

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Agreement”) is reached by and between Plaintiff Maria Chavarin De Gamez (“Plaintiff”), individually and on behalf of all members of the Settlement Class, defined below, and Defendants California Fruit Basket, Inc. and Melkonian Enterprises, Inc. (Collectively “Fruit Basket” or “Defendants”). Plaintiff and Defendants are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Daniel J. Brown of Stansbury Brown Law (“Class Counsel”). Defendants are represented by Katherine C. Den Bleyker of Lewis Brisbois Bisgaard & Smith LLP.

Plaintiff filed a Class Action Complaint (“Complaint”) against Defendants on August 28, 2020, in Fresno County Superior Court, Case No. 20CECG02531, which alleges class action claims for: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; and (7) unfair competition (the “Lawsuit”). Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”) on November 3, 2020, adding an additional cause of action (8) for civil penalties under the California Private Attorneys General Act (“PAGA”).

On June 16, 2021, the Parties attended and participated in good faith, arm’s length settlement discussions at a mediation before Mediator Lisa Klerman, Esq. The Parties agreed to discuss class action settlement as part of mediation. As such, prior to mediation, the Parties conducted significant investigation of the facts and law. This included review and analysis of Defendants’ policies and putative class members’ time records and payroll records. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiff’s claims, the defenses thereto, and the damages and penalties claimed by Plaintiff in the Lawsuit. As a result of the Parties’ thorough investigation of the class action allegations and defenses thereto, they were able to reach an agreement after several months of extensive negotiations after mediation.

Therefore, given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

1. Certification for Settlement Purposes. For the purposes of this Settlement Agreement only, the Parties stipulate to certification of the following Settlement Class:

1. **Settlement Class** – All individuals who worked for Defendant California Fruit Basket, Inc. and/or Defendant Melkonian Enterprises, Inc. (collectively “Defendants”) in California as non-exempt employees from August 28, 2016 through June 16, 2021 (the “Class Period”) (“Settlement Class” or “Settlement Class Members”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the California Code of Civil Procedure or Rule 23 of the Federal Rules of Civil Procedure.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. Releases.

- A. **Releases by Settlement Class Members.** Plaintiff and every member of the Settlement Class (except those who opt out, as described below) will fully release and discharge Defendants California Fruit Basket, Inc., Melkonian Enterprises, Inc., and their past and present owners, officers, directors, shareholders, members, partners, managers, employees, parent companies, subsidiaries, predecessors, successors, assigns, joint venturers, insurers, and legal representatives (collectively the “Released Parties”) for any and all causes of action, claims, rights, damages, penalties, liabilities, expenses, and losses alleged in any of the pleadings or LWDA Notice(s) in the Lawsuit or that could have been alleged based on any matter or fact set forth or referred to in any of the pleadings and LWDA Notice(s), including: (a) minimum wage violations; (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) wage statement violations; (f) waiting time penalties; (g) all claims arising out of unfair or unlawful business practices under California Business & Professions Code sections 17200, *et seq.* that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the Lawsuit; and (h) all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been based on the factual allegations in the Lawsuit (collectively, the “Released Claims”). For members of the Settlement Class who do not validly opt out, the release period shall run from August 28, 2016, through June 16, 2021 (“Class Period”).
- B. **Parties’ Mutual Release of Unknown Claims.** The Parties have agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal, state, or local law, against each other and the Released Parties. Each Party understands that this release includes unknown claims and that she or it is, as a result, waiving all rights and benefits afforded by section 1542 of the California Civil Code, which provides:

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

However, to the extent that either Party has claims that cannot be released as a matter of law (i.e., workers’ compensation claims), then those claims will not be released.

3. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Defendants agree to pay a common fund of Four Hundred Twenty Thousand Dollars and Zero Cents (\$420,000.00) (the “Maximum Settlement Amount” or “MSA”) in full and complete settlement of this matter, as follows:

