writing, or any term of it, he or she must do so by mailing a written  
2 objection to the Settlement Administrator at the address or phone number provided on the Class  
3 Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of  
4 the Objection forthwith to Class Counsel and Defendant's Counsel. Defendant's Counsel shall  
5 lodge a copy of the Objection with the Court at least sixteen (16) court days before the hearing  
6 on the Motion for Final Approval. The Objection should set forth in writing: (1) the objector's  
7 name and address, and (2) the reason(s) for the Objection, along with whatever legal authority,  
8 if any, the objector asserts in support of the Objection. If a Settlement Class Member objects to  
9 the Settlement, the Settlement Class Member will remain a member of the Settlement Class and  
10 if the Court approves this Agreement, the Settlement Class Member will be bound by the terms  
11 of the Settlement in the same way and to the same extent as a Settlement Class Member who  
12 does not object. The date of mailing of the Class Notice to the objecting Settlement Class  
13 Member shall be conclusively determined according to the records of the Settlement  
14 Administrator. Settlement Class Members need not object in writing to be heard at the Final  
15 Approval Hearing; they may object or comment in person at the hearing at their own expense.  
16 Class Counsel and Defendant's Counsel may respond to any objection lodged with the Court up  
17 to five (5) court days before the Final Approval Hearing.

18 **C. Requesting Exclusion.**

19 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the  
20 Settlement by mailing a written request to be excluded from the Settlement ("Request for  
21 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.  
22 To be valid, a Request for Exclusion must include the Class Member's name, social security  
23 number and signature and the following statement or something to its effect: "Please exclude me  
24 from the Settlement Class in the *Angela Duran v. Fresh Select, LLC* matter" or a statement of  
25 similar meaning. The Settlement Administrator shall immediately provide copies of all Requests  
26 for Exclusion to Class Counsel and Defendant's Counsel and shall report the Requests for  
27 Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final  
28 Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure

1 will not be entitled to receive any payment from the Settlement and will not be bound by the  
2 Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any  
3 Settlement Class Member who does not opt out of the Settlement by submitting a timely and  
4 valid Request for Exclusion will be bound by all terms of the Settlement, including those  
5 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if  
6 Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a  
7 Request for Exclusion and an objection. If a Settlement Class Member submits an objection and  
8 a Request for Exclusion, the Request for Exclusion will control and the Objection will be void.  
9 Settlement Class Members who worked during the PAGA Period that submit a valid Request for  
10 Exclusion will still be deemed Aggrieved Employees, will still receive their *pro rata* share of the  
11 PAGA Payment, and will be bound by any release of claims under PAGA related to the Released  
12 Claims.

13 **D. Disputes Regarding Settlement Class Members' Weekly Pay Period Data.**

14 Class Members will have an opportunity to dispute the information provided in their Class  
15 Notice. To the extent Class Members dispute the number of Weekly Pay Periods to which they  
16 have been credited, Class Members may produce evidence to the Settlement Administrator  
17 showing that such information is inaccurate. Absent evidence rebutting Defendant's records,  
18 Defendant's records will be presumed determinative. However, if a Class Member produces  
19 evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by  
20 the Class Member and will make the final decision as to the number of Weekly Pay Periods that  
21 should be applied. All such disputes are to be resolved not later than ten (10) calendar days after  
22 the Response Deadline.

23 **E. Extension of Response Deadline for Remailing**

24 Class Members who are re-mailed a Class Notice shall have an additional fifteen (15)  
25 days from the re-mailing, or sixty (60) days from the date of the initial mailing, whichever is  
26 later, in which to postmark a Request for Exclusion, Workweek Dispute or Objection. The date  
27 of the postmark shall be the exclusive means for determining whether a Request for Exclusion,  
28 objection, or Workweek Dispute was submitted by the Response Deadline.

10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS  
MEMBERS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Weekly Pay Periods during the Class Period. PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees on a *pro rata* basis based on Aggrieved Employees' respective number of Weekly Pay Periods during the PAGA Period. Specific calculations of the Individual Settlement Shares and PAGA Payments to PAGA Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Weekly Pay Periods worked by each Settlement Class Member during the Class Period ("Class Member's Weekly Pay Periods"), as well as the aggregate number of Weekly Pay Periods worked by all Settlement Class Members during the Class Period ("Class Weekly Pay Periods"). Additionally, the Settlement Administrator will determine the total number of Weekly Pay Periods worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Weekly Pay Periods"), as well as the aggregate number of Weekly Pay Periods worked by all Aggrieved Employees during the PAGA Period ("PAGA Weekly Pay Periods").

