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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

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

Plaintiff,

v.

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

Defendants.

CASE NO.: 20STCV04683

CLASS ACTION

[Assigned for all purposes to the Hon. Amy
D. Hogue in Dept. 7]

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

ACTION FILED: February 5, 2021

TRIAL DATE: None set

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

1 1. **DEFINITIONS**

2 A. **"Action"** means *Guzman v. Freshco Painters, Inc. et al.* filed in Los Angeles
3 County Superior Court, Case No. 20STCV04683.

4 B. **"Aggrieved Employees"** means Class Members working for Defendant during
5 the PAGA Period as non-exempt, hourly-paid employees.

6 C. **"Class Counsel"** means: David D. Bibiyan, Jeffrey D. Klein, and Diego Aviles
7 of Bibiyan Law Group, P.C. The term "Class Counsel" shall be used synonymously with the
8 term "Plaintiff's Counsel."

9 D. **"Class Period"** means the period from February 5, 2017 through November 30,
10 2021.

11 E. **"Court"** means the Superior Court of the State of California for the County of
12 Los Angeles.

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

17 G. **"Defendant"** means Freshco Painters, Inc.

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

22 I. **"General Release"** means the general release of claims by Plaintiff, which is in
23 addition to Plaintiff's limited release of claims as a Participating Class Member.

24 J. **"Gross Settlement Amount"** means a non-reversionary fund in the sum of One
25 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00),¹ which shall be paid by
26 Defendant, from which all payments for the Individual Settlement Payments to Participating
27 Class Members and the Court-approved amounts for attorneys' fees and reimbursement of

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

1 litigation costs and expenses to Class Counsel, Settlement Administration Costs, the Service
2 Award, the PAGA Payment, and the LWDA Payment shall be paid. It expressly excludes
3 Employer Taxes, which shall be paid by Defendant separate and apart from the Gross Settlement
4 Amount.

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

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

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

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

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

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1 **P. “Operative Complaint” or “Complaint”** means the Complaint that was filed
2 with the Court on February 5, 2021.

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

6 **R. “PAGA Period”** means the period from February 3, 2020, through November 30,
7 2021.

8 **S. “Participating Class Members”** means all Settlement Class Members who do
9 not submit a timely and valid Request for Exclusion.

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

15 **U. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
16 Plaintiff Angel Martinez Guzman.

17 **V. “Preliminary Approval Date”** means the date on which the Court enters an
18 Order granting preliminary approval of the Settlement.

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

24 **X. “Response Deadline”** means the deadline for Settlement Class Members to mail
25 any Requests for Exclusion or objections to the Settlement Administrator, which is forty-five
26 (45) calendar days from the date that the Class Notice is first mailed in English and Spanish by
27 the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an instance,
28 the Class Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days from

1 the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion
2 or Objection. The date of the postmark shall be the exclusive means for determining whether a
3 Request for Exclusion, objection, or Work Shifts Dispute was submitted by the Response
4 Deadline.

5 Y. **"Request for Exclusion"** means a written request to be excluded from the
6 Settlement Class pursuant to Section 9.C below.

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

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

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1 **BB. "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 **CC. "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 **DD. "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.

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1 C. Thereafter, the Parties agreed to exchange informal discovery and attend an early
2 mediation, in which Plaintiff was provided with, among other things: (1) approximately 25% of
3 the time and payroll records for 57 of 67 Class Members; (2) the number of workweeks in the
4 Class Period, separated employees in the relevant time period for waiting time penalties, and the
5 number of workweeks and Class Members in the relevant time period for wage statement
6 violations, as well as the average rate of pay for Class Members; (3) all documents concerning
7 Plaintiff; (4) Defendant's Employee Handbook; and (5) employee reimbursement invoices.