- A. Within thirty (30) calendar days of the Final Approval (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval, or solely in the event that there are any objections to the settlement, the filing of an objection being a prerequisite to the filing of an appeal, the later of: (i) the last date on which any appeal might be filed, or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review), Defendants will deposit the Maximum Settlement Amount and their share of employer’s payroll taxes into a Qualified Settlement Fund account from which the Settlement Administrator will have authority to distribute money within fifteen (15) business days of receipt of the Maximum Settlement Amount. The Settlement Administrator shall disburse its settlement administration fees, Class Representative Incentive Payment, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, Class Counsel’s litigation costs and expenses, and Class Counsel’s attorneys’ fees.
- B. This is a non-reversionary settlement. No portion of the Maximum Settlement Amount will return to Defendants. The Maximum Settlement Amount includes:
 - (1) All payments to the Settlement Class;
 - (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement, which are anticipated to be no greater than Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00).
 - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for a Class Representative Incentive Payment, subject to Court approval. The Class Representative Incentive Payment to Plaintiff is in exchange for the Released Claims, General Release of Plaintiff’s individual claims, and for Plaintiff’s time, effort, and risk in bringing and prosecuting the Lawsuit. Any adjustments made by the Court to the requested Class Representative Incentive Payment shall not be deemed a material modification of this Agreement. In the event that the Court reduces or does not approve the requested Class Representative Incentive Payment, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the Agreement for that reason, and it shall remain binding. Any portion of the requested Class Representative Incentive Payment that is not awarded to Plaintiff, as the Class Representative, shall become part of the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement;
 - (4) Up to one-third of the Maximum Settlement Amount in attorneys’ fees, which is currently estimated to be One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00), plus up to Twenty Thousand Dollars and Zero Cents

(\$20,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the Agreement for that reason, and it shall remain binding. Any portion of the requested fees or costs that is not awarded by the Court to Class Counsel shall become part of the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement; and

- (5) Five Thousand Dollars and Zero Cents (\$5,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per California Labor Code section 2699(i), seventy-five percent (75%) of such penalties, or Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) will be payable to the Settlement Class as the "PAGA Amount."

C. Defendants' share of payroll taxes shall be paid by Defendants separately from, and in addition to, the Maximum Settlement Amount. Defendants shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including their official names, 8-digit state unemployment insurance tax ID numbers, and other information requested by the Settlement Administrator, no later than seven (7) calendar days of the Effective Date.

D. **Escalator Clause.** Defendants represent that as of June 16, 2021, there were approximately 15,622 weekly pay periods worked by approximately 203 Settlement Class Members. If, the number of weekly pay periods worked by Settlement Class Members increased by ten percent (10 %) or more (i.e., if there are 17,185 or more weekly pay period worked by Settlement Class Members), Defendants shall increase the Maximum Settlement Amount on a pro-rata basis equal to the increase in the number of weekly pay periods worked or number of increased Settlement Class Members (e.g., if the actual number of weekly pay periods worked were 25% greater than 15,622, Defendants will increase the Maximum Settlement Amount by 25%).

4. **Settlement Award Procedures.** Settlement Class Members are not required to submit a claim form to receive their Individual Settlement Award. "Individual Settlement Awards" will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for: (1) the Settlement Administrator's fees and expenses; (2) the Class Representative Incentive Payment to Plaintiff; (3) Class Counsel's attorneys' fees; (4) Class Counsel's costs and expenses; and (5) the LWDA's share of the PAGA payment. The remaining amount shall be known as the "Net Settlement Fund."
- B. From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Award.

Individual Settlement Awards shall be based on the following formula:

- i. Waiting Time Amount: Twenty percent (20%) of the Net Settlement Fund shall be designated as the “Waiting Time Amount.” Each Participating Settlement Class Member who separated from their employment with Defendant California Fruit Basket, Inc. and/or Defendant Melkonian Enterprises, Inc. at any time from August 28, 2017 to June 16, 2021 (“Waiting Time Period”) shall receive an equal, pro-rata share of the Waiting Time Amount.
- ii. Wage Statement Amount: Fifteen percent (15%) of the Net Settlement Fund shall be designated as the “Wage Statement Amount.” Each Participating Settlement Class Member who was employed by Defendant California Fruit Basket, Inc. and/or Defendant Melkonian Enterprises, Inc. at any time from August 28, 2019 to June 16, 2021 shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked during the period from August 28, 2019 to June 16, 2021 (“Wage Statement Period”).
- iii. PAGA Amount: Each Settlement Class Member who was employed by Defendant California Fruit Basket, Inc. and/or Defendant Melkonian Enterprises, Inc. at any time from August 28, 2019 to June 16, 2021 shall receive a portion of the One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) of the Net Settlement Fund that has been designated as the “PAGA Amount” proportionate to the number of pay periods that he or she worked during the period from August 28, 2019 to June 16, 2021 (“PAGA Period”). Settlement Class Members shall not have the right to opt out of the PAGA portion of the settlement, but may choose to opt out of the class portion of the settlement, as detailed herein. Settlement Class Members will receive their portion of the PAGA Amount regardless of their decision to opt out of the class settlement.
- iv. The remainder of the Net Settlement Fund shall be distributed to each Participating Settlement Class Member based on their proportionate share of Eligible Workweeks (defined below) during the Class Period, by multiplying the remaining Net Settlement Fund by a fraction, the numerator of which is the Participating Settlement Class Member’s Eligible Workweeks during the Class Period, and the denominator of which is the total Eligible Workweeks of all Participating Settlement Class Members during the Class Period.