B. To determine each Settlement Class Member's Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member's Weekly Pay Periods ÷ Class Weekly Pay Periods) × Net Settlement Amount.

C. To determine each Participating Class Member's Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Weekly Pay Periods worked by all Participating Class Members during the Class Period ("Participating Class Weekly Pay Periods") and use the following formula: Individual Settlement Share = (Participating Class Member's Weekly Pay Periods ÷ Participating Class Weekly Pay Periods) × Net Settlement Amount.

///



1           D.     The net amount of the Individual Settlement Share is to be paid out to  
2 Participating Class Members by way of check and is referred to as "Individual Settlement  
3 Payment(s)."

4           E.     To determine each Aggrieved Employee's Individual PAGA Payment the  
5 Settlement Administrator will use the following formula: Aggrieved Employee's Individual  
6 PAGA Payment = (Aggrieved Employee's Weekly Pay Periods ÷ PAGA Weekly Pay Periods)  
7 x \$2,500.00 (the PAGA Payment). This amount is to be paid out to Aggrieved Employees by  
8 way of check. The Settlement payment for a Participating Class Member who is also an  
9 Aggrieved Employee will therefore include the Participating Class Member's Individual  
10 Settlement Share and Individual PAGA Payment. A Settlement Class Member who is also an  
11 Aggrieved Employee who submits a valid Request for Exclusion will nevertheless be bound  
12 by any release of claims under PAGA related to the Released Claims and will still receive their  
13 Individual PAGA Payment.

14 **11.     DISTRIBUTION OF PAYMENTS**

15 **A.     Distribution of Individual Settlement Payments.**

16           Settlement Class Members who do not submit a timely and valid Request for Exclusion  
17 (i.e., Participating Class Members) will receive an Individual Settlement Payment. All PAGA  
18 Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not,  
19 will receive their portion of the PAGA Payment. Individual Settlement Payment checks and  
20 checks to PAGA Aggrieved Employees for their portion of the PAGA Payment shall remain  
21 valid and negotiable for one hundred and eighty (180) calendar days after the date of their  
22 issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such  
23 payments shall be canceled and funds associated with such checks shall be considered unpaid,  
24 unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384  
25 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of  
26 Civil Procedure section 384, shall be transmitted as follows: to California Farmworker  
27 Foundation, 1120 Kensington Street, Delano, California 93215 for use in Kern County. The  
28 Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code

1 of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel  
2 along with a proposed amended judgment that is consistent with the provisions of Code of Civil  
3 Procedure section 384.

4 **B. Funding of Settlement.**

5 Defendant shall pay the Gross Settlement Amount of Nine Hundred Thousand Dollars  
6 and Zero Cents (\$900,000.00), unless the same is escalated pursuant to Paragraph 16 below (and  
7 in such event, the escalated amount) to the Settlement Administrator in addition to Employer's  
8 Taxes. All amounts must be paid to the Settlement Administrator pursuant to Internal Revenue  
9 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account ("QSA")  
10 with an FDIC insured banking institution, for distribution in accordance with this Agreement and  
11 the Court's Orders and subject to the conditions described herein. Individual Settlement  
12 Payments for Class Members and PAGA Payments to Aggrieved Employees shall be paid  
13 exclusively from the QSA, pursuant to the settlement formula set forth herein.

14 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified  
15 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid  
16 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement  
17 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA  
18 Payment, as specified in this Agreement and approved by the Court; and (5) PAGA Payments to  
19 Aggrieved Employees on a *pro rata* basis based on their Weekly Pay Periods worked during the  
20 PAGA Period. The balance any and any accrued interest thereon remaining shall constitute the  
21 Net Settlement Amount from which Individual Settlement Payments shall be made to  
22 Participating Class Members, less applicable taxes and withholdings. All interest accrued shall  
23 be for the benefit of the Class Members and Aggrieved Employees and distributed in a pro-rata  
24 basis.

