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County of Los Angeles  
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8 *Attorneys for Plaintiffs and the Class*

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

12 JEFF ROSS, ROXANNE OLIVEIRA, and  
13 NATASHA SCOTT, on behalf of  
14 themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 PANDA RESTAURANT GROUP, INC.,  
and DOES 1-50, inclusive,

18 Defendant.

Case No. 21STCV03662  
(Assigned to Hon. Lawrence P. Riff, Dept. 7)

CLASS ACTION

**DECLARATION OF JEFFREY D. KALIEL  
IN SUPPORT OF UNOPPOSED MOTION  
FOR ATTORNEYS' FEES, EXPENSES,  
AND CLASS REPRESENTATIVE  
SERVICE AWARDS**

**[Notice of Unopposed Motion for Attorneys'  
Fees, Expenses, and Class Representative  
Service Awards; Memorandum of Points and  
Authorities; [Proposed] Order; *Ex Parte*  
Application to file Memorandum in Excess of  
Page limit; and [Proposed] Order Granting  
*Ex Parte* Application filed concurrently  
herewith]**

**Hearing Date: November 8, 2023  
Time: 10:00 a.m.  
Department: 7**

Action filed: January 29, 2021  
SAC Filed: December 5, 2022  
Trial date: None

1 **DECLARATION OF JEFFREY D. KALIEL**

2 I, Jeffrey D. Kaliel, declare:

3 1. My firm is Class Counsel of record for Plaintiffs Jeff Ross, Roxanne Oliveira and  
4 Natasha Scott, and the proposed Settlement Class in the above-captioned matter. I submit this  
5 Declaration in support of Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Expenses and Class  
6 Representative Service Award.

7 2. This case was the result of a significant investigation into delivery fee practices  
8 industrywide, well before the complaint was ever filed. Subsequently, Class Counsel drafted and  
9 filed two complaints in two different jurisdictions, then engaged in informal discovery and extensive  
10 settlement negotiations (including two mediations) overseen by a well-respected neutral, former  
11 U.S. District Court Judge Andrew Guilford (Ret.). The Settlement is an excellent result in this novel  
12 action with merits risks and uncertain odds of a contested class certification motion—indeed, this is  
13 one of the first lawsuits in the nation challenging “delivery fees” that, allegedly, are not actually the  
14 flat, low cost as represented. The most important benefit of the proposed Settlement is one that will  
15 benefit all Settlement Class Members and all current and future users of Panda’s delivery services  
16 nationwide: Panda has stopped charging its “Service Fee” entirely and agrees that it will not charge  
17 a Service Fee on delivery orders for four (4) years from the Effective Date of the Agreement.  
18 Plaintiffs estimate that this results in a saving of at least \$12,000,000 to consumers nationwide.

19 3. Plaintiffs’ class action claims arise out of allegations that Panda unfairly obscures its  
20 true delivery charges by falsely marketing a flat, low cost delivery fee of \$2.95 to consumers for  
21 food purchases placed on its App and website. On delivery orders only, Panda assesses an additional  
22 charge it calls a “Service Fee” which amounts to 10% more for the same food received by non-  
23 delivery customers.

24 4. Plaintiffs contend that because this Fee is exclusively charged to delivery customers,  
25 and not to customers who order online and pick up their food in store, the “Service Fee”—which is  
26 included in a line item called “Taxes and Fees”—is in all actuality a hidden delivery upcharge,  
27 rendering the \$2.95 delivery fee representation false and misleading.

1           5.     Plaintiffs allege that by omitting, concealing, and misrepresenting material facts about  
2 Panda’s delivery service, Panda deceives consumers into making online food purchases they  
3 otherwise would not make.

4           6.     In the Second Amended Complaint, Plaintiffs allege consumer protection claims  
5 under California and Michigan law and for breach of contract seeking monetary damages,  
6 restitution, injunctive relief, declaratory relief, and attorneys’ fees on behalf of a nationwide class  
7 of consumers who made a food delivery order through Panda’s App or website during the Class  
8 Period.

9           7.     On February 9, 2022, the Parties attended a full-day mediation before Judge Andrew  
10 Guilford (Ret.), who previously served as U.S. District Court Judge in the Central District of  
11 California.

12           8.     In preparation for mediation and for several months throughout the settlement  
13 negotiations, the Parties engaged in informal discovery. Plaintiff requested, and Panda provided,  
14 voluminous information regarding Panda’s policies, practices, and procedures related to the  
15 marketing and pricing of delivery orders during the Class Period.

16           9.     Panda also provided detailed sales data and data analysis regarding delivery orders,  
17 users, and fees.

18           10.    The matter did not settle at the mediation, but the Parties continued lengthy  
19 negotiations and ultimately agreed to the material terms of settlement, resulting in the Agreement  
20 now before the Court.

21           11.    The Parties subsequently engaged in confirmatory discovery on class membership and  
22 damages.

