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6 Attorneys for Plaintiff, ANGEL MARTINEZ GUZMAN,
on behalf of himself and all others similarly situated,

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10
11 ANGEL MARTINEZ GUZMAN, an individual
and on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 FRESHCO PAINTERS INC., a California
15 corporation; and DOES 1 through 100,
16 inclusive,

17 Defendants.

CASE NO.: 20STCV04683

CLASS ACTION

[Assigned for all purposes to the Hon.
Lawrence P. Riff in Dept. 7]

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

ACTION FILED: February 5, 2021
TRIAL DATE: None set

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20 This Second Amended Joint Stipulation re: Class Action and Representative Action
21 Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between
22 plaintiff ANGEL MARTINEZ GUZMAN (“Plaintiff”) individually and on behalf of the
23 Settlement Class, as defined below, on the one hand; and defendant FRESHCO PAINTERS,
24 INC. (“Defendant”), on the other hand; in the lawsuit entitled *Guzman v. Freshco Painters, Inc.*
25 *et al.* filed in Los Angeles County Superior Court, Case No. 20STCV04683 (the “Action”).
26 Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties.” This
27 Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle
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1 the claims as set forth herein, based upon and subject to the terms and conditions of this
2 Agreement.

3 **1. DEFINITIONS**

4 **A. “Action”** means *Guzman v. Freshco Painters, Inc. et al.* filed in Los Angeles
5 County Superior Court, Case No. 20STCV04683.

6 **B. “Aggrieved Employees”** means Class Members working for Defendant during
7 the PAGA Period as non-exempt, hourly-paid employees.

8 **C. “Class Counsel”** means: David D. Bibiyan, Jeffrey D. Klein, and Diego Aviles
9 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the
10 term “Plaintiff’s Counsel.”

11 **D. “Class Period”** means the period from February 5, 2017 through November 30,
12 2021.

13 **E. “Court”** means the Superior Court of the State of California for the County of
14 Los Angeles.

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

19 **G. “Defendant”** means Freshco Painters, Inc.

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

24 **I. “General Release”** means the general release of claims by Plaintiff, which is in
25 addition to Plaintiff’s limited release of claims as a Participating Class Member.

26 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
27 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00),¹ which shall be paid by

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

1 Defendant, from which all payments for the Individual Settlement Payments to Participating
2 Class Members and the Court-approved amounts for attorneys' fees and reimbursement of
3 litigation costs and expenses to Class Counsel, Settlement Administration Costs, the Service
4 Award, the PAGA Payment, and the LWDA Payment shall be paid. It expressly excludes
5 Employer Taxes, which shall be paid by Defendant separate and apart from the Gross Settlement
6 Amount.

7 **K. "Individual PAGA Payment"** means a payment made to an Aggrieved
8 Employee of his or her share of the PAGA Payment, which may be in addition to his or her
9 Individual Settlement Share.

10 **L. "Individual Settlement Payment"** means a payment to a Participating Class
11 Member of his or her net share of the Net Settlement Amount.

12 **M. "Individual Settlement Share"** means the gross amount of the Net Settlement
13 Amount that a Settlement Class Member is eligible to receive based on the number of shifts that
14 he or she worked as a Settlement Class Member during the Class Period if he or she does not
15 submit a timely and valid Request for Exclusion.

16 **N. "LWDA Payment"** means the payment to the State of California Labor and
17 Workforce Development Agency ("LWDA") for its seventy-five percent (75%) share of the total
18 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
19 Settlement Amount. The Parties have agreed that Ten Thousand Dollars and Zero Cents
20 (\$10,000.00) shall be allocated toward PAGA penalties, of which Seven Thousand Five Hundred
21 Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and
22 Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00) will be paid to Aggrieved
23 Employees on a *pro rata* basis based on the shifts worked in the PAGA Period, as further set out
24 herein.

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

3 **O. "Operative Complaint" or "Complaint"** means the First Amended Complaint
4 that was filed with the Court

5 **P. "PAGA Payment"** is the \$2,500 payment payable to Aggrieved Employees, which
6 would be in addition to their Individual Settlement Share so long as they do not opt out of the
7 Settlement.

8 **Q. "PAGA Period"** means the period from February 3, 2020, through November 30,
9 2021.

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

12 **S. "Participating Individual Settlement Share"** means the gross amount of the Net
13 Settlement Amount that a Participating Class Member is eligible to receive based on the number
14 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
15 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
16 may be entitled if he or she is also an Aggrieved Employee.