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

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

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

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

5 **3. JURISDICTION**

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

11 **4. STIPULATION OF CLASS CERTIFICATION**

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

15 **5. MOTION FOR PRELIMINARY APPROVAL AND PROOF OF**
16 **FINANCIAL STRAIN**

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

1 **6. STATEMENT OF NO ADMISSION**

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

13 **7. RELEASE OF CLAIMS**

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

15 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
16 of Judgment, and payment by Defendant to the Third-Party Administrator selected of the full
17 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff
18 and all Participating Class Members release all claims against the Released Parties asserted in
19 the Complaint filed in the Action, or any and all claims that may be asserted against the Released
20 Parties based on the factual allegations in the Complaint filed on February 5, 2021, as follows:
21 For the duration of the Class Period, the release includes: (a) all claims for failure to pay overtime
22 wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide
23 compliant meal and rest periods and associated premium pay; (d) all claims for the failure to
24 timely pay wages upon termination or resignation; (f) all claims for non-compliant wage
25 statements; (g) all claims for failure to reimburse costs as required under Labor Code § 2802; and
26 (h) all claims asserted through California Business & Professions Code § 17200 *et seq.* arising
27 out of the Labor Code violations referenced in the Complaint (the "Class Released Claims"). For
28 Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims

1 released during the Class Period, as well as all asserted PAGA claims for penalties arising out of
2 Labor Code Sections 210, 226.3, 558, 1197.1 and 2699 based on the factual allegations and Labor
3 Code sections alleged to have been violated in the PAGA Notice filed on February 3, 2021, which
4 include, without limitation, alleged violations of Labor Code sections 204, 246, 432, 1174,
5 1198.5, and 2810.5 (the "PAGA Released Claims").

6 **B. General Release.**

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

1 business opportunity or with contracts, or unfair insurance practices, and any other cause of
2 action whatsoever which arose on or before the date of the complete execution of this Agreement.

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

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

11 **8. SETTLEMENT ADMINISTRATOR**

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

22 **9. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTIONS, AND**
23 **EXCLUSION PROCESS**

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

25 (1) Within seven (7) calendar days after the Preliminary Approval Date,
26 Defendant's Counsel shall provide the Settlement Administrator with information with respect
27 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
28 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social

1 Security Number(s) in Defendant's possession, custody, or control; and (3) the hire dates and
2 termination or resignation dates (if applicable) for each Settlement Class Member ("Class List"),
3 which shall be made available to Class Counsel upon request. The Settlement Administrator
4 shall perform an address search using the United States Postal Service National Change of
5 Address ("NCOA") database and update the addresses contained on the Class List with the
6 newly-found addresses, if any. Within seven (7) calendar days of receiving the Class List from
7 Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to
8 the Settlement Class Members via first-class regular U.S. Mail using the most current mailing
9 address information available. The Settlement Administrator shall maintain a list with names
10 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.

13 (2) The Class Notice will set forth:

- 14 (a) the Settlement Class Member's estimated Individual
15 Settlement Payment and Individual PAGA Payment,
16 and the basis for each;
- 17 (b) the information required by California Rule of Court,
18 rule 3.766, 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
23 the Settlement;
- 24 (g) how the Settlement Class Member can obtain
25 additional information, including contact information
26 for Class Counsel;
- 27 (h) information regarding opt-out and objection
28 procedures;

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

14 (3) If a Class Notice from the initial notice mailing is returned as
15 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
16 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
17 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
18 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
19 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
20 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
21 Administrator with a forwarding address before the Response Deadline shall be promptly re-
22 mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class
23 Notice shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of
24 the initial mailing, whichever is later, in which to postmark a Request for Exclusion, objection
25 or to dispute their attributed Weekly Pay Period count in the Class Period and/or PAGA Period.

26 (4) No later than seven (7) calendar days from the Response Deadline, the
27 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
28 completion of the notice process, including the number of attempts to obtain valid mailing

1 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
2 and copies of all Requests for Exclusion and objections/comments received by the Settlement
3 Administrator.

4 **B. Objections.**

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

21 **C. Requesting Exclusion.**

22 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
23 Settlement by mailing a written request to be excluded from the Settlement ("Request for
24 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
25 To be valid, a Request for Exclusion must include the Class Member's name, social security
26 number and signature and the following statement or something to its effect: "Please exclude me
27 from the Settlement Class in the *Guzman v. Freshco Painters, Inc. et al.* matter" or a statement
28 of similar meaning. The Settlement Administrator shall immediately provide copies of all

1 Requests for Exclusion to Class Counsel and Defendant's Counsel and shall report the Requests
2 for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the
3 Final Approval Hearing. Any Settlement Class Member who requests exclusion using this
4 procedure will not be entitled to receive any payment from the Settlement and will not be bound
5 by the Settlement Agreement or have any right to object to, appeal, or comment on the
6 Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting
7 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
8 those pertaining to the Released Claims, as well as any Judgment that may be entered by the
9 Court if Final Approval of the Settlement is granted. A Class Member cannot both opt out and
10 object to the Settlement. In the event that a Class Member tries to both opt out and object to the
11 Settlement, the opt-out will control and the objection will be void.