23           12.    The Parties’ rigorous efforts in securing the Settlement continued through the  
24 preliminary approval stage. The Court carefully scrutinized the terms of the Settlement and required  
25 supplemental briefing to address outstanding concerns and to clarify specific provisions in the  
26 Agreement and the Notices, including but not limited to, the scope of Panda’s potential damages  
27 exposure, justification for the claims process and how counsel will encourage claim submissions,  
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1 and the agreed-upon procedures for any undeliverable email notices.

2 13. Additionally, the Parties submitted an Amended Joint Stipulation of Class Action  
3 Settlement that designates the State Bar of California’s Justice Gap Fund as a *cy pres* recipient in  
4 the very unlikely event there is an undistributed remainder of the cash portion of the Net Settlement  
5 Amount.

6 14. As noted above, the settlement was aggressively negotiated with the assistance of  
7 Judge Andrew Guilford (Ret.), a well-respected mediator who presided over an arm’s-length  
8 mediation between capable and experienced class action counsel on both sides.

9 15. The Parties engaged in a significant amount of informal and confirmatory discovery  
10 in order to assist Class Counsel in vetting and assessing the claims of Settlement Class Members  
11 and Panda’s defenses to those claims prior to reaching this Agreement.

12 16. The information provided included, but was not limited to, the nature, timing,  
13 geographic scope and implementation of Panda’s advertisements, marketing materials, and  
14 disclosures on its website and App regarding delivery fees and service fees; each Plaintiffs’  
15 purchasing history with Panda; the number of customers who purchased food for delivery on  
16 Panda’s website and App; and the approximate fees and prices charged to customers who purchased  
17 food for delivery on Panda’s website and App.

18 17. Importantly, the Parties did not discuss attorneys’ fees and costs, nor any potential  
19 service awards, until they first agreed on the material terms of the settlement, including the  
20 definition of the Class, notice, class benefits, and scope of the releases.

21 18. The Parties have entered into the Agreement, which completely resolves the *Ross*  
22 Action and the *Scott* Action—both of which the Parties have agreed will be stayed while approval  
23 of this proposed Settlement is pending.

24 19. Class Counsel believes that the contemplated benefits addressed below adequately  
25 compensate the Settlement Class for the harm they suffered and, in light of the risks of litigation,  
26 represent an excellent result for the Settlement Class.

27 20. Class Counsel spent a significant amount of time on this first-of-its kind case,  
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including an extensive and sophisticated initial investigation that culminated in the Class Action Complaints. Given the complexity of the issues involved, the exceptional results obtained, an extended settlement negotiation, and the execution of a large notice program, the 620 hours expended on the case have been necessary and reasonable.

21. The total lodestar of the firm on this case (including estimated time for completion of certain tasks shown above) is \$454,870.70 broken down as follows:

Task	Jeff Kaliel	Sophia Gold	Brittany Casola	Neva Garcia
<b>Pre-suit investigation, Factual Development, Client Meetings and Correspondence</b> <i>Performed first of its kind industrywide investigation regarding whether restaurants are increasing menu prices for delivery orders; whether restaurants were adding additional delivery-only fees; and the legality of same; researched potential causes of action; researched potentially applicable laws and industry guidance; researched California law; researched consumer complaints on various online forums; researched Panda Express's corporate structure and potential damages; reviewed Panda Express's disclosures and compared to other industry actors; interviewed numerous potential class representatives; reviewed paperwork from clients; prepared preservation letter; prepared CLRA letter.</i>	24.0	29.0	11	17.2
<b>Strategy, Case Analysis, Class Counsel Conferences</b> <i>Strategy meetings internally at the firm.</i>	16.5	9.5	7.5	
<b>Pleadings</b> <i>Researched, drafted, and edited complaint for both state and federal court cases; researched, drafted and edited amended complaint; reviewed answer and researched viability of affirmative defenses.</i>	37	21	36.5	8
<b>Discovery</b> <i>Promulgated discovery requests; promulgated damages-related discovery requests; reviewed documents; conferences with opposing counsel.</i>	46	27.3		15
<b>Case Management and Other Court Mandated Tasks</b> <i>Prepared case management statements and status reports.</i>	6.7			1

Task	Jeff Kaniel	Sophia Gold	Brittany Casola	Neva Garcia
<b>Settlement</b> <i>Engaged in settlement discussions with opposing counsel; prepared mediation brief and researched arguments made in Panda Express's mediation brief; attended two full-day mediations; continued post-mediation settlement discussions; negotiated and finalized settlement agreement and all associated documentation.</i>	112.5	54.1		5.5
<b>Preliminary Approval</b> <i>Drafted motion for preliminary approval and motion for conditional certification and accompanying declarations.</i>	21	9	12	6.0
<b>Class Notice</b> <i>Received and reviewed detailed bids from notice administrators; worked with notice administrator to develop notice plan and find cost-efficiencies; oversaw notice process; responded to class member inquiries</i>	13.5	7.4		
<b>Final Approval, Settlement Execution, Distribution of Common Fund (Estimated)</b> <i>Prepare motion for final approval and all supporting declarations, respond to objections, prepare for and attend final approval hearing, work with settlement administrator to ensure proper distribution of funds to class members, prepare any post-final approval motions.</i>	35	25		6.5
<b>Totals</b>	<b>312.2</b>	<b>182.3</b>	<b>67</b>	<b>59.2</b>