An “Eligible Workweek” shall be any workweek in which the Class Member worked at least one day during the workweek based on Defendants’ records.

- C. Within ten (10) business days following the funding of the Maximum Settlement Amount with the Settlement Administrator by Defendants, the Settlement

Administrator will calculate Individual Settlement Award amounts less the amount, if any, they received as part of their Individual Settlement Agreements and will prepare and mail Individual Settlement Awards to Settlement Class Members and transfer to Class Counsel its attorneys' fees and verified costs. The Releases described in Paragraph 2 of this Agreement are null and void if the Settlement is not fully funded.

- D. For purposes of calculating applicable taxes and withholdings for the Participating Settlement Class Members, twenty percent (20%) of each Individual Settlement Award shall be designated as wages subject to W-2 reporting and normal payroll withholdings; and the remaining eighty percent (80%) of each Individual Settlement Award shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. For Settlement Class Members who opt out of the class portion of the settlement and receive only their portion of the PAGA Amount, one hundred percent (100%) of the PAGA Amount shall be designated as penalties subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each Settlement Class Member who receives an Individual Settlement Award must cash the settlement check within one hundred eighty (180) days from the date of issuance. The one hundred eighty (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Settlement Class Members whose checks are not cashed within one hundred eighty (180) days period will not be reissued and will be transferred by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code sections 1500, *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that the property is claimed.
- F. Neither Plaintiff nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized cashing of checks. Unless responsible by her or its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Class Counsel's Attorneys' Fees and Litigation Costs.** Defendants will not object to a request for a total award of attorneys' fees to Class Counsel of one-third of the Maximum Settlement Amount, which is currently estimated to be One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00), plus up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised, responses to any intervenors, and

any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court.

6. **Plaintiff's Class Representative Incentive Payment.** Defendants will not object to a request for a Class Representative Incentive Payment for Plaintiff of Five Thousand Dollars and Zero Cents (\$5,000.00) in exchange for the general release of her claims, her time and risks in prosecuting this case, and her service to the Settlement Class. This payment will be in addition to Plaintiff's Individual Settlement Award as a Settlement Class Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Incentive Payment to Plaintiff is for her services in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Incentive Payment and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Incentive Payment does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Incentive Payment constitutes wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and/or any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendants from the Incentive Payment paid under this Settlement Agreement. In addition, Plaintiff shall hold Defendants, Released Parties, and Class Counsel harmless and indemnify Defendants, Released Parties, and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendants by reason of any claims relating to the non-withholding of taxes from the Incentive.

7. **Settlement Administrator.** Defendants will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator nor to Class Counsel seeking Court approval to pay up to Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00) from the Maximum Settlement Amount for its services. The Settlement Administrator shall be responsible for sending all required notices, calculating the Net Settlement Fund, calculating each Class Member's Individual Settlement Award amount, preparing all checks and mailings, and disbursing all residuals resulting from uncashed settlement checks as set forth in Section 4(E)-(F). The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after checks have been mailed to all Settlement Class Members.

8. **Preliminary Approval.** Plaintiff shall apply to the Court for the entry of an Order:
- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
 - B. Appointing Daniel J. Brown of Stansbury Brown Law as Class Counsel;
 - C. Appointing Maria Chavarin De Gamez as Class Representative for the Settlement Class;
 - D. Approving Phoenix Settlement Administrators as Settlement Administrator;
 - E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;

- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Objection Form attached hereto as Exhibits 1, 2, and 3, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice Procedures.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) business days after entry of an order preliminarily approving this Settlement Agreement, Defendants will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Settlement Class Members, as well as the total workweeks worked by each member of the Settlement Class during the Class Period.
- B. Within seven (7) business days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Settlement Class Member at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. The Settlement Administrator shall use its best professional efforts, including utilizing a “skip trace,” to track any Settlement Class Member’s mailing returned as undeliverable, and will re-send the Notice Packet promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.
- D. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection.

