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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

12

13 JEFF ROSS, ROXANNE OLIVEIRA, and
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.
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Case No. 21STCV03662
Assigned for All Purposes to:
Hon. Lawrence P. Riff, Dept. 7

[COMPLEX LITIGATION]

**AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT**

**[Plaintiffs' Supplemental Brief ISO Class
Action Settlement; Declarations of Jeffrey D.
Kaliel, Cameron Azari, Jeff Ross, Roxanne
Oliveira and Natasha Scott filed concurrently
herewith]**

Date: June 1, 2023

Time: 11:00 a.m.

Dept. 7

Action filed: January 29, 2021

SAC Filed: December 5, 2023

Trial date: None

AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action Settlement is entered into by and between Plaintiffs Jeff Ross and Roxanne Oliveira, and Natasha Scott, individually and on behalf of the Settlement Class (defined below) and Defendant Panda Restaurant Group, Inc. The Parties are entering into this amendment to address the Court’s concerns regarding disbursement of any residual funds to a *cy pres* recipient as outlined in the Court’s March 29, 2023 Minute Order and Checklist for Preliminary Approval of Class Action Settlement.

DEFINITIONS

1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action Settlement.

2. “Action” means collectively the claims asserted in the court actions, entitled “*Ross, et al. v. Panda Restaurant Group, Inc.*,” Case No. 21STCV03662, pending before the Los Angeles County Superior Court and “*Scott v. Panda Restaurant Group, Inc.*,” Case No. 2:21-cv-05368-MCS-GJS, pending before the United States District Court for the Central District of California.

3. “CAFA Notice” means the notice requirements imposed by 28 U.S.C. § 1715(b), which Defendant shall handle and pay for separately and which will not be included in Settlement Administration Costs.

4. “Claim” or “Claim Form” means a claim form submitted by a Participating Class Member in the form attached hereto as **Exhibit B**.

5. “Claim Period” means the time period in which a Class Member may submit a Claim Form. The Claim Period will run for 6 months from the time that the Settlement Administrator sends Notice to Class Members.

6. “Class Counsel” means KalieGold PLLC.

7. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement. Class Counsel may request attorneys’ fees not to exceed 33% of the Gross Settlement (i.e., 33% of \$1,400,000, which is \$462,000), subject to the Court’s approval.

1 8. “Class List” means a complete list of all Class Members that Defendant will diligently and
2 in good faith compile from its business records and provide to the Settlement Administrator within 30
3 calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a
4 Microsoft Office Excel spreadsheet and, to the extent provided by Class Members, will include the Class
5 Members’: (1) full name; (2) last known delivery address; (3) last known telephone number; and (4) last
6 known email address. The creation of the Class List shall not be considered a Settlement Administration
7 Cost and Defendant shall receive no compensation for the time and expense of compiling the Class List.

8 9. “Class” or “Class Members” means persons within the United States who at any time
9 between July 17, 2020 and February 16, 2022 placed an order for delivery through Defendant’s website
10 or mobile application where a Service Fee was charged in connection with that delivery order.

11 10. “Class Period” means the period from July 17, 2020, through February 16, 2022.

12 11. “Class Representatives” means Plaintiffs Jeff Ross, Roxanne Oliveira, and Natasha Scott
13 in their capacities as representatives of the Participating Class Members.

14 12. “Class Representative Service Award” means the amount that the Court authorizes to be
15 paid to the Class Representatives separate from their Individual Settlement Recoveries, in recognition of
16 the efforts and risks they have taken in assisting with the prosecution of the Action and in exchange for
17 the General Release of their claims as provided herein.

18 13. “Court” means the Superior Court of the State of California for the County of Los Angeles.

19 14. “Defendant” means Panda Restaurant Group, Inc.

20 15. “Effective Date” means: the later of: (a) the date for filing an appeal and no such appeal
21 being filed; or (b) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such
22 appeal in a way that does not alter the terms of the settlement

23 16. “Final Approval” means the Court entering an order granting final approval of the
24 Settlement Agreement.

25 17. “Gross Settlement” means the sum of \$1,400,000, which shall be allocated as \$900,000 in
26 cash and \$500,000 in Vouchers available to Participating Class Members pursuant to the terms of this
27 Agreement.
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1 18. "Individual Settlement Recovery" means the amount payable from the Net Settlement
2 Amount to each Participating Class Member who makes a claim under the provisions of this Settlement.
3 Individual Settlement Recoveries of cash shall be paid by electronic transfer to Participating Class
4 Members who make a claim for cash. Individual Settlement Recoveries of Vouchers shall be provided by
5 electronic transfer directly to the email address that the Participating Class Member identifies when
6 submitting a claim.

7 19. "Net Settlement" means the recovery available to the Class after the following amounts are
8 deducted from the Gross Settlement: (1) Class Counsel's fees, (2) Class Counsel's costs, (3) Settlement
9 Administration Costs, and (4) Class Representative Service Awards to Plaintiffs.

10 20. "Notice" means the Notice of Class Action Settlement in a form substantially similar to the
11 form attached hereto as **Exhibit A**, that will be included in the body of an email sent to the potential Class
12 Members' last known email addresses (as reflected in Defendant's records) and which will provide
13 information regarding the Action and information regarding the settlement of the Action. Each Notice
14 will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's
15 principal terms; (c) the Class definition; (d) the dates which comprise the Class Period; (e) the deadlines
16 by which the Class Member must postmark Requests for Exclusion or Objections to the Settlement; (f)
17 the claims to be released, as set forth herein; (g) the date for the final approval hearing as initially set by
18 the Court; and (h) the information required to submit a valid claim.

19 21. "Parties" means Plaintiffs and Defendant, collectively, and "Party" shall mean either
20 Plaintiffs or Defendant, separately.

21 22. "Participating Class Members" means any Class Members who do not timely submit a
22 Request for Exclusion.

23 23. "Plaintiffs" means Jeff Ross, Roxanne Oliveira, and Natasha Scott.

24 24. "Preliminary Approval" means the Court order granting preliminary approval of the
25 Settlement Agreement.

26 25. "Publication Notice" means the settlement notice that shall be published pursuant to
27 requirements of the California Legal Remedies Act (i.e., California Civil Code section 1781(f)) that may
28 apply to this settlement. The Settlement Administrator shall publish the Publication Notice on Facebook,

1 which the Parties agree is the social media platform that is most likely to reach Class Members who might
2 not receive or read the Notice sent by email. The Publication Notice shall: (a) notify readers of a class
3 action settlement concerning fees charged on delivery orders placed directly through Panda Express; and
4 (b) include an email address so readers can ask the Settlement Administrator to see if they are eligible
5 Class Members and address other questions. In response to such questions, the Settlement Administrator
6 shall obtain sufficient information to determine whether the caller is an eligible Class Member (e.g., for
7 each potentially relevant order, the customer name used for the order, order date, order total, delivery
8 address, and the e-mail address used to place the order), and then convey that information to the Parties'
9 counsel. Whether a person will be treated as a Class Members shall be agreed by the Parties after good
10 faith consultation. If the Parties agree that a person should be treated as a Class Member, the Settlement
11 Administrator will email that person a Notice.