		<u>Hourly Rate</u>	<u>Hours Spent</u>	<u>TOTAL</u>
1	Jeffrey D. Kaliel	\$829.00	312.2	\$258,813.80
2	Sophia G. Gold	\$733.00	182.3	\$133,625.90
3	Brittany Casola	\$733.00	67.0	\$49,111.00
3	Neva Garcia	\$225.00	59.2	\$13,320.00
4	<b>TOTALS</b>		<b>620.70</b>	<b>\$454,870.70</b>

22. Plaintiffs' counsel has spent approximately 620 hours performing necessary work on behalf of the Class, from investigating and gathering evidence in support of the claims resolved by the Settlement; drafting the original complaints, then the Amended Complaints; conferring with the class representatives; regularly researching critical legal issues; performing discovery; preparing for mediation including by researching and drafting a comprehensive mediation statement; attending mediation on two separate occasions; negotiating and drafting the Agreement with Defendant's counsel that provides substantial benefits to the Settlement Class, moving for and obtaining preliminary approval, including providing supplemental briefing to address outstanding questions for the Court; overseeing the Settlement Administrator's efforts to provide notice to the Class; and preparing the Motion for Final Approval.

23. The total costs and expenses incurred by KalielGold in this Action which have not been reimbursed is \$16,382.20. The costs and expenses are broken down in the chart below:

<u>Date</u>	<u>Recipient</u>	<u>Nature</u>	<u>Amount</u>
04/05/2021	Apex Legal Services	Court Costs/Filing Fees	\$ 1,726.75
05/15/2021	LACSC	Court Fees	\$ 23.00
06/04/2021	Apex Legal Services	Court Costs/Filing Fees	\$ 265.50
06/18/2021	Apex Legal Services	Court Costs/Filing Fees	\$ 69.00
06/29/2021	Apex Legal Services	Court Costs/Filing Fees	\$ 94.55
09/21/2021	Apex Legal Services	Court Costs/Filing Fees	\$ 74.00
11/05/2021	LACSC	Court Fees	\$ 8.00
11/15/2021	Apex Legal Services	Court Costs/Filing Fees	\$ 50.00
12/22/2021	LACSC	Court Fees	\$ 10.60
01/10/2022	LACSC	Court Fees	\$ 1.00
01/14/2022	Judicate West	Mediation	\$ 7,750.00
02/01/2022	LACSC	Court Fees	\$ 10.60
03/17/2022	Apex Legal Services	Court Costs/Filing Fees	\$ 63.00
04/03/2022	Judicate West	Mediation	\$ 5,500.00
06/12/2022	Apex Legal Services	Court Costs/Filing Fees	\$ 87.00
08/26/2022	CaseAnywhere	Case Management Fee	\$ 649.20
		<b>TOTAL:</b>	<b>\$ 16,382.20</b>



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24. KaliefGold, PLLC is a respected and experienced class action firm, with substantial experience in not only in class actions generally, but more particularly in consumer litigation. As demonstrated throughout the Declaration, it is unquestionable that the firm has regularly achieved exceptional results. Kalief Gold has been appointed Class Counsel in dozens of cases across the country, most recently achieving a groundbreaking \$75,000,000 settlement for class members in a case in which they were lead counsel.

25. The costs and expenses were necessary and were an important factor in bringing this matter to a successful conclusion, and consist mainly of filing fees and costs to engage an experienced and well-respected mediator for two separate mediation sessions.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of July, 2023, at Washington, D.C.



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JEFFREY D. KALIEL

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 1100 15<sup>th</sup> Street NW, 4<sup>th</sup> Floor, Washington, DC 20005.

On **July 5, 2023**, I served the document(s) described as:

**DECLARATION OF JEFFREY D. KALIEL IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS’ FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS**

on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

**SEE ATTACHED SERVICE LIST**

- [ ] **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with KalieiGold PLLC’s practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- [ ] **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address ngarcia@kalielgold.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- [ X ] **BY NOTICE OF ELECTRONIC FILING:** I electronically served the document(s) with the by using the CaseAnywhere system. Participants in the case who are registered CaseAnywhere users will be served by the CaseAnywhere system. Participants in the case who are not registered CaseAnywhere users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **July 5, 2023**, at Los Angeles, California.

NEVA R. GARCIA  
Type or Print Name



Signature

**SERVICE LIST**

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