- E. **Opt-Out/Request for Exclusion Procedures.** Any Settlement Class Member who wishes to opt-out of the class portion of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Request for Exclusion Form must: (1) contain the name, address, and telephone number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the class settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form fails to comply with items (1)-(3), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion Form not containing a Settlement Class Member’s telephone number will be deemed valid. The date of the postmark on the Request for Exclusion Form shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement (although the PAGA settlement and release provisions will still apply to each such individual, and such individual shall be entitled to his or her portion of the PAGA Amount) or have any right to object, intervene, appeal or comment thereon. Settlement Class Members will receive their portion of the PAGA Amount regardless of their decision to opt out of the class settlement. Any Settlement Class Member who does not submit a Request for Exclusion Form is automatically deemed a “Participating Settlement Class Member.”
- F. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants’ counsel as well as filing them with the Court). Defendants’ counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) calendar days of the Motion for Final Approval filing deadline, in which case Defendant’s counsel and Class Counsel shall have ten (10) calendar days to respond. To be valid, any objection must: (1) contain the objecting Settlement Class member’s full name and current address; (2) include all objections and the factual and legal bases for the objections; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked on or before the Response Deadline.
- G. **Challenges to Individual Settlement Award Calculations.** Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member’s estimated Settlement Award, as well as the information that was used from Defendants’ records in order to calculate the Individual Settlement Award, including the Settlement Class Member’s number of Eligible Workweeks

during the Class Period, the number of pay periods worked during the PAGA/Wage Statement periods, and whether the Settlement Class Member's employment ended during the period of August 28, 2017, and June 16, 2021. Settlement Class Members will have the opportunity, should they disagree with Defendants' records regarding the number of Eligible Workweeks and/or pay periods stated in their Notice Packet and/or whether their employment ended between August 28, 2017 and June 16, 2021, to challenge the data provided. In order to challenge Defendants' data, the Settlement Class Member must provide documentation and/or an explanation demonstrating that Defendants' data is incorrect and evidencing the correct number of Eligible Workweeks and/or pay periods that the Settlement Class Member believes he or she should have been credited with and/or evidence of the correct date his or her employment ended. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) business days of receipt.

- H. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Settlement Class Members' Individual Settlement Awards, the allocation of W-2 wages, and the number of Eligible Workweeks and/or pay periods. Where the information submitted by Defendants from its records differs from the information submitted by the Settlement Class Member, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and Defendants' counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will finally determine the eligibility for and amount of any Settlement Award. Such determination shall be binding upon the Settlement Class Member and the Parties.

10. **Final Approval Process.** Following preliminary approval and the close of the Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's application for the Settlement Administrator's fees and expenses, Plaintiff's Class Representative Incentive Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission.** Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, that it has any liability to anyone under the

claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code section 1152.

12. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses set forth below, or such other addresses as the Parties may designate in writing from time to time:

if to Defendants:

Katherine C. Den Bleyker, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
633 W. 5th St., Suite 4000
Los Angeles, CA 90071
katherine.denbleyker@lewisbrisbois.com

if to Plaintiff:

Daniel J. Brown, Esq.
STANSBURY BROWN LAW
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
dbrown@stansburybrownlaw.com

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

15. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

EXECUTION BY PARTIES AND COUNSEL

DATED: California Fruit Basket, Inc.

By: _____
Its: _____

DATED: Melkonian Enterprises, Inc.

By: _____
Its: _____

DATED: 2-22-22 Maria Chavarin De Gamez

By: Maria Chavarin De Gamez
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
Katherine C. Den Bleyker
Attorneys for Defendants

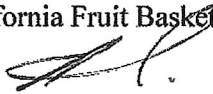
DATED: February 22, 2022 STANSBURY BROWN LAW

By: DB
Daniel J. Brown
Attorneys for Plaintiff

EXECUTION BY PARTIES AND COUNSEL

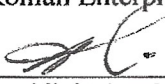
DATED: 2-16-22

California Fruit Basket, Inc.


