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Attorneys for Plaintiffs and the Class

**Electronically FILED by
Superior Court of California,
County of Los Angeles
10/06/2023 6:01 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Valenzuela, Deputy Clerk**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

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

Plaintiffs,

v.

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

Defendant.

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

CLASS ACTION

**DECLARATION OF JEFFREY D. KALIEL
IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

**[Motion for Final Approval of Class Action
Settlement; [Proposed] Order 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 as follows:

3 1. I am counsel of record of Plaintiffs Jeff Ross, Roxanne Oliveira and Natasha Scott
4 and Class Counsel for the settlement Class in the above-captioned matter. I submit this declaration
5 in support of Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement. I have
6 personal knowledge of the facts set forth in this declaration and could and would testify competently
7 to them if called upon to do so.

8 2. Plaintiffs’ class action claims arise out of allegations that Panda unfairly obscured its
9 true delivery charges by falsely marketing a flat, low cost delivery fee of \$2.95 to consumers for
10 food purchases placed on its App and website. On delivery orders only, Panda assessed an additional
11 charge it called a “Service Fee” which amounted to 10% more for the same food received by non-
12 delivery customers.

13 3. Plaintiffs contend that because this Fee was exclusively charged to delivery
14 customers, and not to customers who ordered online and picked up their food in store, the “Service
15 Fee”—which was included in a line item called “Taxes and Fees”—was in all actuality a hidden
16 delivery upcharge, rendering the \$2.95 delivery fee representation false and misleading.

17 4. Plaintiffs allege that by omitting, concealing, and misrepresenting material facts about
18 Panda’s delivery service, Panda deceived consumers into making online food purchases they
19 otherwise would not make.

20 5. On December 6, 2022, Plaintiffs filed a Second Amended Complaint. In the Second
21 Amended Complaint, Plaintiffs allege consumer protection claims under California and Michigan
22 law and for breach of contract seeking monetary damages, restitution, injunctive relief, declaratory
23 relief, and attorneys’ fees on behalf of a nationwide class of consumers who made a food delivery
24 order through Panda’s App or website during the Class Period.

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

1 7. In preparation for mediation and for several months throughout the settlement
2 negotiations, the Parties engaged in informal discovery. Plaintiffs requested, and Panda provided,
3 voluminous information regarding Panda’s policies, practices, and procedures related to the
4 marketing and pricing of delivery orders during the Class Period.

5 8. Panda also provided detailed sales data and data analysis regarding delivery orders,
6 users, and fees.

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

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

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

18 12. Additionally, the Parties amended the Agreement to address some of the Court’s
19 concerns. Thus, they submitted an Amended Joint Stipulation of Class Action Settlement that
20 designates the State Bar of California’s Justice Gap Fund as a *cypres* recipient in the very unlikely
21 event there is an undistributed remainder of the cash portion of the Net Settlement Amount.

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

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

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

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

9 17. The most important benefit of the proposed Settlement is one that will benefit all
10 Settlement Class Members and all current and future users of Panda’s delivery services nationwide:
11 Panda has stopped charging its “Service Fee” entirely and agrees that it will not charge a Service
12 Fee on delivery orders for four (4) years from the Effective Date of the Agreement. Plaintiffs
13 estimate that this results in a saving of at least \$12,000,000 to consumers nationwide.

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

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

20 20. As set forth above, the *Dunk* presumption in favor of approval applies as the
21 Settlement was reached through arm’s-length negotiation with the assistance of an experienced
22 mediator robust investigation and informal discovery was conducted and more than sufficient to allow
23 informed decisions regarding settlement.

24 21. Robust investigation and informal discovery was conducted and more than sufficient
25 to allow informed decisions regarding settlement

26 22. Class Counsel is experienced in similar litigation.

27 23. Class Counsel believes the Settlement is an excellent one for the Settlement Class.

1 24. Given the real substantive and procedural uncertainties of protracted litigation risks
2 discussed here, a settlement that provides members of the Settlement Class with a critical change to
3 Panda’s allegedly deceptive practice, as well a substantial monetary benefit, undoubtedly supports
4 granting final approval.

5 25. Indeed, the monetary benefits are also robust. The \$900,000 cash portion of the
6 Settlement Fund—which is to be distributed equally amongst those Participating Class Members
7 who submit a valid claim and who opt to receive a cash benefit in Individual Settlement Recovery
8 amounts to be determined on a pro rata basis—plus the \$500,000 Voucher portion—which provides
9 Settlement Class Members with the ability to receive up to two (2) Vouchers for one free medium
10 entrée through Panda’s mobile App or website (each Voucher estimated at a maximum retail value
11 of \$11.75) without the need for any additional purchase—collectively represents approximately
12 19.4% of Class Counsel’s estimate of Plaintiffs’ best-case damages at trial, if Plaintiffs were to
13 prevail

14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct. Executed this 6th day of October 2023, at Washington, D.C.

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19 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 15th Street NW, 4th Floor, Washington, DC 20005.

On **October 6, 2023**, I served the document(s) described as:

DECLARATION OF JEFFREY D. KALIEL IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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:

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[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 **October 6, 2023**, at Los Angeles, California.

NEVA R. GARCIA
Type or Print Name



Signature