12 26. "Objection" means a Participating Class Member's valid and timely written objection to
13 the Settlement Agreement. For an Objection to be valid, it must include enough information for the
14 Settlement Administrator to determine the identity of the objector and intent to object. Ideally, this would
15 include: (a) the Participating Class Member's full name, address, telephone number, email address used
16 to place the order and (b) a written statement of all grounds for the objection accompanied by legal support,
17 if any, for such objection.

18 27. "Released Claims" means all claims, demands, actions, and causes of action of any kind or
19 nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential,
20 liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law,
21 regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance,
22 regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Participating
23 Class Members ever had, now have, may have, or hereafter can, shall or may ever have against Defendant
24 in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or
25 administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in
26 any way whatsoever relating to Defendant's marketing and charges for orders through Defendant's
27 website or mobile application during the Class Period and the claims alleged in the Action (i.e., the original
28 Complaint and the proposed First Amended Complaint), and, more particularly, but without in any way

1 limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever
2 pertaining or relating to the claims alleged in the complaint in the Action, including, but not limited to,
3 communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging,
4 marketing, labeling, advertising, promotion, packaging, displays, brochures, studies, manufacture,
5 distribution, operation, performance, functionality, notification, providing, offering, dissemination,
6 replacement, any claims for rescission, restitution or unjust enrichment for all damages of any kind,
7 violations of any state’s deceptive, unlawful and/or unfair business and/or trade practices, false,
8 misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes, any violation
9 of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any
10 similar federal, state or local statutes, codes, damages, costs, expenses, extracontractual damages,
11 compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage
12 multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys’ fees and costs against
13 Defendant reasonably arising or reasonably related to the claims alleged in the operative complaint in the
14 Action, notwithstanding that Plaintiffs and the Settlement Class acknowledge that they may hereafter
15 discover facts in addition to or different from those that they now know or believe to be true concerning
16 the subject matter of the Action and/or the Released Claims herein.

17 28. “Released Parties” means Defendant Panda Restaurant Group, Inc., and its current and
18 former parent, subsidiaries and/or related companies, affiliated and related corporations and other entities,
19 their successors and assigns, and all of their current and former owners, shareholders, directors, officers,
20 partners, principals, managers, members, employees, agents, attorneys, representatives, firms,
21 associations, partnerships, joint ventures, and entities, and their agents, guardians, successors, assigns,
22 heirs, executors, and administrators.

23 29. “Request for Exclusion” means a valid and timely written statement submitted by a Class
24 Member requesting to be excluded from the Action. To be effective, the Request for Exclusion must
25 include enough information for the Settlement Administrator to determine the identity of the class member
26 and their intent to exclude themselves from the Settlement. Ideally, this would include: (a) the Class
27 Member’s full name, address, telephone number, email address used to place the order and (b) a clear
28 statement requesting to be excluded from the settlement of the class claims similar to the following: “I

1 wish to exclude myself from the class settlement reached in the matter of *Ross, et al. v. Panda Restaurant*
 2 *Group, Inc.* I understand that by excluding myself, I will not receive money from the settlement of my
 3 individual claims.” To be effective, the Request for Exclusion must be post-marked by the Response
 4 Deadline and received by the Settlement Administrator.

5 30. “Response Deadline” means the date 60 days after the Settlement Administrator emails
 6 Notice to Class Members and the last date on which Class Members may submit Requests for Exclusion
 7 or written objections to the Settlement. In the event the 60th day falls on a Sunday or Federal holiday, the
 8 Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The
 9 Response Deadline may also be extended by express written and signed agreement between Class Counsel
 10 and Defendant. Under no circumstances, however, will the Settlement Administrator have the authority
 11 to unilaterally extend the deadline for Class Members to submit a Request for Exclusion or objection to
 12 the settlement.

13 31. “Service Fee” means a distinct fee (separate and apart from the subtotal, “Delivery Fee,”
 14 tip, tax, and other line items or charges required by law) that is assessed only on delivery orders made
 15 through Defendant’s website or mobile application to help offset the cost of the digital platform used for
 16 delivery and pickup orders, as depicted by the following image:



Subtotal	\$32.75
Delivery Fee	\$4.95
Tip	\$4.91
Taxes & Fees ^	\$7.17
Tax	\$3.89
Service Fee ⓘ	\$3.28
Order Total	\$49.78

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 22 32. “Settlement” means the disposition of the Action pursuant to this Agreement.

23 33. “Settlement Administrator” means Epiq Class Action Solutions. The Parties each represent
 24 that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship
 25 with the Settlement Administrator that could create a conflict of interest.

26 34. “Settlement Administration Costs” mean the costs payable from the Gross Settlement to
 27 the Settlement Administrator for administering this Settlement, including, but not limited to, printing,
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1 distributing, and tracking documents for this Settlement, calculating/confirming the class member
2 information contained in the Class List, calculating each Participating Class Member's Individual
3 Settlement Recovery, tax reporting, distributing the Gross Settlement, providing necessary reports and
4 declarations, and other duties and responsibilities set forth herein to process this Settlement, and as
5 requested by the Parties. Settlement Administration Costs shall not exceed \$105,000.

6 35. "Voucher" means a credit redeemable through Panda's digital platforms issued to
7 Participating Class Members who make a claim and elect to receive a Voucher. Each Voucher will be
8 redeemable for a medium entrée through Panda's mobile application or website. The Voucher will cover
9 any type of medium entrée (i.e., standard or premium), and Panda estimates that the current retail value
10 of each Voucher is up to \$11.75. Participating Class Members will not be charged sales tax on the entrée
11 redeemed with a Voucher, and no additional purchase shall be necessary to use the Voucher. Vouchers
12 will be in the form of a unique code and will be delivered by the Settlement Administrator to Participating
13 Class Members who file a valid Claim Form and elect to receive a Voucher via the email address for that
14 Participating Class Member on the Class List. Participating Class Members may only use one Voucher
15 per transaction, and one voucher per day. (The distribution of Vouchers to Participating Class Members
16 is discussed in Section 38(b).)

17 TERMS OF AGREEMENT

18 36. Amended Pleading. For settlement purposes, Plaintiffs will file a motion for leave to
19 amend the complaint in *Ross, et al. v. Panda Restaurant Group, Inc.*, Los Angeles Superior Court Case
20 No. 21STCV03662, redefining the class definition to be consistent with the Settlement Class described
21 herein, adding a claim under the Michigan Consumer Protection Act, and adding Natasha Scott as a named
22 Plaintiff and Class Representative. The draft amended complaint is attached hereto as **Exhibit C**, and
23 Plaintiffs will file the motion for leave on or before filing the motion for preliminary approval of this
24 Agreement. The granting of leave to file the amended complaint is material to this Agreement. Should
25 the Court deny the amendment, the Parties will meet and confer in good faith, but Defendant will not be
26 required to abide by the terms of the Agreement unless and until a court fully approves the settlement of
27 all claims at issue in both the *Ross* and *Scott* Actions.