By: Nicholas Melkonian
Its: President

DATED: 2-16-22

Melkonian Enterprises, Inc.


By: Nicholas Melkonian
Its: President

DATED:

Maria Chavarin De Gamez

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 2-18-22

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
Katherine C. Den Bleyker
Attorneys for Defendants

DATED:

STANSBURY BROWN LAW

By: _____
Daniel J. Brown
Attorneys for Plaintiff

EXHIBIT 1

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT
Maria Chavarin De Gamez v. California Fruit Basket, Inc., et al.
Fresno Superior Court
Case No.: 20CECG02531

To: All individuals who worked for Defendant California Fruit Basket, Inc. and/or Defendant Melkonian Enterprises, Inc. (collectively “Defendants”) in California as non-exempt employees from August 28, 2016 through June 16, 2021 (“Class Members”).

PLEASE READ CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in the matter of *Maria Chavarin De Gamez v. California Fruit Basket, Inc., et al.*, Fresno County Superior Court, Case No. 20CECG02531 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc.’s (collectively, “Defendants”) records show that you were employed by California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. as a non-exempt employee in California between August 28, 2016 and June 16, 2021 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this Lawsuit about?

Plaintiff Maria Chavarin De Gamez (“Plaintiff”) brought this Lawsuit against Defendants seeking to assert claims on behalf of a class of all current and former non-exempt employees who worked for California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. in California from August 28, 2016 through June 16, 2021. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Class Members, are known as “Class Counsel.”

The Lawsuit alleges that Defendants: (i) failed to pay employees all earned minimum and overtime wages; (ii) failed to provide all legally required meal and rest periods; (iii) failed to provide accurate and itemized wage statements; (iv) failed to timely pay all wages due or final wages due upon separation of employment; and (v) engaged in unlawful business practices as a result of the above-mentioned alleged violations. The Lawsuit further alleges that Defendants are also liable for civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”).

Defendants deny that they have done anything wrong. Defendants also deny that they owe Class Members any wages, restitution, statutory or civil penalties, damages, or any other remedies. Accordingly, the Settlement is a compromise of disputed claims and should not be considered as an admission of liability on the part of Defendants, by whom all liability is expressly denied.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the risk of the Court not allowing the case to proceed as a class action, the risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

The Court has not ruled on the merits of the claims alleged in the Lawsuit. In granting preliminary approval of the Settlement, the Court has determined only that there is sufficient evidence to suggest that the Settlement might be fair, adequate, and reasonable. A final determination on whether the Settlement is fair, adequate, and reasonable will be

made at the Final Approval hearing.

Your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants' policies strictly prohibit unlawful retaliation. Defendants will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff/Settlement Class: STANSBURY BROWN LAW Daniel J. Brown dbrown@stansburybrownlaw.com 2610 ½ Abbot Kinney Blvd. Venice, California 90291 Tel: (323) 204-3124 www.stansburybrownlaw.com	Attorneys for Defendants: LEWIS BRISBOIS BISGAARD & SMITH LLP Katherine C. Den Bleyker, Esq. katherine.denbleyker@lewisbrisbois.com 633 W. 5 th St., Suite 4000 Los Angeles, CA 90071 Tel: (213) 250-1800 www.lewisbrisbois.com
---	--

What are the terms of the Settlement?

Defendants have agreed to pay \$420,000.00 (the "Maximum Settlement Amount") to fully resolve all claims in the Lawsuit, including payments to Class Members, Class Counsel's attorneys' fees and expenses, Settlement administration costs, and the Class Representative's Incentive Payment.

The following deductions from the Maximum Settlement Amount will be requested by the Parties:

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for up to one-third of the Maximum Settlement Amount, which is currently estimated at \$140,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 in verified costs incurred in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$6,250.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Class Representative Incentive Payment. Class Counsel will ask the Court to award the Class Representative an Incentive Payment in the amount of \$5,000.00 to compensate her for her service and extra work provided on behalf of the Class Members.

Payment to State of California. The Parties have agreed to allocate \$5,000.00 towards the Settlement of the PAGA claims in the Lawsuit. \$3,750.00 will be paid to the State of California Labor and Workforce Development Agency ("LWDA"), representing its 75% share of the PAGA civil penalties. The remaining \$1,250.00 will be allocated to Class Members as part of the Net Settlement Fund described below.