25 **C. Time for Distribution.**

26 No more than fourteen (14) calendar days after payment of the full Gross Settlement  
27 Amount (as the same may be escalated by Paragraph 16 below) by Defendant, as well as  
28 Employer Taxes, the Settlement Administrator shall distribute all payments due under the

1 Settlement, including the Individual Settlement Payments to Participating Class Members and  
2 PAGA Payments to Aggrieved Employees, as well as the Court-approved payments for the  
3 Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel,  
4 administration costs to the Settlement Administrator, and the LWDA Payment.

5 **11. ATTORNEYS' FEES AND LITIGATION COSTS**

6 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'  
7 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, or Three Hundred Fifteen  
8 Thousand Dollars and Zero Cents (\$315,000.00) unless the Gross Settlement Amount is escalated  
9 pursuant to this Agreement. Class Counsel shall further apply for, and Defendant shall not  
10 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated  
11 with Class Counsel's prosecution of this matter as set forth by declaration from Class Counsel  
12 including testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents  
13 (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement  
14 Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain  
15 Final Approval of the settlement in the Action. The "future" aspect of the amounts stated herein  
16 includes, without limitation, all time and expenses expended by Class Counsel (including any  
17 appeals therein). There will be no additional charge of any kind to either the Settlement Class  
18 Members or request for additional consideration from Defendant for such work. Should the  
19 Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than  
20 the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net  
21 Settlement Amount.

22 **12. SERVICE AWARD TO PLAINTIFF**

23 Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to  
24 exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in  
25 and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the  
26 Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves  
27 Service Awards to Plaintiff in less than the amounts sought herein, then the unapproved  
28 portion(s) shall be a part of the Net Settlement Amount.

1 **13. TAXATION AND ALLOCATION**

2 A. Each Individual Settlement Share shall be allocated as follows: 10% as wages (to  
3 be reported on an IRS Form W2); and 90% as interest, premiums, and penalties (to be reported  
4 on an IRS Form 1099). The PAGA Payments to the Aggrieved Employees shall be characterized  
5 as non-wages (to be reported on an IRS Form 1099). The Parties agree that the employee's share  
6 of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share  
7 will be withheld from the Individual Settlement Share in order to yield the Individual Settlement  
8 Payment. The amount of federal income tax withholding will be based upon a flat withholding  
9 rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as  
10 amended or supplemented. Income tax withholding will also be made pursuant to applicable  
11 state and/or local withholding codes or regulations.

12 B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement  
13 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the  
14 "Code") and consistent with this Agreement. If the Code, the regulations promulgated  
15 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes  
16 set forth in this Section may be modified in a manner to bring Defendant into compliance with  
17 any such changes.

18 C. All Employer Taxes shall be paid by Defendant separate, apart and above from  
19 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of  
20 payroll taxes as described above.

21 D. Neither Counsel for Plaintiff nor Defendant intend anything contained in this  
22 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement  
23 be relied upon as such within the meaning of United States Treasury Department Circular 230  
24 (31 C.F.R. Part 10, as amended) or otherwise.

25 **14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

26 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the  
27 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent  
28 (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the

1 LWDA Payment), and twenty-five percent (25%) will remain a part of the Net Settlement  
2 Amount (\$2,500.00), to be distributed to Aggrieved Employees on a *pro rata* basis, based upon  
3 their respective Weekly Pay Periods in the PAGA Period (*i.e.*, the PAGA Payments).

4 **15. COURT APPROVAL**

5 This Agreement is contingent upon an order by the Court granting Final Approval of the  
6 Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event  
7 it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the  
8 Parties shall be restored to their respective positions in the Action prior to entry of this Settlement.  
9 If this Settlement Agreement is voided, not approved by the Court or approval is reversed on  
10 appeal, it shall have no force or effect and no Party shall be bound by its terms except to the  
11 extent: (a) the Court reserves any authority to issue any appropriate orders when denying  
12 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically  
13 stated to survive the Settlement Agreement being voided or not approved, and which control in  
14 such an event.

15 **16. INCREASE IN WEEKLY PAY PERIODS**

16 Defendant represents that there are no more than 34,678 Weekly Pay Periods worked  
17 during the Class Period. In the event the number of Weekly Pay Periods worked increases by  
18 more than 10%, then the GFV shall be increased proportionally by the weekly pay periods in  
19 excess of 34,678 multiplied by the weekly pay period value. The weekly pay period value shall  
20 be calculated by dividing the GFV by 34,678. The Parties agree that the weekly pay period  
21 value amounts to and the settlement amounts to \$25.95 per Weekly Pay Period (\$900,000 /  
22 34,678 weekly pay periods). Thus, for example, should there be 38,500 weekly pay periods in  
23 the Class Period, then the GFV shall be increased by \$99,180.90. (38,500 Weekly Pay Periods  
24 – 34,678 Weekly Pay Periods x \$25.95/Weekly Pay Period.)

25 **NOTICE OF JUDGMENT**

26 In addition to any duties set out herein, the Settlement Administrator shall provide  
27 notice of the Final Judgment entered in the Action by posting the same on its website for at  
28 least three (3) years after the Judgment becomes final.

1 **17. MISCELLANEOUS PROVISIONS**

2 **A. Interpretation of the Agreement.**

3 This Agreement constitutes the entire agreement between Plaintiff and Defendant with  
4 respect to its subject matter. Except as expressly provided herein, this Agreement has not been  
5 executed in reliance upon any other written or oral representations or terms, and no such extrinsic  
6 oral or written representations or terms shall modify, vary or contradict its terms. In entering  
7 into this Agreement, the Parties agree that this Agreement is to be construed according to its  
8 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be  
9 interpreted and enforced under the laws of the State of California, both in its procedural and  
10 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or  
11 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively  
12 in the Superior Court of the State of California for the County of Tulare, and Plaintiff and  
13 Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in  
14 connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement Class,  
15 and Defendant participated in the negotiation and drafting of this Agreement and had available  
16 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor  
17 Defendant may claim that any ambiguity in this Agreement should be construed against the other.  
18 The Agreement may be modified only by a writing signed by counsel for the Parties and approved  
19 by the Court.

20 **B. Further Cooperation.**

21 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare and  
22 execute all documents, to seek the necessary approvals from the Court, and to do all things  
23 reasonably necessary to consummate the Settlement as expeditiously as possible.

24 **C. Counterparts.**

25 The Agreement may be executed in one or more actual or non-original counterparts, all  
26 of which will be considered one and the same instrument and all of which will be considered  
27 duplicate originals.

28 ///

1           **D.     Authority.**

2           Each individual signing below warrants that he or she has the authority to execute this  
3 Agreement on behalf of the party for whom or which that individual signs.

4           **E.     No Third-Party Beneficiaries.**

5           Plaintiff, Participating Class Members, Class Counsel, and Defendant are direct  
6 beneficiaries of this Agreement, but there are no third-party beneficiaries.

7           **F.     Deadlines Falling on Weekends or Holidays.**

8           To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,  
9 or legal holiday, that deadline shall be continued until the following business day.

10          **G.     Severability.**

11          In the event that one or more of the provisions contained in this Agreement shall for any  
12 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or  
13 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class  
14 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed  
15 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

16          **H.     Confidentiality.**

17          The Parties hereby expressly agree that any settlement that occurs between the Parties,  
18 including this Settlement Agreement, shall remain confidential until a stipulation for preliminary  
19 approval is filed with the Court.

20          **I.     Limitation on Public Statements About Settlement.**

21          Defendant, Defendant's Counsel, Plaintiff, and Class Counsel agree to limit public  
22 comment on this Settlement, the Action, and the claims to stating that the matter has been  
23 resolved to the satisfaction of both Plaintiff and Defendant, except as necessary to give notice to  
24 the Class Members, seek approval from the Court, or is legally required to comply with ethical  
25 obligations. Plaintiff and Defendant agree not to effectuate or cause any press release, posting,  
26 or other comment on this Settlement or its terms to be made. This provision shall not prohibit  
27 Class Counsel from communicating with Class Members after preliminary approval is granted  
28 for the sole purpose of administering the Settlement. This provision also does not limit Class

1 Counsel from posting court-filed documents on their website for viewing by Class Members after  
2 Preliminary Approval of the Settlement. Nothing in this provision shall prevent Defendant or  
3 Plaintiff from making any required disclosures.

4 **J. Right of Defendant to Reject Settlement.**

5 If the number of Class Members who timely submit valid Elections Not to Participate in  
6 Settlement exceeds ten percent (10%) of the Class, Defendant, at its sole discretion, shall have  
7 the right but not the obligation to revoke the Settlement. Defendant shall exercise its revocation  
8 rights, if at all, within fourteen (14) calendar days of the deadline for submission of Elections  
9 Not to Participate in Settlement by providing written notice to Class Counsel. If Defendant  
10 exercises its revocation rights, the Parties will have no further obligations under the Settlement,  
11 including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts  
12 that otherwise would have been owed under this Agreement, except that Settlement  
13 Administration Expenses as of the date that Defendant exercises the right to void the Settlement  
14 pursuant to this Paragraph will be paid by Defendant.

15 **K. No Solicitation.**

16 The Parties and their respective counsel represent that neither the Parties nor their  
17 respective counsel have or will solicit or otherwise encourage directly or indirectly any Class  
18 Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the  
19 Settlement.

20 **L. No Prior Assignments.**

21 The Parties represent, covenant and warrant that they have not directly or indirectly  
22 assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or  
23 entity and portion of any liability, claim, demand, action, cause of action, or right released and  
24 discharged in this Settlement.

25 **M. No Tax Advice:**

26 Neither Class Counsel nor Defendant's Counsel intend anything contained in this  
27 Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement  
28



1 be relied upon as such within the meaning of United States Treasury Department Circular 230  
2 (31 CFR Part 10, as amended) or otherwise.

3 **N. Agreement Binding on Successors.**

4 This Agreement will be binding upon, and inure to the benefit of, the successors of each  
5 of the Parties.

6 **O. Applicable Law.**

7 All terms and conditions of this Agreement and its exhibits will be governed by and  
8 interpreted according to the laws of the State of California.

9 **P. Cooperation in Drafting.**

10 The Parties have cooperated in the drafting and preparation of this Agreement. This  
11 Agreement will not be construed against any Party on the basis that the Party was the drafter or  
12 participated in the drafting.

13 **Q. Fair Settlement.**

14 Parties and their respective counsel believe and warrant that this Agreement reflects a  
15 fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement  
16 through arms-length negotiations, taking into account all relevant factors, current and potential.

17 **R. Use and Return of Documents and Data.**

18 All originals, copies, and summaries of documents and data provided to Class Counsel  
19 by Defendant in connection with the mediation or other settlement negotiations in this matter  
20 may be used only with respect to this Settlement, and no other purpose, and may not be used in  
21 any way that violates any existing contractual agreement, statute, or rule.

22 **S. Headings.**

23 The descriptive heading of any section or paragraph of this Agreement is inserted for  
24 convenience of reference only and does not constitute a part of this Agreement.

25 **T. Stay of Litigation.**

26 The Parties agree that upon the execution of this Agreement the litigation shall be stayed,  
27 except to effectuate the terms of this Agreement. The Parties further agree that upon the signing  
28 of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial

1 under CCP section 583.310 for the entire period of this settlement process from the mediation  
2 with Tripper Ortman on August 31, 2021 until the earlier of the Effective Date or the date this  
3 Agreement shall not longer be of any force or effect.

4 **U. Continuing Jurisdiction.**


5 The Court shall retain continuing jurisdiction over the Action under CCP section 664.6  
6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement  
7 until performance in full of the terms of this Settlement.

8 **IT IS SO AGREED:**

9  
10  
11 Dated: \_\_\_\_\_, 2022

ANGELA DURAN  
Plaintiff and Class Representative

12  
13  
14  
15  
16 Dated: 1/13, 2022

  
FRESH SELECT, LLC  
Defendant

By: Scott Critcham  
Its: MEMBER

17  
18  
19 **AGREED AS TO FORM:**

20  
21 Dated: \_\_\_\_\_, 2022

DAVID D. BIBIYAN  
SARA EHSANI-NIA  
Bibiyon Law Group, P.C.  
Counsel for Plaintiff Angela Duran

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Dated: January 13, 2022



IAN WIELAND  
Sagaser, Watkins & Weiland PC  
Counsel for Defendant Fresh Select, LLC.