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on behalf of himself and all others similarly situated and aggrieved

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

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

~~[PROPOSED]~~ **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFYING CLASS FOR
SETTLEMENT PURPOSES ONLY**

This Court, having considered the Motion of plaintiff Angel Martinez Guzman (“Plaintiff”) for Preliminary Approval of the Class Action Settlement and Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declaration of David D. Bibiyan, the Stipulation for Class Action and Representative Action Settlement (the “Settlement Agreement”), the Notice of Proposed Class Action Settlement (“Class Notice”), and the other documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

1. The definitions set out in the Settlement Agreement are incorporated by reference into this Order; all terms defined therein shall have the same meaning in this Order.

1 2. The Court certifies the following settlement class for the purpose of settlement only:
2 all current and former non-exempt, hourly-paid employees of defendant Freschco Painters Inc.
3 (“Defendant”) from February 5, 2017 through November 30, 2021 (“Class Period”) in the State of
4 California (“Class Members”).

5 3. The Court preliminarily appoints named plaintiff Angel Martinez Guzman as Class
6 Representative, and David D. Bibiyan, Jeffrey D. Klein, and Diego Aviles of Bibiyan Law Group,
7 P.C. as Class Counsel.

8 4. The Court preliminarily approves the proposed class settlement upon the terms and
9 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
10 settlement appears to be within the range of reasonableness of settlement that could ultimately be
11 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
12 amount is fair, adequate and reasonable as to all potential settlement class members when balanced
13 against the probable outcome of further litigation relating to liability and damages issues. It further
14 appears that extensive and costly investigation and research has been conducted such that counsel
15 for the parties at this time are reasonably able to evaluate their respective positions. It further
16 appears to the Court that the settlement at this time will avoid substantial additional costs by all
17 parties, as well as the delay and risks that would be presented by the further prosecution of the
18 Action. It further appears that the settlement has been reached as the result of intensive, non-
19 collusive, arms-length negotiations utilizing an experienced third party neutral.

20 5. The Court approves, as to form and content, the Class Notice that has been submitted
21 herewith.

22 6. The Court directs the mailing of the Class Notice by first-class mail to the Settlement
23 Class Members in accordance with the procedures set forth in the Settlement Agreement. The Court
24 finds that the dissemination of the Class Notice set forth in the Settlement Agreement complies with
25 the requirements of law, and appears to be the best notice practicable under the circumstances.

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1 7. The Court hereby preliminarily approves the definition and disposition of the Gross
2 Settlement Amount of \$175,000.00, which is inclusive of attorneys’ fees not to exceed thirty-five
3 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
4 Agreement, amounts to \$61,250.00, in addition to actual costs incurred not to exceed \$20,000, an
5 incentive award of \$7,500.00 to the named Plaintiff, costs of settlement administration of no more
6 than \$5,000.00, and PAGA penalties in the amount of \$10,000.00, of which \$7,500.00 (75%) will
7 be paid to the Labor and Workforce Development Agency (“LWDA”) and \$2,500.00 (25%) will be
8 paid to “Aggrieved Employees”, defined as Class Members working as non-exempt, hourly-paid
9 employees of Defendant in California from February 3, 2020 through November 30, 2021 (“PAGA
10 Period”).

11 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
12 paid separately and apart by Defendant on the wages portion of the Settlement Amount.

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

23 10. The Court deems Phoenix Settlement Administrators (“Phoenix”) the Settlement
24 Administrator, and payment of administrative costs, not to exceed \$5,000.00, out of the Gross
25 Settlement Amount for services to be rendered by Phoenix on behalf of the class. The Settlement
26 Administrator shall prepare and submit to Class Counsel and Defendant’s Counsel a declaration
27 attesting to the completion of the notice process as set forth in the Settlement Agreement, including
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1 an explanation of efforts to resend any Class Notice returned undeliverable and the total number of
2 opt-outs and objections received before and after the deadline.

3 11. The Court directs Defendant to, within seven (7) calendar days of this Order, provide
4 the Settlement Administrator with the “Class List” for Class Members. The Class List will include
5 for Class Members: (1) name, last known address(es) and last known telephone number(s) currently
6 in Defendant’s possession, custody, or control; (2) Social Security Number(s) in Defendant’s
7 possession, custody, or control; and (3) the hire dates and termination or resignation dates (if
8 applicable) for each Class Member. “Weekly Pay Periods” means the number of weekly pay periods
9 a Class Member was employed by Defendant in a non-exempt, hourly-paid position during the Class
10 Period based on hire dates, re-hire dates, and termination dates.

11 12. Because social security numbers are included in the Class List, the Settlement
12 Administrator shall maintain the list in confidence, and shall only access and use the list to
13 administer the settlement in conformity with the Court’s orders.

14 13. Upon receipt of the Class List, the Settlement Administrator shall perform an address
15 search using the United States Postal Service National Change of Address (“NCOA”) database. To
16 the extent that this process yields an updated address, that updated address shall replace the last
17 known address and be treated as the new last known address for purposes of this Settlement, and for
18 subsequent mailings.

19 14. Within seven (7) calendar days of receiving the Class List from Defendant, the
20 Settlement Administrator shall mail the Class Notice in English and Spanish to the Class Members
21 via first-class regular U.S. Mail using the most current mailing address information available.

22 (1) The deadline by which Class Members may dispute the number of Weekly
23 Pay Periods worked, and the deadline by which Class Members may opt out or object, shall be sixty
24 (60) calendar days from the date of mailing of the Class Notice, unless the Class Member had their
25 Class Notice re-mailed. Class Members who are re-mailed a Class Notice shall have fifteen (15)
26 days from the re-mailing, or sixty (60) days from the date of the initial mailing, whichever is later,
27 in which to postmark a Request for Exclusion, objection or to dispute their attributed Weekly Pay
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1 Period count in the Class Period and/or PAGA Period. This shall be known as the “Response
2 Deadline”.

3 15. Any Class Member wishing to opt out from the Settlement must mail, fax, or e-mail
4 a written Request for Exclusion to the Settlement Administrator by the Response Deadline. The
5 Request for Exclusion must include the Class Member’s name, social security number and signature
6 and a statement indicating the Class Member wishes to be excluded from the Settlement Class in
7 the *Guzman v. Freshco Painters, Inc. et al.* matter. The date of the postmark on the return mailing
8 envelope receipt confirmation will be the exclusive means to determine whether a Request for
9 Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the Settlement
10 Administrator, who will certify jointly to Class Counsel and counsel for Defendant the Requests for
11 Exclusion that were timely submitted.

12 16. Any Class Member who does not submit a timely and valid Request for Exclusion
13 shall be deemed a “Participating Class Member” and be bound by the terms of the Settlement,
14 including the releases provided therein.

15 17. Class Members will have an opportunity to dispute the information provided in their
16 Class Notice. To the extent Class Members dispute the number of Weekly Pay Periods with which
17 they have been credited in the Class Period and/or PAGA Period, Class Members may produce
18 evidence to the Settlement Administrator showing that such information is inaccurate. Any such
19 disputes must be mailed, faxed, or e-mailed to the Settlement Administrator by the Class Member,
20 postmarked on or before the Response Deadline. The Settlement Administrator shall immediately
21 provide copies of all disputes to Class Counsel and counsel for Defendant and shall immediately
22 attempt to resolve all such disputes directly with relevant Class Member(s) with the assistance of
23 Defendant and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall
24 adjudicate the dispute.

25 18. Only Participating Class Members may object to the Settlement. In order for any
26 Class Member to object to this Settlement, or any term of it, he or she should do so by mailing,
27 faxing, or e-mailing a written objection to the Settlement Administrator at the address or phone
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1 number provided on the Class Notice no later than the Response Deadline. The Objection should
2 set forth in writing: (1) the objector’s name and address, and (2) the reason(s) for the objection,
3 along with whatever legal authority, if any, the objector asserts supports the objection. The
4 postmark date will be deemed the exclusive means for determining that the Objection is timely.
5 Participating Class Members who fail to object in the manner specified above will be foreclosed
6 from making a written Objection, but shall still have a right to appear at the Final Approval Hearing
7 and object to, and or comment on, the Settlement.

8 19. If a Class Member objects to the Settlement and opt out, the opt-out will control and
9 the objection will be overruled.

10 20. All papers filed in support of final approval, including supporting documents for
11 attorneys’ fees and costs, shall be filed by ~~_____~~, 2022.] ^!^! [â^È

12 21. A Final Approval Hearing shall be held with the Court on ~~_____~~, 2022 at
13 ~~FCCCE E~~ A.M./P.M in Department “7” of the above-entitled Court to determine: (1) whether the proposed
14 settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the
15 amount of attorneys’ fees and costs to award Class Counsel; (3) the amount of incentive award to
16 the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the
17 amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

18 Defendant shall make payments to the Settlement Administrator for deposit in an interest-
19 bearing qualified settlement account (“QSF”) with an FDIC insured banking institution, as follows:
20 An initial payment in the amount of \$90,000 will be made within 7 calendar days of the Preliminary
21 Approval Date; after which monthly payments amounting to a total of \$85,000 (the Gross Monthly
22 Payment Total) must be made by Defendant on the following schedule: on the first day of the month
23 of every month following the initial payment amount, Defendant shall pay the amount of \$6,250.00
24 until the Gross Monthly Payment Total is fully funded for a total of thirteen (13) monthly payments,
25 with the final and thirteenth payment amounting to \$10,000.00. In addition, as part of the Final
26 Payment, Defendant shall include the Employer Taxes, which shall be determined by the Settlement
27 Administrator.

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1 22. Within seven (7) calendar days after the Effective Date, payment of the full Gross
2 Settlement Amount by Defendant, as well as payment by Defendant of the Employer Taxes, or as
3 soon thereafter as practicable, the Settlement Administrator shall distribute all payments due under
4 the Settlement, including the Individual Settlement Payments to Participating Class Members and
5 Individual PAGA Payments to Aggrieved Employees, as well as the Court-approved payments for
6 the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel,
7 administration Costs to the Settlement Administrator, and the LWDA Payment to the LWDA.

8 23. Any checks issued by the Settlement Administrator to Participating Class Members
9 and Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days after the
10 date of their issuance. If a Participating Class Member or Aggrieved Employee does not cash his
11 or her Individual Settlement Payment within 180 days, the uncashed funds shall be canceled and
12 funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue
13 pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue shall be
14 forwarded to the Controller of the State of California pursuant to the Unclaimed Property Law,
15 California Civil Code § 1500, *et seq.*, to be held in trust for those Participating Class Members and
16 Aggrieved Employees who did not timely cash their Settlement checks.

17 24. In the event the settlement does not become effective in accordance with the terms
18 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
19 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
20 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

21
22 **IT IS SO ORDERED.**

23 Dated: 12/15/2022, 2022



Lawrence P. Riff / Judge

Judge of the Superior Court