1 37. Joint Stipulation to Stay *Scott* Action. Within 3 court days of this Agreement being fully
2 executed, the Parties will jointly file a stipulation in *Scott v. Panda Restaurant Group, Inc.*, Case No. 2:21-
3 cv-05368-MCS-GJS (“*Scott* Action”) requesting that the case be stayed while the Parties seek approval of
4 this Agreement and the proposed amended complaint in *Ross, et al. v. Panda Restaurant Group, Inc.*, Los
5 Angeles Superior Court Case No. 21STCV03662. The joint stipulation is attached hereto as **Exhibit D**.

6 38. Settlement Consideration.

7 (a) **Cash Portion:** Defendant shall fund the cash portion of the Gross Settlement
8 following Final Approval by the Court and the occurrence of the Effective Date in
9 accord with paragraph 41. The following will be paid out of the cash portion of the
10 Gross Settlement: the sum of the cash Individual Settlement Recoveries, the Class
11 Representative Service Award, Class Counsel’s Fees and Costs, and the Settlement
12 Administration Costs, as specified in this Agreement. The amount of cash
13 Individual Settlement Recoveries shall be determined on a pro rata basis,
14 distributing the cash Gross Settlement amount equally among Class Members who
15 submit a Claim for a cash payment, after deductions from the cash Gross Settlement
16 amount for the Class Representative Service Award, Class Counsel’s Fees and
17 Costs, and the Settlement Administration Costs. Defendant shall not be required to
18 pay more than the Gross Settlement. No portion of the cash portion of the Gross
19 Settlement shall revert to Defendant.

20 (b) **Vouchers:** Defendant shall also make \$500,000 in Vouchers available to
21 Participating Class Members. Each Settlement Class Member who elects to
22 participate in the Voucher portion of the Settlement will be eligible to receive up to
23 two Vouchers that can be used to purchase any medium-priced entrée. For the
24 purposes of allocation, the value of each Voucher shall be the currently estimated
25 maximum retail value of \$11.75. The maximum number of Vouchers available is
26 thus 42,553. Each Settlement Class Member who chooses the Voucher option will
27 receive two Vouchers if there are enough Vouchers available. If there are not
28 enough Vouchers available for two Vouchers per claimant, Class Members who

1 submit claims later in time will instead receive one Voucher. If a Participating
2 Settlement Class Member fails to choose between cash and a Voucher, or chooses
3 both a cash and a Voucher, that claimant will be deemed to have chosen the cash
4 option.

5 (c) **Change to Business Practice:** Beginning on or around February 16, 2022,
6 Defendant stopped charging a Service Fee on delivery orders placed through its
7 mobile application and website. The Parties agree that this change in business
8 practice shall not be construed as an admission of liability or that any of Plaintiffs'
9 allegations are true. Defendant agrees that it will not charge a Service Fee on
10 delivery orders for a period of 4 years from the Effective Date of this Agreement,
11 unless such a fee is reasonably required under the law. Without waiving the
12 settlement or mediation privileges, the Defendant also agrees that, for purposes of
13 seeking approval of this settlement, Plaintiffs may use the sales data produced
14 during settlement discussions to estimate the Service Fees that could have been
15 charged over the next 4 years but for the change to business practice.

16 39. Claim Process. The Parties agree that a claims process is appropriate under the relevant
17 circumstances. Among other things, a claims process will help ascertain the identity of Class Members
18 and allow Class Members to choose the method of compensation they prefer. Participating Class Members
19 may make a Claim by submitting a Claim to the Settlement Administrator by using a simple, easy-to-use
20 web form (a direct link to which shall be providing in the Notice sent to Class Members) during the Claim
21 Period. Participating Class Members may choose to either receive Vouchers or participate in the cash
22 portion of the Net Settlement Fund. Participating Class members who submit a claim to receive Vouchers
23 but do so after \$500,000 in Vouchers have been claimed by prior-received Claim Forms, will no longer
24 be able to receive a Voucher and will be deemed to have submitted a claim to participate in the cash
25 portion of the Net Settlement Fund.

26 40. Dismissal of the *Scott* Action. Within 5 calendar days of the Court's grant of final approval
27 of this Agreement, Plaintiff will file a request to voluntarily dismiss the *Scott* Action with prejudice. The
28 granting of that dismissal with prejudice is a material term of this Agreement and a precondition to

1 Defendant’s obligation to fund the cash portion of the settlement. Should the *Scott* court deny the request
2 to dismiss the *Scott* Action, the Parties will meet and confer in good faith about a mutually agreeable
3 solution, but Defendant will not be required to abide by the terms of the Agreement unless and until the
4 Parties mutually agree.

5 41. Funding of the Gross Settlement. Within 10 business days of the Effective Date of the
6 Settlement, Defendant will deposit the cash portion of the Gross Settlement into a Qualified Settlement
7 Fund (“QSF”) to be established by the Settlement Administrator. In no event, however, shall Defendant
8 be required to fund the cash portion of the Gross Settlement until the *Scott* Action is dismissed.

9 42. Distribution of the Gross Settlement. Subject to Court approval, within 14 calendar days
10 of the funding of the Settlement, the Settlement Administrator will issue: (a) Individual Settlement
11 Recoveries (i.e., the Vouchers and cash payment; (b) the Class Representative Service Awards; (c) Class
12 Counsel’s Fees and Costs; and (d) Settlement Administration Costs. If Participating Class Members elect
13 to participate in the cash portion of the Settlement, but the Settlement Administrator is unable to make a
14 cash payment using the contact information provided by that Participating Class Member, the Settlement
15 Administrator will work with the Participating Class Member to arrange alternative means of payment.
16 Any funds in the cash portion of the Net Settlement Amount that are undeliverable for more than 180
17 calendar days after date of distribution, will be tendered to the State Bar of California’s Justice Gap Fund.
18 The Parties do not have any interest or involvement in the governance or administration of the State Bar
19 of California’s Justice Gap Fund that would in any way create a conflict of interest.

20 43. Class Representative Service Award. Defendant agrees not to oppose or object to any
21 application or motion by Plaintiffs for Class Representative Service Awards of up to \$5,000 each. The
22 Class Representative Service Award is in exchange for the General Release of the Plaintiffs’ individual
23 claims and for their time, effort and risk in bringing and prosecuting the Action. Any portion of the
24 requested Class Representative Service Award that is not awarded to the Class Representatives shall be
25 reallocated to the cash portion of the Net Settlement and distributed to Participating Class Members as
26 provided in this Agreement.

1 44. Net Settlement for Payment of Class Claims. The Net Settlement will be used to pay the
2 Participating Class Members Individual Settlement Recoveries in accordance with the terms of this
3 Agreement. Subject to court approval, the estimated Net Settlement is as follows:

4	Gross Settlement Cash Portion	\$900,000
5	Gross Settlement Vouchers Available	\$500,000
6	Service Award (maximum):	\$15,000
7	Class Counsel's Fees (maximum):	\$462,000
8	Class Counsel's Costs (maximum):	\$16,500
9	Settlement Administration Costs (maximum):	\$105,000
10	Estimated Net Settlement	\$301,500 (cash); \$500,000 (available Vouchers)

11 45. Settlement Administration Process. The Parties agree to cooperate in the administration of
12 the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred
13 in administration of the Settlement. The Settlement Administrator will provide the following services:

- 14 a) Establish and maintain a Qualified Settlement Fund.
- 15 b) Calculate the Individual Settlement Recovery each Participating Class
16 Member is eligible to receive.
- 17 c) Distribute the Notice and Publication Notice according to this Agreement.
- 18 d) Create and maintain a website according to this Agreement.
- 19 e) Process Requests for Exclusion, field inquiries from Class Members.
- 20 f) Issue settlement payments.
- 21 g) Provide declarations and/or other information to this Court as requested by
22 the Parties and/or the Court.
- 23 h) Provide weekly status reports to counsel for the Parties.
- 24 i) Post a notice of final judgment online at the Settlement Administrator's
25 website.

26 46. Approval of Process by Settlement Administrator. Defendant shall confirm and approve the
27 Settlement Administrator's calculation of Class Member or Participating Class Members Individual Settlement
28 Recoveries within 10 business days of receipt from the Settlement Administrator. If Defendant fails to approve

1 such calculations within 10 business days, the Settlement Administrator may proceed with approval from Class
2 Counsel alone.

3 47. Notice by Email. Within 7 calendar days after receiving the Class List from Defendant,
4 the Settlement Administrator will email the Notice to Class Members using the most current, known email
5 addresses identified in the Class List.

6 48. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
7 requirements listed herein in paragraph 50, it will be disregarded.

8 49. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Action
9 must sign and postmark a written Request for Exclusion to the Settlement Administrator by the Response
10 Deadline. The Request for Exclusion must include information sufficient to identify the Class Member
11 and conclude that the Class Member wishes to exclude themselves from the settlement. Ideally, this would
12 include (a) the Class Member's name, address, telephone number, and email address used to place the
13 order and (b) a clear statement requesting to be excluded from the settlement of the class claims similar
14 to the following: "I wish to exclude myself from the class settlement reached in the matter of *Ross, et al.*
15 *v. Panda Restaurant Group, Inc.* I understand that by excluding myself, I will not receive money from
16 the settlement of my individual claims." The date of the postmark on the return mailing envelope receipt
17 confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely
18 submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify
19 jointly to Class Counsel and Defendant's counsel the Requests for Exclusion that were timely submitted.
20 All Class Members who do not request exclusion from the Action will be bound by all terms of the
21 Settlement Agreement if the Settlement is granted final approval by the Court.

22 50. Defendant's Right to Rescind. If 10,000 or more of the Class Members elect not to
23 participate in the Settlement, Defendant may, at its election, rescind the Settlement Agreement and all
24 actions taken in furtherance of it will be thereby null and void. Defendant must meet and confer with
25 Class Counsel prior to exercising this right and must make clear their intent to rescind the Agreement
26 within 30 calendar days of the Settlement Administrator notifying the Parties of these opt-outs. If
27 Defendant exercises its right to rescind the Agreement, Defendant shall be responsible for all Settlement
28 Administration Costs incurred to the date of rescission.

1 51. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
2 who does not affirmatively opt-out of the Settlement by submitting a timely and valid Request for
3 Exclusion in accordance with paragraph 50 will be bound by all of its terms, including those pertaining to
4 the Released Claims, as well as the Judgment that will be entered by the Court if it grants final approval
5 of the Settlement. Class Members who opt-out of the Settlement shall not be bound by such Judgment or
6 release.

7 52. Objection Procedures. To object to the Settlement, a Participating Class Member must
8 postmark a valid Objection to the Settlement Administrator on or before the Response Deadline. The
9 Objection must be signed by the Participating Class Member and contain all information required by this
10 Settlement Agreement including information sufficient to identify the Class Member and their intent to
11 object to the Settlement. Ideally, this would include the Class Member's full name, address, telephone
12 number, email address used to place the order, and the specific reason including any legal grounds for the
13 Participating Class Members objection. The postmark date will be deemed the exclusive means for
14 determining that the Notice of Objection is timely. Participating Class Members who fail to object in the
15 manner specified above will be foreclosed from making a written objection but shall still have a right to
16 appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will
17 any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to
18 submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel will
19 not represent any Class Members with respect to any objections to this Settlement.

20 53. Certification Reports Regarding Individual Settlement Recovery Calculations. The
21 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report which
22 explains: (a) the number of Class Members who have submitted valid Requests for Exclusion; (b) the
23 number of bounce-backs from invalid email addresses; (c) whether any Class Member has submitted a
24 challenge to any information contained in the Notice; (d) whether any other correspondence has been
25 received from actual or purported Class members; and (e) website traffic [as applicable]. Additionally,
26 the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
27 administration of the Settlement Agreement as needed or requested.

28 54. Administration of Taxes by the Settlement Administrator. The Settlement Administrator

1 will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any 1099 or
2 other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

3 55. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of
4 the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on any
5 statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.
6 Plaintiffs and Participating Class Members understand and agree that they will be solely responsible for
7 the payment of any taxes and penalties assessed on the payments described herein.

8 56. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the
9 “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other
10 party”) acknowledges and agrees that: (a) no provision of this Agreement, and no written communication
11 or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be,
12 nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice
13 within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (b)
14 the acknowledging party (i) has relied exclusively upon his, her or its own, independent legal and tax
15 counsel for advice (including tax advice) in connection with this Agreement, (ii) has not entered into this
16 Agreement based upon the recommendation of any other party or any attorney or advisor to any other
17 party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney or adviser to
18 any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (c) no
19 attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any
20 such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon
21 disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including
22 any transaction contemplated by this Agreement.

23 57. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that
24 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
25 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
26 right herein released and discharged.

27 58. Release by Participating Class Members. Upon remittance of the cash portion of the Gross
28 Settlement by Defendant to the Settlement Administrator , Participating Class Members shall be deemed

1 to have fully released and discharged the Released Parties from any and all Released Claims for the Class
2 Period. This release shall be binding on all Participating Class Members.

3 59. Release of Additional Claims & Rights by Plaintiffs. Upon the funding of the cash portion
4 of the Gross Settlement, Class Representatives agree—on behalf of themselves only—to the additional
5 general release discussed in this paragraph. In consideration of Defendant’s promises and agreements as
6 set forth herein (including the Class Representative Incentive Awards), the sufficiency of which is
7 expressly acknowledged, each Plaintiff hereby fully releases the Released Parties from any and all
8 Released Claims and also generally releases and discharges the Released Parties from any and all claims,
9 demands, obligations, causes of action, rights, or liabilities of any kind, known or unknown, foreseen or
10 unforeseen, which have been or could have been asserted against the Released Parties at any time during
11 the Class Period. This release specifically includes any and all claims, demands, obligations and/or causes
12 of action for damages, restitution, penalties, interest, and attorneys’ fees and costs (except as provided by
13 the Settlement Agreement) relating to or in any way connected with the matters referred to herein, whether
14 or not known or suspected to exist, and whether or not specifically or particularly described herein.
15 Specifically, Plaintiffs waive all rights and benefits afforded by California Civil Code Section 1542, which
16 provides:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
18 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
19 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
20 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
21 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

22 60. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally
23 approve the Settlement as provided herein; (b) the Court strikes or does not approve any material term of
24 this Settlement Agreement, such as granting the motion to amend the complaint in the *Ross* action; (c) the
25 *Scott* court does not grant dismissal of the *Scott* Action; or (d) the Settlement does not become final as
26 written and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
27 documents generated to bring it into effect, will be null and void, all amounts deposited into the qualified
28 settlement fund will be returned to Defendant, and the Parties shall be returned to their original respective

1 positions. Should the Court fail to approve this settlement for any reason, the Parties agree that they will
2 return to and attend mediation with a mutually agreed upon mediator in an effort to reach a settlement that
3 may be approved by the Court. Any failure by the Court to fully and completely approve the Agreement
4 as to the Action will result in this Settlement Agreement entered into by the Parties, and all obligations
5 under this Settlement Agreement, being nullified and voided.

6 61. Preliminary Approval Hearing. Plaintiffs will reserve a hearing before the Court to request
7 Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for:
8 (a) conditional certification of the Settlement Class for settlement purposes only; (b) Preliminary Approval
9 of the proposed Settlement Agreement; and (c) setting a date for a Final Approval/Settlement Fairness
10 Hearing. The Preliminary Approval Order will provide for the Notice and Publication Notice to be
11 distributed as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will
12 submit this Agreement, which sets forth the terms of the Settlement, and will include the proposed Notice
13 attached as Exhibit A. Class Counsel will be responsible for drafting all documents necessary to obtain
14 preliminary approval and will provide these papers to Defendant 10 business days in advance of such
15 filing. Defendant may review and suggest revisions to Plaintiffs' Motion for Preliminary Approval, which
16 Plaintiffs will consider. Defendant agrees that it will not oppose Plaintiffs' Motion for Preliminary
17 Approval, but reserves the right to file its own brief in support of preliminary approval. Defendant shall
18 not seek to delay the hearings on this motion for more than 30 calendar days from the date obtained by
19 Plaintiffs.

20 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to
21 postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's permission, a
22 Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement
23 Agreement along with the amounts properly payable for: (a) Individual Settlement Recoveries; (b) the Attorneys'
24 Fees and Costs; (c) the Class Representative Service Awards; and (d) the Settlement Administration Costs. Class
25 Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Plaintiffs will provide
26 these papers to Defendant 10 business days in advance of such filing. Defendant may review and suggest
27 revisions to Plaintiffs' Motion for Final Approval, which Plaintiffs will consider. Defendant agrees that
28 it will not oppose Plaintiffs' Motion for Final Approval, but reserves its right to file its own brief in support

1 of final approval. Defendant shall not seek to delay such hearing for more than 30 calendar days from the
2 date set by the Court.

3 63. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court
4 or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the Court
5 for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for
6 purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement; (b)
7 Settlement administration matters; and (c) such post-Judgment matters as may be appropriate under court
8 rules or as set forth in this Settlement. The Judgment shall state that it is a Judgment on Settlement and
9 makes no finding of liability.

10 64. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set
11 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
12 Any Exhibits to this Settlement are an integral part of the Settlement.

13 65. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
14 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
15 may be deemed binding on the Parties.

16 66. Amendment or Modification. This Settlement Agreement may be amended or modified
17 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

18 67. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
19 represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement
20 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to
21 this Settlement Agreement to effectuate its terms and to execute any other documents required to
22 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
23 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
24 reach agreement on the form or content of any document needed to implement the Settlement, or on any
25 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
26 may seek the assistance of the Court to resolve such disagreement.

27 68. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and
28 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 69. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will
2 be governed by and interpreted according to the laws of the State of California.

3 70. Execution and Counterparts. This Settlement Agreement is subject only to the execution
4 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
5 executed counterparts and each of them, including scanned copies of the signature page, will be deemed
6 to be one and the same instrument.

7 71. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
8 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
9 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
10 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
11 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
12 fairness and reasonableness of this Settlement.

13 72. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the
14 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
15 applicable precedents so as to interpret all provisions of this Agreement as valid and enforceable.

16 73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
17 certification for purposes of this Settlement only; except, however, that either party may appeal any court
18 order that materially alters the Settlement Agreement's terms.

19 74. Class Action Certification for Settlement Purposes Only. The Parties agree to class action
20 certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the
21 stipulation to certification will be void. The Parties further agree that certification for purposes of the
22 Settlement is not an admission that class action certification is proper under the standards applied to
23 contested certification motions and that this Agreement will not be admissible in this or any other
24 proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable to
25 Plaintiffs or any Class Member, other than according to the Settlement's terms.

26 75. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute
27 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering
28 into this Agreement, Defendant does not admit, and specifically denies, it has violated any federal, state,

1 or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
2 applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty;
3 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
4 purchases of their products or services. Neither this Agreement, nor any of its terms or provisions, nor
5 any of the negotiations connected with it, shall be construed as an admission or concession by Defendant
6 of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding
7 to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered
8 or received as evidence in any action or proceeding to establish any liability or admission on the part of
9 Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance
10 with, federal, state, local or other applicable law.

11 76. Captions. The captions and section numbers in this Agreement are inserted for the reader's
12 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this
13 Agreement.

14 77. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
15 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
16 a further waiver by such party of the same or any other condition, covenant, right or remedy.

17 78. Enforcement Action. In the event that one or more of the Parties institutes any legal action
18 or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to
19 declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to
20 recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
21 witness fees incurred in connection with any enforcement actions.

22 79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
23 conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against
24 one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of
25 the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
26 Parties have contributed to the preparation of this Settlement Agreement.

27 80. Representation by Counsel. The Parties acknowledge that they have been represented by
28 counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement

1 has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiffs and
2 Class Counsel warrant and represent that there are no liens on the Agreement.

3 81. All Terms Subject to Final Court Approval. All amounts and procedures described in this
4 Settlement Agreement herein will be subject to final Court approval.

5 82. Cooperation and Execution of Necessary Documents. The Parties agree to cooperate to
6 promote participation in the Settlement, and in seeking Court approval of the Settlement. The Parties and
7 their counsel agree not to take any action to encourage any Class Members to opt out of and/or object to
8 the Settlement.