12 **D. Disputes Regarding Settlement Class Members' Weekly Pay Periods.**

13 Each Settlement Class Member may dispute the number of Weekly Pay Periods attributed
14 to him or her on his or her Class Notice. Any such disputes must be mailed to the Settlement
15 Administrator by the Settlement Class Member, postmarked on or before the Response Deadline.
16 The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel
17 and counsel for Defendant and shall immediately attempt to resolve all such disputes directly
18 with relevant Settlement Class Member(s) with the assistance of Defendant and Class Counsel.
19 If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

20 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA**
21 **PAYMENTS TO PARTICIPATING CLASS MEMBERS**

22 Individual Settlement Payments will be calculated and distributed to Participating Class
23 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
24 Members' respective number of Work Shifts during the Class Period. Individual PAGA
25 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
26 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
27 number of Work Shifts during the PAGA Period. Specific calculations of the Individual
28

1 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
2 follows:

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

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

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

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

24 E. To determine each Aggrieved Employee's Individual PAGA Payment, the
25 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
26 PAGA Payment = (Aggrieved Employee's Work Shifts ÷ PAGA Work Shifts) × \$2,500.00 (the
27 PAGA Payment).
28

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

5 **11. DISTRIBUTION OF PAYMENTS**

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

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

19 **B. Funding of Settlement.**

20 Defendant will make an initial payment, followed by sixteen (16) monthly payments to
21 the Settlement Administrator for deposit in an interest-bearing qualified settlement account
22 ("QSIF") with an FDIC insured banking institution, for distribution in accordance with this
23 Settlement Agreement and the Court's orders and subject to the conditions described herein. An
24 initial payment in the amount of \$75,000 will be made by April 15, 2022; after which monthly
25 payments amounting to \$100,000 (the Gross Monthly Payment Total) must be made by
26 Defendant on the following schedule; (i) May 15, 2022: 1/16 of the Gross Monthly Payment
27 Total (1st Payment); (ii) June 15, 2022: 1/16 of the Gross Monthly Payment Total (2nd Payment);
28 (iii) July 15, 2022: 1/16 of the Gross Monthly Payment Total (3rd Payment); (iv) August 15, 2022:

1 1/16 of the Gross Monthly Payment Total (4th Payment); (v) September 15, 2022: 1/16 of the
2 Gross Monthly Payment Total (5th Payment); (vi) October 15, 2022: 1/16 of the Gross Monthly
3 Total Payment (6th Payment); (vii) November 15, 2022: 1/16 of the Gross Monthly Payment
4 Total (7th Payment); (viii) December 15, 2022: 1/16 of the Gross Monthly Payment Total (8th
5 Payment); (ix) January 15, 2023: 1/16 of the Gross Monthly Payment Total (9th Payment); (x)
6 February 15, 2023: 1/16 of the Gross Monthly Payment Total (10th Payment); (xi) March 15,
7 2023: 1/16 of the Gross Monthly Payment Total (11th Payment); (xii) April 15, 2023: 1/16 of the
8 Gross Monthly Payment Total (12th Payment); (xiii) May 15, 2023: 1/16 of the Gross Monthly
9 Payment Total (13th Payment); (xiv) June 15, 2023: 1/16 of the Gross Monthly Payment Total
10 (14th Payment); (xv) July 15, 2023: 1/16 Gross Monthly Payment Total (15th Payment); (xvi)
11 August 15, 2023: 1/16 of the Gross Monthly Payment Total (Final Payment). In addition, as part
12 of the Final Payment, Defendant shall include the Employer Taxes, which shall be determined
13 by the Settlement Administrator.

14 Payments from the QSF 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 (5) Individual PAGA Payments, as specified in the
19 Agreement. The balance remaining shall constitute the Net Settlement Amount from which
20 Individual Settlement Payments shall be made to Participating Class Members, less applicable
21 taxes and withholdings. All interest accrued shall be for the benefit of the Class Members and
22 distributed in a *pro rata* basis.

23 **C. Time for Distribution.**

24 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
25 Defendant, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
26 Administrator shall distribute all payments due under the Settlement, including the Individual
27 Settlement Payments to Participating Class Members and Individual PAGA Payments to
28 Aggrieved Employees, as well as the Court-approved payments for the Service Award to

1 Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel, Administration Costs
2 to the Settlement Administrator, and the LWDA Payment to the LWDA.

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

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

20 **12. SERVICE AWARD TO PLAINTIFF**

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

28 //

1 **13. TAXATION AND ALLOCATION**

2 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
3 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
4 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
5 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
6 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
7 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
8 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
9 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
10 be made pursuant to applicable state and/or local withholding codes or regulations.

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

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

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

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

25 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
26 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
27 (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the
28 LWDA Payment), and twenty-five percent (25%) (\$2,500.00) will be distributed to Aggrieved

1 Employees (*i.e.*, the PAGA Payment) on a *pro rata* basis, based upon their respective weekly
2 pay periods worked during the PAGA Period.

3 **15. COURT APPROVAL**

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

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

15 Defendant represents that there are no more than 4,152 Weekly Pay Periods worked
16 during the Class Period. In the event the number of shifts worked increases by more than 5%, or
17 207 Weekly Pay Periods worked, then the Gross Settlement Amount shall be increased
18 proportionally by the Weekly Pay Periods worked in excess of 4,152 multiplied by the Weekly
19 Pay Period value. The Weekly Pay Period value shall be calculated by dividing the Gross
20 Settlement Amount by 4,152. The Parties agree that the Weekly Pay Period value amounts to
21 and the settlement amounts to \$42.14 per Weekly Pay Period. (\$175,000 / 4,152 Weekly Pay
22 Periods.) Thus, for example, should there be 4,500 Weekly Pay Periods in the Class Period, then
23 the Gross Settlement Amount shall be increased by \$14,664.72. (4,500 Weekly Pay Periods –
24 4,152 Weekly Pay Periods x \$42.14/Weekly Pay Period.)

25 **17. 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 a
28 period of no less than four (4) years.

1 **18. 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 Los Angeles, and Plaintiff and
13 Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in
14 connection therewith. The foregoing is only limited to disputes concerning this Agreement.
15 Plaintiff Angel Martinez Guzman, on behalf of himself and on behalf of the Settlement Class,
16 and Defendant participated in the negotiation and drafting of this Agreement and had available
17 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
18 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
19 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
20 by the Court.

21 **B. Further Cooperation.**

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

25 **C. Counterparts.**

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

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. Stipulation to File a First Amended Complaint**

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

21 **I. No Solicitation.**

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

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

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

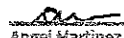
28 //

1 **K. Enforcement of Settlement Agreement**

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

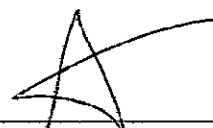
5
6
7 **IT IS SO AGREED:**

8 Dated: Jan 14, 2022, 2021


Angel Martinez Guzman (Jan 14, 2022 13:22 PST)

ANGEL MARTINEZ GUZMAN
Plaintiff and Class Representative

9
10
11
12
13 Dated: January 11, 2022


FRESHCO PAINTERS, INC.
Defendant
By: Angel Fuerte
Its: President

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

BIBIYAN LAW GROUP, P.C.

17
18
19 Dated: _____, 2021

DAVID D. BIBIYAN
JEFFREY D. KLEIN
DIEGO AVILES
Counsel for Plaintiff Angel Martinez Guzman

20
21
22
23 Dated: _____, 2021

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

K. Enforcement of Settlement Agreement

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

IT IS SO AGREED:

Dated: _____, 2021

ANGEL MARTINEZ GUZMAN
Plaintiff and Class Representative

Dated: January 11, 2022

FRESCO PAINTERS, INC.
Defendant
By: Angel Fuerte
Its: President

AGREED AS TO FORM:

BIBIYAN LAW GROUP, P.C.

Dated: January 18, 2022

DAVID D. BIBIYAN
JEFFREY D. KLEIN
DIEGO AVILES
Counsel for Plaintiff Angel Martinez Guzman

Dated: Jan. 12, 2022

LARRY E. CORTEZ
STEVEN G. SCHMIDT
Counsel for Fresco Painters, Inc.