Calculation of Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the "Net Settlement Fund," which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion Form ("Settlement Class Members") (described below). The Net Settlement Fund is estimated at approximately \$245,140.00, and will be divided as follows:

- (i) 20% of the Net Settlement Fund shall be designated as the "Waiting Time Amount" and will be allocated in equal amounts to all Settlement Class Members whose employment with California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. ended at any time between August 28, 2017 and June 16, 2021 ("Waiting Time Period").
- (ii) 15% of the Net Settlement Fund shall be designated as the "Wage Statement Amount" and will be allocated to Settlement Class Members based on the proportionate number of pay periods that they each worked between August 28, 2019 and June 16, 2021 ("Wage Statement Period").
- (iii) \$1,250.00 of the Maximum Settlement Amount has been designated as the "PAGA Amount." Each Class Member who was employed by California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. at any time from August 28, 2019 to June 16, 2021 shall receive a portion of the PAGA Amount based on the number of proportionate pay periods that he or she worked during the time period of August 28, 2019 to June 16, 2021 ("PAGA Period"). Class Members shall not have the right to opt out of the PAGA portion of the settlement, and will receive their portion of the PAGA Amount regardless of their decision to opt out of the class settlement.
- (iv) The remainder of the Net Settlement Fund will be distributed to each Settlement Class Member based on the proportionate number of Eligible Workweeks (defined as any workweek in which the Settlement Class Member worked at least one day during the workweek based on Defendants' records) that he or she worked during the Class Period (August 28, 2016 to June 16, 2021).

Payment of the Settlement. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to all Class Members for their portion of the PAGA Amount regardless of whether they submit a Request for Exclusion Form. In addition, Settlement Class Members will receive additional compensation as part of their Individual Settlement Awards comprised of their portion of the Net Settlement Fund as described above. The Maximum Settlement Amount will be paid by Defendants within thirty (30) calendar days of the Final Approval. <<<DATE OF FINAL APPROVAL >>>.

Allocation and Taxes. For tax purposes, each Individual Settlement Award shall be treated as follows: 20% as "wages" subject to normal payroll withholdings, for which an IRS Form W-2 will be issued; and 80% as penalties and interest with no withholdings, for which an IRS Form 1099 will be issued. For Class Members who opt out of the class portion of the settlement and receive only their portion of the PAGA Amount, 100% of the PAGA Amount shall be treated as penalties with no withholdings, for which an IRS Form 1099 will be issued. Class Members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of awards they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class Member will fully release and discharge Defendants California Fruit Basket, Inc. and Melkonian Enterprises, Inc., their past and present owners, officers, directors, shareholders, members, partners, managers, employees, parent companies, subsidiaries, predecessors, successors, assigns, joint venturers, insurers, and legal representatives (collectively, the "Released Parties") for any and all causes of action, claims, rights, damages, penalties, liabilities, expenses, and losses alleged in any of the pleadings or LWDA Notice(s) in the Lawsuit, or that could have been alleged based on any matter or fact set forth or referred to in any of the pleadings or LWDA Notice(s) in the Lawsuit, including: (a) minimum wage violations; (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) wage statement violations; (f) waiting time penalties; (g) all claims arising out of unfair or unlawful business practices under California Business & Professions Code sections 17200, *et seq.* that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the Lawsuit; and (h) all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been pled based on the factual

allegations in the Lawsuit (collectively, the “Released Claims”). For members of the Settlement Class who do not validly opt out, the release period shall run from August 28, 2016 through June 16, 2021 (“Class Period”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks in which you worked at least one day based on Defendants’ records (“Eligible Workweek”) during the Class Period, the proportionate number of pay periods you worked during the Wage Statement Period, the proportionate number of pay periods you worked during the PAGA Period, and whether you separated from your employment with California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. during the Waiting Time Period, as stated in this Notice. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your Individual Settlement Award is based on the proportionate number of Eligible Workweeks you worked during the Class Period, the proportionate number of pay periods you worked during the Wage Statement Period, the proportionate number of pay periods you worked during the PAGA Period, and whether you have separated from your employment with California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. during the Waiting Time Period. The information contained in Defendants’ records regarding each of these factors, along with your estimated Individual Settlement Award, is listed below. If you disagree with the information listed below, you may submit a dispute, along with any supporting documentation, to <<ADMINISTRATOR CONTACT INFO>>. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Settlement Administrator will determine whether any adjustments are warranted, and if so, will consult with the Parties and make a determination as to whether an adjustment will be made.