9 83. Confidentiality. The Parties and their counsel agree to keep the terms of the Settlement
10 confidential until the filing of Plaintiffs' Motion for Preliminary Approval. Plaintiffs, Class Counsel,
11 Defendant and their counsel agree that they will not issue any press releases, initiate any contact with the
12 press, respond to any press inquiry or have any communication with the press about this Action at all,
13 including the amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall
14 limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in furtherance of
15 business purposes, including the fulfillment of obligations stated in this Settlement Agreement or limit
16 Class Counsel's communications with the Class Members in furtherance of approval of this Settlement.

17 84. Binding Agreement. The Parties warrant that they understand and have full authority to
18 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
19 binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to
20 enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply
21 under federal or state law.

22 Dated: 5/3/2023

PLAINTIFF

By: _____

Jeff Ross

DocuSigned by:

Jeffrey Ross

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26 Dated: 5/4/2023

PLAINTIFF

By: _____

Roxanne Oliveira

DocuSigned by:

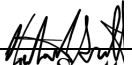
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Dated: 05 / 05 / 2023

PLAINTIFF

By: 
Natasha Scott

Dated: _____

DEFENDANT

PANDA RESTAURANT GROUP, INC.

By: _____
Peggy Cherng
Co-Founder, Co-Chairman, and Co-CEO
Panda Restaurant Group, Inc.

Approved as to Form:

Dated: 5/3/2023

KALIELGOLD PLLC

By: 
Jeffrey Kalief
Attorneys for Plaintiffs

Dated: _____

GREENBERG TRAURIG, LLP

By: _____
Mark Kemple
Attorneys for Defendant

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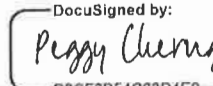
PLAINTIFF

By: _____
Natasha Scott

Dated: May 8, 2023

DEFENDANT

PANDA RESTAURANT GROUP, INC.

By:  _____
Peggy Cherng
Co-Founder, Co-Chairman, and Co-CEO
Panda Restaurant Group, Inc.

Approved as to Form:

Dated: _____

KALIELGOLD PLLC

By: _____
Jeffrey Kaliel
Attorneys for Plaintiffs

Dated: May 11, 2023

GREENBERG TRAURIG, LLP

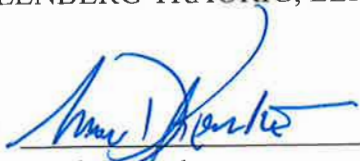
By:  _____
Mark Kemple
Attorneys for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Ross, et al. v. Panda Restaurant Group, Inc.
Los Angeles County Superior Court, Case No. 21STCV03662

YOUR ID NUMBER: XXXXXXXXX

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.**

To: All persons within the United States who at any time between July 17, 2020 and February 16, 2022 placed an order for delivery through Panda's website or mobile application where a Service Fee was charged in connection with that delivery order.

BASIC INFORMATION

1. What is this settlement about?

Plaintiffs filed a lawsuit in Los Angeles County Superior Court titled *Jeff Ross and Roxanne Oliveira v. Panda Restaurant Group, Inc.*, Case No. 21STCV03662 (the "Action"). Plaintiffs allege that Panda Restaurant Group, Inc. ("Panda") made representations regarding delivery fees and service fees on delivery orders placed through its website and mobile application that were false or misleading. Complete details on these allegations are available in the Second Amended Complaint on the Settlement Website.

Panda contends that its statements were accurate, disagrees with Plaintiffs' allegations, and denies any liability or wrongdoing associated with the claims alleged in the Action. Panda also asserts that the Action is not appropriate for class treatment for any purpose other than this Settlement.

2. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, the Plaintiffs), sue on behalf of people who appear to have similar claims. All these people are referred to here as Class Members. One court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Los Angeles County Superior Court (the "Court") is in charge of the Action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action Settlement ("Settlement Agreement" or "Settlement").

On [DATE] the Court granted preliminary approval of the Settlement, appointed Plaintiffs Jeff Ross, Roxanne Oliveira, and Natasha Scott as the Class Representatives, and appointed their attorneys at KalielGold PLLC as counsel for the Class ("Class Counsel").

The Class Representatives and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement and a Class Member if you fit within the following definition:

“All persons within the United States who at any time between July 17, 2020 and February 16, 2022 placed an order for delivery through Defendant’s website or mobile application where a Service Fee was charged in connection with that delivery order.”

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will provide the sum of \$1,400,000, which shall be allocated as \$900,000 in cash and \$500,000 in Vouchers available to Class Members. This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Class Settlement Amount that will be available for distribution to Class Members who submit timely and valid Claim Forms and do not submit requests for exclusion (“Settlement Class Members”). The Net Settlement Amount is the Class Settlement Amount less the following amounts (which are subject to Court approval):

- A. Attorneys’ Fees to Class Counsel – not to exceed 33% of the Gross Settlement Amount or \$462,000.
- B. Litigation Costs/Expenses to Class Counsel – not to exceed \$16,500.
- C. Service Awards to the Class Representatives – not to exceed \$15,000, total.
- D. Settlement Administration Costs – currently estimated to be \$105,000.

Class Members who make a claim for recovery may choose whether they would like to participate in the Cash Portion of the Net Settlement Amount, which will be divided equally amongst all Class Members who make a claim and choose that form of compensation, or receive up to two Vouchers.

Each Voucher shall be redeemable for one medium entree through Defendant’s mobile application or website and no further purchase is necessary to redeem the Vouchers. The Vouchers must be used within one year of the date that they are emailed to Class Members. Class Members may choose to receive up to two Vouchers instead of a cash payment until the \$500,000 in Vouchers is completely depleted. If there are not enough Vouchers for each claimant to receive two vouchers, Class Members who submit claims later in time may instead receive one Voucher. Though unlikely, if all the Vouchers have been claimed by the time you submit your request for a Voucher, you will automatically receive a cash payment. Class Members may only use one Voucher per transaction and one Voucher per day.

Each Class Member who chooses to participate in the Cash Portion of the Net Settlement Amount, will have their recovery determined on a *pro rata* basis, based on the total number of Class Members who chose a cash payment. It is anticipated that each Class Member’s recovery from the Cash Portion of the Net Settlement Amount would exceed \$10. This amount is not guaranteed and could increase or decrease depending on the number of Class Members who choose to participate in the Cash Portion. In no event will Panda pay any additional money beyond the Gross Settlement Amount.

HOW TO GET A PAYMENT FROM THE NET SETTLEMENT AMOUNT

6. How can I get a Cash Payment or Voucher?

All Participating Class Members must fill out and submit a valid Claim Form found at www._____.com and use the ID number included at the top of your Notice. As a part of the Claim Form, Participating Class Members must choose whether they would like to participate in the Cash Portion or receive a Voucher. The completed Claim Form must be submitted online by _____.

7. When will I receive my Cash Payment or Voucher?

The Court will hold a hearing on _____, to decide whether to approve the Settlement. Even if the Court approves the Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. You will not receive your cash payment or Voucher until any appeals are resolved.

8. What else does the Settlement Provide?

Beginning on February 16, 2022, Panda stopped charging a Service Fee on delivery orders placed through its mobile application and website. This change in business practices shall not be construed as an admission of liability or that any of Plaintiffs' allegations are true. Panda agrees that it will not charge a Service Fee, as defined in the Settlement Agreement, on delivery orders until at least _____.

9. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount, in exchange for the consideration set forth in the Settlement Agreement, Plaintiffs and all Class Members who choose to participate in the settlement shall release the "Released Parties" from the "Released Claims" for the "Class Period."

"Released Parties" means Defendant Panda Restaurant Group, Inc., and its current and former parent, subsidiaries and/or related companies, affiliated and related corporations and other entities, their successors and assigns, and all of their current and former owners, shareholders, directors, officers, partners, principals, managers, members, employees, agents, attorneys, representatives, firms, associations, partnerships, joint ventures, and entities, and their agents, guardians, successors, assigns, heirs, executors, and administrators.

"Released Claims" means all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Participating Class Members ever had, now have, may have, or hereafter can, shall or may ever have against Defendant in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to Defendant's marketing and charges for orders through Defendant's website or mobile application during the Class Period and the claims alleged in the Action (i.e., the original Complaint and the proposed First Amended Complaint), and, more particularly, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the complaint in the Action, including,

but not limited to, communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging, marketing, labeling, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, any claims for rescission, restitution or unjust enrichment for all damages of any kind, violations of any state's deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes, any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extracontractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against Defendant reasonably arising or reasonably related to the claims alleged in the operative complaint in the Action, notwithstanding that Plaintiffs and the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Released Claims herein.

The release of these claims pertains to the Released Claims Period from July 17, 2020 through February 16, 2022.

EXCLUDING YOURSELF FROM THE RELEASE

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims, then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not be eligible to receive a cash payment or Voucher from the Net Settlement Amount.

10. How can I not participate in the Settlement?

To exclude yourself from the release of Released Claims you must submit a written request for exclusion. Your Request for Exclusion must contain sufficient information for the Settlement Administrator to identify you as a Class Member and determine you want to exclude yourself from the Settlement. Ideally this would include: (a) the Class Member's full name, address, telephone number, e-mail address associated with the order, and (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: "I wish to exclude myself from the class settlement reached in the matter of *Ross, et al. v. Panda Restaurant Group, Inc.* I understand that by excluding myself, I will not receive money from the settlement of my individual claims."

The writing for exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [60 calendar days from the date of mailing]. You cannot exclude yourself by phone or email.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Claims.

You may be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant or the Released Parties, regarding the Released Claims.

11. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a Request for Exclusion, you give up the right to sue Defendant and the Released Parties for the Released Claims. If you have a pending lawsuit involving Released Claims, speak to your lawyer immediately.

12. If I exclude myself, can I get money from this settlement?

No. But if you submit a timely and valid Request for Exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against the Released Parties for Released Claims.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has approved KanielGold PLLC as Class Counsel. The firm's contact information is:

110015th Street NW, 4th Floor
Washington D.C. 20005

14. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees of up to \$462,000 and reimbursement of litigation cost/expenses of up to \$10,000 from the Gross Settlement Amount. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

15. How do I tell the Court if I don't like the settlement?

If you are a Class Member who does not exclude himself/herself from the settlement, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [60 calendar days from the date of mailing]. Your objection must include sufficient information for the Settlement Administrator to identify you as a Class Member and determine that you are objecting. Ideally, it should include your full name, address, telephone number, e-mail address associated with the order and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

16. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. You cannot submit both an objection and Request for Exclusion.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing").

17. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [REDACTED] a.m./p.m. on [REDACTED], 2023], at the Los Angeles County Superior Court, Spring Street Courthouse located at 312 North Spring Street, Los Angeles, CA 90012 in Department 7.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

18. Do I have to come to the hearing?

No. If you agree to the Settlement, you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your own expense to attend on your behalf.

19. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator website located at [www.\[REDACTED\].com](http://www.[REDACTED].com).

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will be part of the Settlement Class, but you will not get a cash payment or Voucher from the Settlement. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or Released Parties about the Released Claims, ever again.

GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator or Class Counsel or by reviewing the Settlement Agreement and other documents filed in this matter online by entering the case number above on the Court's website: <https://www.lacourt.org/documentimages/civilImages/SearchByCaseNumber.aspx>

WHAT IF MY INFORMATION CHANGES?

22. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO
THE CLERK OF THE COURT OR THE JUDGE**

EXHIBIT B

Ross, et al. v. Panda Restaurant Group, Inc.

Case No. 21STCV03662

[Home](#) [FAQs](#) [Documents](#) [Submit a Claim](#) [Contact](#)

CLAIM FORM AND INSTRUCTIONS

Three Simple Steps to Make a Claim

If you placed a food delivery order through Panda's mobile application or website during the Class Period (July 17, 2020 through February 16, 2022) where a "Service Fee" was charged, then you are a potential class member and may be entitled to relief. Class Members must submit a claim no later than **Month XX, 202X**, for it to be valid. Claims submitted after the deadline will be untimely and may not be accepted.

Step 1. First, choose whether you want cash or a voucher by selecting a button below. The settlement allows you to choose to either receive (1) a cash payment, or (2) up to two vouchers redeemable for medium entrees through Panda's mobile application or website. If you choose the cash option, your payment will be determined on a *pro rata* basis, based on the total number of people who also choose that option. It is anticipated that each cash payment will exceed \$10 (though the cash sum could increase or decrease depending on the number of people who choose this option). If you choose the voucher option, you will receive up to two electronic voucher codes, each of which is redeemable for one medium entree through Panda's mobile application or website. You do not need to make any additional purchase in order to use the vouchers. There are a limited number of vouchers available. If there are not enough vouchers for each claimant to receive two vouchers, Class Members who submit claims later in time may instead receive one Voucher. All vouchers must be used within one year of the date that they are emailed to Class Members. Though unlikely, if the vouchers run out before you submit your claim, you will be deemed to have selected a cash payment. Please make your selection by marking one box below (if both boxes are marked, or neither box is marked, you will be deemed to have chosen the cash option):

I would like to receive a cash payment

I would like to receive a voucher

Step 2. Second, please fill in below the ID Code you received with your email Notice from the Settlement Administrator, and click "Submit". If you lost or did not receive your Notice, you may contact the Settlement Administrator to obtain your ID Code. [Where can I find my ID Code?](#)

Step 3. Finally, please fill out the information and certification below, so that we can provide your cash payment or voucher.

First Name:

Middle Initial: Last Name:

Phone Number:

Email Address:

By checking this box, I certify that I placed a food delivery order through Panda's mobile application or website between July 17, 2020 and February 16, 2022, and that a Service Fee was charged on that order. I wish to receive a cash payment or a voucher per the class action settlement in *Ross, et al. v. Panda Restaurant Group, Inc.*, Los Angeles Superior Court Case No. 21STCV03662.