17 **T. "Plaintiff", "Named Plaintiff" or "Class Representative"** shall refer to
18 Plaintiff Angel Martinez Guzman.

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

21 **V. "Released Parties"** shall mean Defendant and each of its past, present, and future
22 respective subsidiaries, dba's, affiliates, parents, insurers and reinsurers, and company-sponsored
23 employee benefit plans of any nature and their successors and predecessors in interest, including
24 all of their officers, directors, shareholders, employees, agents, principals, heirs, representatives,
25 accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

26 **W. "Response Deadline"** means the deadline for Settlement Class Members to mail
27 any Requests for Exclusion or objections to the Settlement Administrator, which is sixty (60)
28 calendar days from the date that the Class Notice is first mailed in English and Spanish by the

1 Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an instance, the
2 Class Member shall have fifteen (15) days from the re-mailing, or sixty (60) days from the date
3 of the initial mailing, whichever is later, in which to postmark a Request for Exclusion or
4 Objection. The date of the postmark shall be the exclusive means for determining whether a
5 Request for Exclusion, objection, or Work Shifts Dispute was submitted by the Response
6 Deadline.

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

9 **Y. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
10 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
11 will be paid out of the Gross Settlement Amount.

12 **Z. “Settlement Administration Costs”** means all costs incurred by the Settlement
13 Administrator in administration of the Settlement, including, but not limited to, translating the
14 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
15 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, and
16 Individual PAGA Payments, as well as associated taxes and withholdings, providing
17 declarations, generating Individual Settlement Payment checks and related tax reporting forms,
18 doing administrative work related to unclaimed checks, transmitting payment to Class Counsel
19 for the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and
20 expenses, to Plaintiff for his Service Award, and to the LWDA for the LWDA Payment,
21 providing weekly reports of opt-outs, objections and related information, and any other actions
22 of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this
23 Agreement. The Settlement Administration Costs are estimated not to exceed \$5,000. If the actual
24 amount of the Settlement Administration Costs is less than \$5,000, the difference between \$5,000
25 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If
26 the Settlement Administration Costs exceed \$5,000, then such excess will be paid solely from
27 the Gross Settlement Amount and Defendant will not be responsible for paying any additional
28 funds in order to pay these additional costs.

1 **AA.** “**Settlement Administrator**” means the Third-Party Administrator mutually
2 agreed upon by the Parties that will be responsible for the administration of the Settlement
3 including, without limitation, translating the Class Notice in Spanish, the distribution of the
4 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
5 and related matters under this Agreement.

6 **BB.** “**Settlement Class**” or “**Settlement Class Members**” means all persons currently
7 or formerly employed by Defendant, as non-exempt, hourly-paid employees in the State of
8 California during the Class Period.

9 **CC.** “**Weekly Pay Periods**” means the number of weekly pay periods that a
10 Settlement Class Member was employed by Defendant in a non-exempt, hourly position during
11 the Class Period, based on hire dates, re-hire dates, and termination dates. If a Settlement Class
12 Member disputes his/her Individual Settlement Share, it shall be termed a “Weekly Pay Period
13 Dispute.”

14 **2. BACKGROUND**

15 **A.** On February 3 2021, Plaintiff filed with the LWDA and served on Defendant a
16 notice under Labor Code section 2699.3 (the “PAGA Notice”) stating he intended to serve as a
17 proxy of the LWDA to recover civil penalties for aggrieved employees in connection with various
18 Labor Code violations.

19 **B.** Plaintiff filed a putative wage-and-hour class action and representative action
20 complaint against Defendant on February 5, 2021. Plaintiff alleges that during the Class Period,
21 with respect to Plaintiff and the Settlement Class Members, Defendant, *inter alia*, failed to pay
22 the Settlement Class Members’ overtime wages and minimum wages for all hours worked and/or
23 recorded; failed to provide compliant meal and rest periods and associated premium payments;
24 failed to issue compliant and accurate itemized wage statements; failed to timely pay all wages
25 due and owing at the time of termination or resignation; failed to indemnify work-related
26 expenses; and engaged unfair competition based on the alleged Labor Code violations.