According to Defendants’ records:

- (a) you worked for California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. in California from [REDACTED] to [REDACTED];
- (b) you worked [REDACTED] Eligible Workweeks between August 28, 2016 and June 16, 2021, for California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc.;
- (c) you worked [REDACTED] pay periods between August 28, 2019 and June 16, 2021, for California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc.; and
- (d) your employment with California Fruit Basket, Inc. and/or Melkonian Enterprises, Inc. <<DID/DID NOT>> end between August 28, 2017 and June 16, 2021.

Based on the above, your Individual Settlement Award is estimated at \$ [REDACTED]. The lowest Individual Settlement Award to a Settlement Class Member is estimated at \$ [REDACTED]. The highest Individual Settlement Award to a Settlement Class Member is estimated at \$ [REDACTED].

Exclude Yourself from the Class Portion of the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself from the class portion of the settlement by completing the Request for Exclusion Form included with this Notice, and sending it to the Settlement Administrator postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, and your signature.

Send the Request for Exclusion Form directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion Form, shall, upon receipt by the Settlement Administrator, not be a Settlement Class Member and shall be barred from participating in any portion of

the Net Settlement Fund. However, the person may not opt out of the PAGA portion of the settlement and release as described above. Class Members will receive their portion of the PAGA Amount regardless of their decision to opt out of the class settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may complete the Objection Form or timely submit a written objection directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection must include your name, address, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, together with any evidence in support of your objection. Objection Forms or written objections must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also object by appearing at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 503 of the Fresno County Superior Court, located at 1330 O Street, Fresno, California 93721. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered. All objections or other correspondence must state the name and number of the case, which is *Maria Chavarin De Gamez v. California Fruit Basket, Inc., et al.*, Fresno County Superior Court, Case No. 20CECG02531.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 503 of the Fresno County Superior Court, located at 1330 O Street, Fresno, California 93721. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Class Representative Incentive Payment to Plaintiff. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Fresno County Superior Court, located at 1330 O Street, Fresno, California 93721, during regular court hours. You may also view the case file online at <https://publicportal.fresno.courts.ca.gov> selecting "Smart Search," and entering the case number information. This case is assigned to Department 503 of the Fresno County Superior Court, located at 1330 O Street, Fresno, California 93721. The Settlement Agreement is attached as Exhibit A to the Declaration of Daniel J. Brown in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, filed on <<<DATE PRELIMINARY APPROVAL MOTION FILED>>>. You may also contact the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>> for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS, OR THEIR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting a Request for Exclusion Form, Objection Form, or any dispute is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIMINARY APPROVAL DATE>>.

EXHIBIT 2

REQUEST FOR EXCLUSION FORM

Maria Chavarin De Gamez v. California Fruit Basket, Inc., et al.

Fresno Superior Court

Case No.: 20CECG02531

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MAY COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

PHOENIX SETTLEMENT ADMINISTRATORS.

Maria Chavarin De Gamez v. California Fruit Basket, Inc., et al.

CLASS ACTION ADMINISTRATOR

ADDRESS

ADDRESS

PHONE

FAX

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Maria Chavarin De Gamez v. California Fruit Basket, Inc., et al.*, Fresno County Superior Court, Case No. 20CECG02531.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *MARIA CHAVARIN DE GAMEZ V. CALIFORNIA FRUIT BASKET, INC., ET AL.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT, EXCEPT FOR MY PORTION OF THE PAGA AMOUNT.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ _

EXHIBIT 3

OBJECTION FORM

Maria Chavarin De Gamez v. California Fruit Basket, Inc., et al.

**Fresno Superior Court
Case No.: 20CECG02531**

All objections must be mailed or delivered to the Settlement Administrator, Phoenix Settlement Administrators at <<INSERT ADMINISTRATOR CONTACT INFO>> on or before <<RESPONSE DEADLINE>>. All objections must be postmarked on or before <<RESPONSE DEADLINE>>.

Objecting Settlement Class Member Information:

Name

Telephone Number

Address

Date

Signature

Describe the Nature of Each Objection and Please Attach Additional Pages if Necessary:

