

FILED

FEB 21 2023

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

RECEIVED

BY _____ DEPUTY

1/18/2023 10:11 AM

FRESNO COUNTY SUPERIOR COURT

By: V. Duarte, Deputy

1 Daniel J. Brown (State Bar #307604)
dbrown@stansburybrownlaw.com
2 STANSBURY BROWN LAW, PC
2610 1/2 Abbot Kinney Blvd.
3 Venice, California 90291
Tel. (323) 207-5925

4 Attorneys for Plaintiff

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA

6 FOR THE COUNTY OF FRESNO

7
8 MARIA CHAVARIN DE GAMEZ, as an
individual and on behalf of all others
9 similarly situated,

10 Plaintiff,

11 vs.

12 CALIFORNIA FRUIT BASKET, INC.,
13 a California corporation; MELKONIAN
ENTERPRISES, INC., a California corporation;
14 and DOES 1 through 100,

15 Defendants.
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 20CECG02531

[Assigned for all purposes to Dept. 503]

**[REDACTED] FINAL ORDER OF
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL
JUDGEMENT**

Date: February 9, 2023
Time: 3:27 p.m.
Dept.: 503

Complaint Filed: August 28, 2020
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on February 9, 2023, at 3:27
2 p.m. pursuant to California Rule of Court 3.769 and this Court's October 6, 2022 Order Granting
3 Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order").
4 Having considered the Parties' Stipulation of Settlement (the "Settlement" or "Settlement
5 Agreement") attached as Exhibit A to the Declaration of Daniel J. Brown In Support of Plaintiff's
6 Motion for Preliminary Approval of Settlement, filed on March 21, 2022, and the submissions of
7 counsel, and recognizing the sharply disputed factual and legal issues involved in this case, the
8 risks of further prosecution and the benefits to be received by the Class pursuant to the Settlement,
9 the Court hereby makes a final ruling that the proposed Settlement is fair, reasonable, and
10 adequate, and is the product of good faith, arm's-length negotiations between the Parties.

11 Unless otherwise indicated, all terms used in this Order and Judgment shall have the same
12 meaning as that assigned to them in the Settlement.

13 Good cause appearing thereof, the Court hereby GRANTS Plaintiff's Motion for Final
14 Approval of Class Action Settlement, Class Representative's Enhancement Payment, and
15 Settlement Administration Costs ("Motion Final Approval") and Plaintiff's Motion for Attorneys'
16 Fees and Costs and ORDERS as follows:

17 1. The conditional class certification contained in the Preliminary Approval Order is
18 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement
19 Class consisting of:

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

23 2. Plaintiff Maria Chavarin De Gamez is hereby confirmed as Class Representative,
24 and Daniel J. Brown of Stansbury Brown Law, PC is hereby confirmed as Class Counsel.

25 3. Notice was provided to the Settlement Class as set forth in the Settlement, which
26 was preliminarily approved by the Court on October 6, 2022, and the notice process has been
27 completed in conformity with the Court's Order. The Court finds that said notice was the best
28 notice practicable under the circumstances. The Class Notice provided due and adequate notice

1 of the proceedings and matters set forth herein, informed Class Members of their rights, and fully
2 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of
3 Court 3.769, and due process.

4 4. The Court finds that no Class Member objected to the Settlement and only one
5 Class Member, Juan Santos Estrada, opted-out of the Settlement, and that the 99.48%
6 participation rate in the Settlement supports final approval.

7 5. The Court hereby approves the settlement as set forth in the Settlement as fair,
8 reasonable, and adequate, and directs the Parties to effectuate the Settlement according to its
9 terms.

10 6. For purposes of settlement only, the Court finds that (a) the members of the
11 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
12 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
13 community of interest among members of the Settlement Class with respect to the subject matter
14 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
15 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
16 interests of the Class Members; (e) a class action is superior to other available methods for an
17 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel
18 for the Class Representative and the Settlement Class.

19 7. The Court finds that given the absence of objections, and objections being a
20 prerequisite to appeal, that this Order and Judgment shall be considered final as of the date of
21 notice of entry.

22 8. The Court orders that the Maximum Settlement Amount of Four Hundred Twenty
23 Thousand Dollars and Zero Cents (\$420,000.00) shall be deposited with the Settlement
24 Administrator, Phoenix Settlement Administrators (“Phoenix”), as provided in the Settlement.

25 9. Any Settlement funds that remain uncashed after 180 days after they are mailed
26 shall be transferred by the Settlement Administrator to the Controller of the State of California to
27 be held pursuant to the Unclaimed Property Law, California Civil Code sections 1500, et seq., in
28

1 the name of the Settlement Class Member to whom the check was issued, until such time that the
2 property is claimed.

3 10. The Court finds that the Individual Settlement Awards, as provided for in the
4 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
5 distribute the Individual Settlement Awards in conformity with the terms of the Settlement. The
6 Court further orders that if any of the Settlement Class Members are Defendants' current
7 employees and the Individual Settlement Award mailed to those current employees is returned to
8 the Settlement Administrator as being undeliverable, and the Settlement Administrator is unable
9 to locate a valid mailing address, the Settlement Administrator shall arrange with Defendants to
10 have those Settlement Awards delivered to the employees at their place of employment.

11 11. The Court finds that an Enhancement Payment in the amount of \$5,000.00 for
12 Plaintiff Maria Chavarin De Gamez is appropriate for her risks undertaken and service to the
13 Settlement Class. The Court finds that this payment is fair, reasonable, and adequate, and orders
14 that the Settlement Administrator make this payment in conformity with the terms of the
15 Settlement.

16 12. The Court finds that attorneys' fees in the amount of \$140,000.00, and actual
17 litigation costs of \$16,183.46 for Class Counsel, are fair, reasonable, and adequate, and orders
18 that the Settlement Administrator distribute these payments to Class Counsel in conformity with
19 the terms of Settlement and no later than the date for disbursement of the Individual Settlement
20 Awards pursuant to the terms of the Settlement.

21 13. The Court finds that a payment to the Labor & Workforce Development Agency
22 ("LWDA") in the amount of \$3,750.00 for the LWDA's share of civil penalties under the Labor
23 Code Private Attorneys General Act is fair, reasonable, and adequate, and orders that the
24 Settlement Administrator make this payment in conformity with the terms of the Settlement.

25 14. The Court orders that the Settlement Administrator shall be paid \$6,250.00 from
26 the Maximum Settlement Amount for all of its work done and to be done until the completion of
27 this matter, and finds that sum appropriate.

1 15. Pursuant to the terms of Settlement, the employer's share of payroll taxes for the
2 portion of the Net Settlement Amount allocated to wages shall be paid by Defendants separately,
3 and in addition to, the Maximum Settlement Fund.

4 16. The Court finds and determines that upon satisfaction of all obligations under the
5 Settlement and this Order, including the full payment to the Settlement Administrator of the entire
6 Maximum Settlement Amount, all Settlement Class Members will be bound by the Settlement
7 and will have released the Released Claims as set forth in the Settlement.

8 17. Settlement is not an admission by Defendants, nor is this Order and Final
9 Judgment a finding of the validity of any allegations or of any wrongdoing by Defendants.
10 Neither this Order and Final Judgment, the Settlement, nor any document referred to herein, nor
11 any action taken to carry out the Settlement, shall be construed or deemed an admission of
12 liability, culpability, or wrongdoing on the part of Defendants.

13 18. As of the date of this Order and Final Judgment, Plaintiff and every member of
14 the Settlement Class, except for Juan Santos Estrada who timely opted out, shall be deemed to
15 have released and discharged Defendants California Fruit Basket, Inc., Melkonian Enterprises,
16 Inc., and their past and present owners, officers, directors, shareholders, members, partners,
17 managers, employees, parent companies, subsidiaries, predecessors, successors, assigns, joint
18 venturers, insurers, and legal representatives (collectively the "Released Parties") for any and all
19 causes of action, claims, rights, damages, penalties, liabilities, expenses, and losses alleged in
20 any of the pleadings or LWDA Notice(s) in the Lawsuit or that could have been alleged based on
21 any matter or fact set forth or referred to in any of the pleadings and LWDA Notice(s), including:
22 (a) minimum wage violations; (b) failure to pay all overtime wages; (c) meal period violations;
23 (d) rest period violations; (e) wage statement violations; (f) waiting time penalties; (g) all claims
24 arising out of unfair or unlawful business practices under California Business & Professions Code
25 sections 17200, et seq. that could have been premised on the claims that were pled or could have
26 been pled based on the factual allegations in the Lawsuit; and (h) all claims for civil penalties
27 under the PAGA, that could have been premised on the claims that were pled or could have been
28

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

4 19. Plaintiff and all Settlement Class Members who were employed by Defendants in
5 California at any time from August 28, 2019 through June 16, 2021, will not have the opportunity
6 to opt out or object to the PAGA Amount, as described in section 3(B)(5) of the Settlement,
7 and/or release of PAGA claims set forth in the Settlement. Notwithstanding the paragraphs above
8 nor anything else in the Settlement, Plaintiff’s waiver and release in the Settlement does not apply
9 to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers’
10 compensation claims, pending or otherwise; and (ii) rights or claims arising out of this Settlement.

11 20. The releases identified herein shall be null and void should the Settlement not be
12 fully funded.

13 21. This document shall constitute a final judgment pursuant to California Rule of
14 Court 3.769(h) which provides, “If the court approves the settlement agreement after the final
15 approval hearing, the court must make and enter judgment. The judgment must include a
16 provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the
17 judgment. The court may not enter an order dismissing the action at the same time as, or after,
18 entry of judgment.” Pursuant to section 664.6 of the California Code of Civil Procedure, the
19 Court will retain jurisdiction to enforce the Settlement and this Final Order and Judgment.

20 22. The Settlement Class Members will be provided notice with their Individual
21 Settlement Awards that the Final Order and Judgment is posted on a website maintained by the
22 Settlement Administrator.

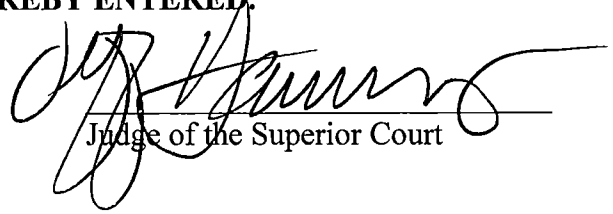
23 23. Within 10 days of the entry of this Order & Judgment, Plaintiff’s Counsel shall
24 provide notice of this Order & Judgment to the California Labor and Workforce Development
25 Agency (“LWDA”).

26 24. The Settlement Administrator shall file a declaration regarding the disbursement
27 of Settlement funds on or before October 5, 2023, and the date for the Final Report
28

1 (Nonappearance) Hearing shall be set for October 12, 2023. The declaration shall state the date
2 the checks were mailed, the total number of checks mailed to Settlement Class Members, the
3 number of checks that remain uncashed, the total value of those uncashed checks, and the nature
4 and date of the disposition of those unclaimed funds.

5 **IT IS SO ORDERED. JUDGMENT IS HEREBY ENTERED.**

6 Dated: 2/21, 2023


Judge of the Superior Court