27 **C.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
28 mediation, in which Plaintiff was provided with, among other things: (1) approximately 25% of

1 the time and payroll records for 57 of 65 Class Members; (2) the number of workweeks in the
2 Class Period, separated employees in the relevant time period for waiting time penalties, and the
3 number of workweeks and Class Members in the relevant time period for wage statement
4 violations, as well as the average rate of pay for Class Members; (3) all documents concerning
5 Plaintiff; (4) Defendant's Employee Handbook; and (5) employee reimbursement invoices.

6 **D.** On October 1, 2021, the Parties participated in a full-day mediation before Nikki
7 Tolt, Esq. a well-regarded mediator experienced in mediating complex labor and employment
8 matters. With the aid of Ms. Tolt's evaluation, the Parties reached the Settlement to resolve the
9 Action.

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

18 **F.** Defendant has concluded that, because of the substantial expense of defending
19 against the Action, the length of time necessary to resolve the issues presented herein, the
20 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
21 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
22 claims asserted against it in the Action and the PAGA Notice. However, Defendant nevertheless
23 desires to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
24 continuing litigation and for the purpose of putting to rest the controversies engendered by the
25 Action.

26 **G.** This Agreement is intended to and does effectuate the full, final, and complete
27 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
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1 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
2 and Aggrieved Employees.

3 **3. JURISDICTION**

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

9 **4. STIPULATION OF CLASS CERTIFICATION**

10 The Parties stipulate to the certification of the Settlement Class under this Agreement for
11 purposes of settlement only. If the Court does not grant Preliminary and Final Approval of the
12 Class Action Settlement, the parties will not stipulate to a Class Certification.

13 **5. MOTION FOR PRELIMINARY APPROVAL AND PROOF OF**
14 **FINANCIAL STRAIN**

15 The Parties agree that Defendants have provided Plaintiff with financial records,
16 including three years of tax returns that were analyzed by an independent forensic accountant
17 chosen by Plaintiff, that reflect Defendant’s contention that their financial condition cannot
18 withstanding a larger Gross Settlement Amount to resolve this Action in the form of the payment
19 plan set forth herein, which Plaintiff agrees to represent to the Court for the purpose of achieving
20 approval. To that end, Plaintiff will move for an order granting preliminary approval of the
21 Settlement, approving and directing the mailing of the proposed Notice of Class Action
22 Settlement (“Class Notice”) attached hereto as Exhibit “A”, conditionally certifying the
23 Settlement Class for settlement purposes only, and approving the deadlines proposed by the
24 Parties for the submission of Requests for Exclusion, Weekly Pay Period Disputes, and
25 Objections, the papers in support of Final Approval of the Settlement, and any responses to
26 Objections or opposition papers to the Motion for Final Approval.

27 **6. STATEMENT OF NO ADMISSION**

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1 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff
2 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
3 PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims
4 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
5 in the event that this Agreement is not approved by the Court, or any appellate court, is
6 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
7 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
8 PAGA Notice, and Defendant will not be deemed to have waived, limited, or affected in any way
9 any of its objections or defenses in the Action and the PAGA Notice. The Parties shall be restored
10 to their respective positions in the Action prior to the entry of this Settlement. Payment of wages
11 does not extend or alter the Class Members-claimants' period of employment for any purpose.

12 **7. RELEASE OF CLAIMS**

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

14 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
15 of Judgment, and payment by Defendant to the Third-Party Administrator selected of the full
16 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff
17 and all Participating Class Members release all claims against the Released Parties asserted in
18 the Operative Complaint filed in the Action, or any and all claims that may be asserted against
19 the Released Parties arising out of the facts asserted in the Operative Complaint, as follows: For
20 the duration of the Class Period, the release includes: (a) all claims for failure to pay overtime
21 wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide
22 compliant meal and rest periods and associated premium pay; (d) all claims for the failure to
23 timely pay wages upon termination or resignation; (f) all claims for non-compliant wage
24 statements; (g) all claims for failure to reimburse costs as required under Labor Code § 2802; and
25 (h) all claims asserted through California Business & Professions Code § 17200 *et seq.* arising
26 out of the Labor Code violations referenced in the Complaint (the "Class Released Claims").

27 **B. Release by All Aggrieved Employees**

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1 For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all
2 claims asserted in the PAGA Notice and thereafter alleged in the Operative Complaint for PAGA
3 civil penalties, and arising out of Labor Code Sections 210, 226.3, 558, 1197.1 and 2699 based
4 on the factual allegations and Labor Code sections alleged to have been violated in the PAGA
5 Notice and Operative Complaint, which include, without limitation, alleged violations of Labor
6 Code sections 204, 246, 432, 1174, 1198.5, and 2810.5 (the “PAGA Released Claims”).

7 Aggrieved Employees shall release the PAGA Released Claims and will be entitled to
8 their portion of the PAGA Payment (*i.e.* \$2,500.00) regardless of whether they submit a Request
9 for Exclusion (*i.e.* opt-out).

10 **C. General Release.**

11 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of
12 Judgment, and payment by Defendant to the Third-Party Administrator selected of the full Gross
13 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
14 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff hereby
15 fully and forever release and discharges Defendant, including any parent, subsidiary, and
16 affiliated companies, and respective past, present, and future officers, directors, shareholders,
17 employees, attorneys, accountants, insurers, consultants, administrators, agents, successors, and
18 assigns from any and all claims, demands, complaints, charges, causes of actions, contracts,
19 promises, rights, or liabilities, that the plaintiff or any spouse, dependent, or other person acting
20 on his/her behalf now holds, or has held, or may hereafter hold, whether known or unknown,
21 including but not limited to those relating to Plaintiff’s employment, compensation, or
22 termination by the Defendant or arising under any California, municipal or Federal statute,
23 ordinance, regulation, order or common law such as Title VII of the Civil Rights Act of 1964, as
24 amended, 42 U.S.C. §2000(a), et seq.; the Civil Rights Act of 1966, as amended 42 U.S.C. §1981,
25 et seq.; the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; the California Fair
26 Employment and Housing Act, as amended, California Government Code §12900 et seq.; the
27 Unruh Civil Rights Act, as amended, California Civil Code §51, et seq.; all provisions of the
28 California Labor Code; the Employee Retirement Income Security Act, 29 U.S.C. §1001, et seq.;

1 and any action based on contract, quasi-contract, implied contract, wrongful or constructive
2 discharge, breach of the covenant of good faith and fair dealing, libel, slander, assault, battery,
3 invasion of privacy, negligent or intentional infliction of emotional distress, discrimination on
4 any basis prohibited by statute, ordinance, or public policy, negligence, interference with
5 business opportunity or with contracts, or unfair insurance practices, and any other cause of
6 action whatsoever which arose on or before the date of the complete execution of this Agreement.

7 With respect to the General Release, Plaintiff stipulates and agrees that, through the Final
8 Approval Date, Plaintiff shall be deemed to have, and by operation of the Final Judgment shall
9 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
10 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision
11 under federal or state law, which provides:

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

15 **8. SETTLEMENT ADMINISTRATOR**

16 A. Plaintiff and Defendant, through their respective counsel, have selected Phoenix
17 Settlement Administrators to administer the Settlement, which includes but is not limited to
18 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
19 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
20 expenses of the Settlement Administrator, currently estimated to be \$5,000.00, will be paid from
21 the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is
22 less than \$5,000, the difference between \$5,000 and the actual Settlement Administration Costs
23 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
24 \$5,000, then such excess will be paid solely from the Gross Settlement Amount and Defendant
25 will not be responsible for paying any additional funds in order to pay these additional costs.

26 **9. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTIONS, AND**
27 **EXCLUSION PROCESS**

28 A. **Notice to the Settlement Class Members.**

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

17 (2) The Class Notice will set forth:

- 18 (a) the Settlement Class Member’s estimated Individual
19 Settlement Payment and Individual PAGA Payment,
20 and the basis for each;
- 21 (b) the information required by California Rule of Court,
22 rule 3.766, subdivision (d);
- 23 (c) the material terms of the Settlement;
- 24 (d) the proposed Settlement Administration Costs;
- 25 (e) the definition of the Settlement Class;
- 26 (f) a statement that the Court has preliminarily approved
27 the Settlement;

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- (g) how the Settlement Class Member can obtain additional information, including contact information for Class Counsel;
- (h) information regarding opt-out and objection procedures;
- (i) the date and location of the Final Approval Hearing; and
- (j) that the Settlement Class Member must notify the Settlement Administrator no later than the Response Deadline if the Settlement Class Member disputes the accuracy of the number of Weekly Pay Periods as set forth on his or her Class Notice (“Weekly Pay Period Dispute”). If a Settlement Class Member fails to timely dispute the number of Work Shifts attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class Notice shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of

1 the initial mailing, whichever is later, in which to postmark a Request for Exclusion, objection
2 or to dispute their attributed Weekly Pay Period count in the Class Period and/or PAGA Period.

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

9 **B. Objections.**

10 Only Participating Class Members may object or comment regarding the Settlement. In
11 order for any Settlement Class Member to object to this Settlement, or any term of it, he or she
12 should do so by either mailing, faxing, or e-mailing a written objection to the Settlement
13 Administrator at the address, phone number, fax number, or email address provided on the Class
14 Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of
15 the objection forthwith to Class Counsel and Defendant's counsel and attach each objection, if
16 any, to the declaration that Class Counsel files with the Court in support of the Motion for Final
17 Approval. The objection should set forth in writing: (1) the objector's name and address, and (2)
18 the reason(s) for the objection, along with whatever legal authority, if any, the objector asserts
19 supports the objection. If a Settlement Class Member objects to this Settlement, the Settlement
20 Class Member will remain a member of the Settlement Class and if the Court approves this
21 Agreement, the Settlement Class Member will be bound by the terms of the Settlement in the
22 same way and to the same extent as a Settlement Class Member who does not object. The date
23 of mailing, faxing, or e-mailing of the Class Notice to the objecting Settlement Class Member
24 shall be conclusively determined according to the records of the Settlement Administrator.
25 Settlement Class Members do not need to object in writing to be heard at, or object to the
26 Settlement, at the Final Approval Hearing.

27 **C. Requesting Exclusion.**

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1 Any Settlement Class Member may request exclusion from (*i.e.*, “opt out” of) the
2 Settlement by mailing, faxing, or e-mailing a written request to be excluded from the Settlement
3 (“Request for Exclusion”) to the Settlement Administrator, postmarked on or before the
4 Response Deadline. To be valid, a Request for Exclusion must include the Class Member’s name,
5 social security number and signature and a statement indicating the Class Member wishes to be
6 excluded from the Settlement Class in the *Guzman v. Freshco Painters, Inc. et al.* matter, or a
7 statement of similar meaning. The Settlement Administrator shall immediately provide copies of
8 all Requests for Exclusion to Class Counsel and Defendant’s Counsel and shall report the
9 Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance
10 of the Final Approval Hearing. Any Settlement Class Member who requests exclusion using this
11 procedure will not be entitled to receive any payment from the Settlement and will not be bound
12 by the Settlement Agreement or have any right to object to, appeal, or comment on the
13 Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting
14 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
15 those pertaining to the Released Claims, as well as any Judgment that may be entered by the
16 Court if Final Approval of the Settlement is granted. A Class Member cannot both opt out and
17 object to the Settlement. In the event that a Class Member tries to both opt out and object to the
18 Settlement, the opt-out will control and the objection will be void.

19 **D. Disputes Regarding Settlement Class Members’ Weekly Pay Periods.**

20 Each Settlement Class Member may dispute the number of Weekly Pay Periods attributed
21 to him or her on his or her Class Notice. Any such disputes must be mailed, faxed, or e-mailed
22 to the Settlement Administrator by the Settlement Class Member, postmarked on or before the
23 Response Deadline. The Settlement Administrator shall immediately provide copies of all
24 disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all
25 such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant
26 and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the
27 dispute.

28 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA**

1 **PAYMENTS TO PARTICIPATING CLASS MEMBERS**

2 Individual Settlement Payments will be calculated and distributed to Participating Class
3 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
4 Members' respective number of Work Shifts during the Class Period. Individual PAGA
5 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
6 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
7 number of Work Shifts during the PAGA Period. Specific calculations of the Individual
8 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
9 follows:

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

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

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

1 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
2 to 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 Work Shifts ÷ PAGA Work Shifts) x \$2,500.00 (the
7 PAGA Payment).

8 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
9 to Participating Class Members and/or Aggrieved Employees by way of check. When a
10 Participating Class Member is also an Aggrieved Employee, one check may be issued that
11 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

12 **11. DISTRIBUTION OF PAYMENTS**

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

14 Participating Class Members will receive an Individual Settlement Payment. Individual
15 Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180)
16 calendar days after the date of their issuance. Thereafter, checks for such payments shall be
17 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
18 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid Reside”).
19 The Unpaid Residue shall be forwarded to the Controller of the Stat of California pursuant to
20 the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, to be held in trust for those
21 Participating Class Members and PAGA Members who did not timely cash their Settlement
22 checks. The Parties agree that this disposition results in no “unpaid residue” under California
23 Civil Procedure Code § 384, as all payments to the Participating Class Members and PAGA
24 Member will be paid out, whether or not thee individuals cash their Settlement checks.
25 Therefore, Defendant will not be required to pay any interest on such amounts.

26 **B. Funding of Settlement.**

27 Defendant will make an initial payment, followed by thirteen (13) monthly payments to
28 the Settlement Administrator for deposit in an interest-bearing qualified settlement account

1 (“QSF”) with an FDIC insured banking institution, for distribution in accordance with this
2 Settlement Agreement and the Court’s orders and subject to the conditions described herein. An
3 initial payment in the amount of \$90,000 will be made within 7 calendar days of the Preliminary
4 Approval Date; after which monthly payments amounting to a total of \$85,000 (the Gross
5 Monthly Payment Total) must be made by Defendant on the following schedule: on the first day
6 of the month of every month following the initial payment amount, Defendant shall pay the
7 amount of \$6,250.00 until the Gross Monthly Payment Total is fully funded for a total of thirteen
8 (13) monthly payments, with the final and thirteenth payment amounting to \$10,000.00. In
9 addition, as part of the Final Payment, Defendant shall include the Employer Taxes, which shall
10 be determined by the Settlement Administrator.

11 Payments from the QSF shall be made for (1) the Service Award to Plaintiff as specified
12 in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
13 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
14 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
15 Payment, as specified in this Agreement; and (5) Individual PAGA Payments, as specified in the
16 Agreement. The balance remaining shall constitute the Net Settlement Amount from which
17 Individual Settlement Payments shall be made to Participating Class Members, less applicable
18 taxes and withholdings. All interest accrued shall be for the benefit of the Class Members and
19 distributed in a *pro rata* basis.

20 **C. Time for Distribution.**

21 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
22 Defendant, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
23 Administrator shall distribute all payments due under the Settlement, including the Individual
24 Settlement Payments to Participating Class Members and Individual PAGA Payments to
25 Aggrieved Employees, as well as the Court-approved payments for the Service Award to
26 Plaintiff, attorneys’ fees and litigation costs and expenses to Class Counsel, Administration Costs
27 to the Settlement Administrator, and the LWDA Payment to the LWDA.

28 **11. ATTORNEYS’ FEES AND LITIGATION COSTS**

1 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
2 fees of up to 35% of the Gross Settlement Amount, or, unless escalated pursuant to Paragraph 16
3 of this Agreement, Sixty-One Thousand Two-Hundred and Fifty Dollars (\$61,250.00). Class
4 Counsel shall further apply for, and Defendant shall not oppose, an application or motion by
5 Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of
6 this matter as set forth by declaration testimony in an amount up to Twenty Thousand Dollars
7 and Zero Cents (\$20,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross
8 Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle,
9 and obtain Final Approval of the settlement in the Class and PAGA Action. The "future" aspect
10 of the amounts stated herein includes, without limitation, all time and expenses expended by
11 Class Counsel (including any appeals therein). There will be no additional charge of any kind to
12 either the Settlement Class Members or request for additional consideration from Defendant for
13 such work unless, in the event of a material breach of this Agreement by Defendant, Plaintiff is
14 required to move the Court for enforcement of this Agreement. Should the Court approve
15 attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts
16 provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

17 **12. SERVICE AWARD TO PLAINTIFF**

18 Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an
19 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
20 participation in and assistance with the Class Action. Any Service Award approved by the Court
21 will result in the issuance of a Form 1099 to Plaintiff as a Class Representative, who shall assume
22 full responsibility and liability for the payment of taxes due on such award. If the Court approves
23 the Service Award to Plaintiff in less than the amounts sought herein, then the unapproved
24 portion(s) shall be a part of the Net Settlement Amount.

25 **13. TAXATION AND ALLOCATION**

26 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
27 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
28 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties

1 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
2 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
3 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
4 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
5 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
6 be made pursuant to applicable state and/or local withholding codes or regulations.

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

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

16 **D.** Neither Counsel for Plaintiff nor Defendant intend anything contained in this
17 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
18 be relied upon as such within the meaning of United States Treasury Department Circular 230
19 (31 C.F.R. Part 10, as amended) or otherwise.

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

21 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
22 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
23 (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the
24 LWDA Payment), and twenty-five percent (25%) (\$2,500.00) will be distributed to Aggrieved
25 Employees (*i.e.*, the PAGA Payment) on a *pro rata* basis, based upon their respective weekly
26 pay periods worked during the PAGA Period.

27 **15. COURT APPROVAL**

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

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

12 Defendant represents that there are no more than 4,152 Weekly Pay Periods worked
13 during the Class Period. In the event the number of shifts worked increases by more than 5%, or
14 207 Weekly Pay Periods worked, then the Gross Settlement Amount shall be increased
15 proportionally by the Weekly Pay Periods worked in excess of 4,152 multiplied by the Weekly
16 Pay Period value. The Weekly Pay Period value shall be calculated by dividing the Gross
17 Settlement Amount by 4,152. The Parties agree that the Weekly Pay Period value amounts to
18 and the settlement amounts to \$42.14 per Weekly Pay Period. (\$175,000 / 3,645 Weekly Pay
19 Periods.) Thus, for example, should there be 4,500 Weekly Pay Periods in the Class Period, then
20 the Gross Settlement Amount shall be increased by \$14,664.72. (4,500 Weekly Pay Periods –
21 4,152 Weekly Pay Periods x \$42.14/Weekly Pay Period.)

22 **17. NOTICE OF JUDGMENT**

23 In addition to any duties set out herein, the Settlement Administrator shall provide
24 notice of the Final Judgment entered in the Action by posting the same on its website for a
25 period of no less than four (4) years.

26 **18. MISCELLANEOUS PROVISIONS**

27 **A. Interpretation of the Agreement.**

28

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

19 **B. Further Cooperation.**

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

23 **C. Counterparts.**

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

27 **D. Authority.**

28

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

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

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

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

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

9 **G. Severability.**

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

15 **H. Stipulation to File a First Amended Complaint**

16 Plaintiff agrees to file a First Amended Complaint the Class Action adding a cause of
17 action under PAGA. Defendant agrees to stipulate to the filing of the First Amended Complaint
18 in the Class Action to add PAGA allegations, which shall relate back to the date on which the
19 Action was filed.

20 **I. No Solicitation.**

21 The Parties to this Settlement Agreement pledge their good faith and fair dealing in
22 supporting the approval of this settlement by the Court and shall not encourage or solicit Class
23 Members to opt out or object to the settlement.

24 **J. Opportunity to Consult with Counsel**

25 The parties to this Settlement Agreement are represented by competent counsel, and they
26 have had an opportunity to consult with counsel prior to its execution.

27 //

28 **K. Enforcement of Settlement Agreement**

1 The Parties agree that even if no formal settlement document is signed, they intend this
2 Settlement Agreement to be enforceable by motion under California Code of Civil Procedure
3 section 664.6.

4
5
6 **IT IS SO AGREED:**

7 Dated: Nov 22, 2022, 2022

Angel Martinez Guzman (Nov 22, 2022 15:06 PST)
ANGEL MARTINEZ GUZMAN
Plaintiff and Class Representative

8
9
10
11
12 Dated: _____, 2022

FRESHCO PAINTERS, INC.
Defendant
By:
Its:

13
14
15
16
17 **AGREED AS TO FORM:**

18
19
20 Dated: November 22, 2022

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel
DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff Angel Martinez Guzman

21
22
23 Dated: _____, 2022

LAURIE CORTEZ
JUSTIN G. SCHMIDT
Counsel for Freshco Painters, Inc.

1 The Parties agree that even if no formal settlement document is signed, they intend this
2 Settlement Agreement to be enforceable by motion under California Code of Civil Procedure
3 section 664.6.
4

5
6 **IT IS SO AGREED:**

7 Dated: _____, 2022

8 _____
9 ANGEL MARTINEZ GUZMAN
10 Plaintiff and Class Representative

11
12 Dated: November 11, 2022

13 _____
14 FRESHCO PAINTERS, INC.
15 Defendant
16 By: Angel Fuerte
17 Its: President

18 **AGREED AS TO FORM:**

19 BIBIYAN LAW GROUP, P.C.

20 Dated: _____, 2022

21 _____
22 DAVID D. BIBIYAN
23 VEDANG J. PATEL
24 Counsel for Plaintiff Angel Martinez Guzman

25 Dated: 11 | 22, 2022

26 _____
27 LAURIE CORTEZ
28 JUSTIN G. SCHMIDT
Counsel for Freshco Painters, Inc.