Remember: All Claim Forms must be submitted online no later than 11:59 p.m. PST on MONTH XX, 202X.

If you have additional questions, please review the [Frequently Asked Questions](#) and the Notice available on this website. You may also contact the Settlement Administrator at _____.

EXHIBIT C

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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES - STANLEY MOSK COURTHOUSE**
12

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

15
16 Plaintiffs,

17 v.

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

20 Defendant.
21

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

**SECOND AMENDED CLASS ACTION
COMPLAINT**

[DEMAND FOR JURY TRIAL]

Date Action Filed: January 29, 2021
Trial Date: None

1 Plaintiffs JEFF ROSS, ROXANNE OLIVEIRA, and NATASHA SCOTT, on behalf of themselves
2 and all others similarly situated, complain and allege upon information and belief based, among other
3 things, upon the investigation made by Plaintiffs and through their attorneys as follows:

4 **NATURE OF ACTION**

5 1. This is a proposed class action seeking monetary damages, restitution, and injunctive and
6 declaratory relief from Defendant Panda Restaurant Group, Inc. (“Defendant” or “Panda Express”), arising
7 from its deceptive and untruthful promises to provide a flat \$2.95 delivery fee on food deliveries ordered
8 through its App and website.

9 2. Since the beginning of the COVID-19 pandemic, Panda Express has moved aggressively
10 into the food delivery business, exploiting an opportunity presented by Americans’ reduced willingness to
11 leave their homes. To appeal to consumers in a crowded food delivery marketplace, Panda Express has
12 promised its customers low-price delivery in its mobile application and on its website, usually in the
13 amount of \$2.95.

14 3. These representations, however, are false, because that is not the true cost of having food
15 delivered by Panda Express. In fact, Panda Express imposes hidden delivery charges on its customers in
16 addition to the low “delivery charge” represented in its app and on its website.

17 4. On delivery orders only, Panda Express assesses an additional charge on food orders that it
18 calls a “service charge.” This additional charge amounts to 10% more for the same food received by non-
19 delivery customers. Because this fee is exclusively charged to delivery customers, and not to customers
20 who order in-store or who order online and pick up their food in store, the “service fee” is by definition a
21 delivery fee. Panda Express obscures the true nature of the fee by naming it a “service fee.”

22 5. Even more insidiously, Panda Express hides its “service fee” in a deceptive line item called
23 “Taxes and Fees”—further obscuring its hidden delivery charge from consumers during the ordering
24 process.

25 6. This hidden delivery upcharge makes Panda Express’s promise of low-cost, \$2.95 delivery
26 patently false. The true delivery costs are obscured, as described above, and far exceed its express
27 representation that its delivery fee is \$2.95.

28 ///

1 7. By falsely marketing a quantified, low-cost delivery charge, Panda Express deceives
2 consumers into making online food purchases they otherwise would not make.

3 8. Panda Express misrepresents the nature of the delivery charges assessed on the Panda
4 Express mobile application and the website, by issuing in-app and online marketing materials that fail to
5 correct reasonable understandings of its low-cost delivery promises, and that misrepresent the actual costs
6 of the delivery service.

7 9. Specifically, Panda Express omits and conceals material facts about the Panda Express
8 delivery service, never once informing consumers in any disclosure, at any time, that the so-called “service
9 fee” is assessed exclusively on delivery customers and is therefore by definition a delivery charge.

10 10. Hundreds of thousands of Panda Express customers like Plaintiffs have been assessed
11 hidden delivery charges they did not bargain for.

12 11. Consumers like Plaintiffs reasonably understand Panda Express’ express “Delivery Fee”
13 representation to disclose the total additional cost they will pay as a result of having their food delivered,
14 as opposed to ordering online and picking up food in person, or ordering and picking up food in person.

15 12. By unfairly obscuring its true delivery costs, Panda Express deceives consumers and gains
16 an unfair upper hand on competitors that fairly disclose their true delivery charges. For example, Panda
17 Express competitors Del Taco and El Pollo Loco both offer delivery services through their app and website.
18 But unlike Panda Express, Del Taco and El Pollo Loco fairly and prominently represent their true delivery
19 charges.

20 13. Plaintiffs seek damages and, among other remedies, injunctive relief that fairly allows
21 consumers to decide whether they will pay Panda Express’s delivery mark-ups.

22 **PARTIES**

23 14. Plaintiff Jeff Ross is a citizen of the State of California who resides in Los Angeles,
24 California.

25 15. Plaintiff Roxanne Oliveira is a citizen of the State of California who resides in Bakersfield,
26 California.

27 16. Plaintiff Natasha Scott is a citizen of the State of Michigan who resides in Wyandotte,
28 Michigan.

1 user markets for online delivery food services are the young and the poor.³ During a 90-day timeframe,
2 63% of consumers between the ages of 18 and 29 used a multi-restaurant delivery website or app service,
3 followed by 51% of consumers between the ages of 30 to 44.⁴ The study also demonstrated that the "less
4 income a consumer earns, the more likely the consumer is to take advantage of restaurant delivery
5 services," as those earning less than \$10,000 per year ordered online delivery the most (51.6%).⁵

6 24. Put plainly, the allure for online food delivery services has historically been based upon
7 pure convenience. A 2019 Gallup study of third-party delivery services companies like GrubHub,
8 DoorDash, and Uber Eats reported 72% of customers order online food delivery because they don't want
9 to leave their house; 50% so that they can continue with their ongoing activities; and 41% to avoid bad
10 weather.⁶

11 25. According to data compiled by Yelp, food delivery orders have *doubled* since the COVID-
12 19 outbreak began.⁷

13 26. The arrival of the unprecedented COVID-19 pandemic escalated the value of online food
14 delivery services from one of pure convenience to that of a comforting necessity for many consumers who
15 are sick, in a high-risk population group for COVID-19, or simply do not feel safe to leave their homes
16 and venture out into the public to purchase food during quarantine.

17 27. In its 2019 Economic Report conducted by research firm Technomic, DoorDash reported
18 that 86% of customers agreed that DoorDash played an important role in helping them access food during
19 the pandemic and 77% of consumers increased their use of third-party delivery services during this time.⁸

21 ³ See Aric Zion and Thomas Hollman, Zion & Zion Research Study, *Usage and Demographics of
22 Food Delivery Apps*, accessible at [https://www.zionandzion.com/research/food-delivery-apps-usage-and-
23 demographics-winners-losers-and-laggards/](https://www.zionandzion.com/research/food-delivery-apps-usage-and-demographics-winners-losers-and-laggards/), last accessed January 19, 2021.

24 ⁴ *Id.*

25 ⁵ *Id.*

26 ⁶ See Sean Kashanchi, Gallup, *Third-Party Delivery Will Grow; Is Your Restaurant Ready?*, May
27 6, 2019, accessible at [https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-
28 ready.aspx](https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-ready.aspx), last accessed January 19, 2021.

29 ⁷ See Tal Axelrod, The Hill, *Yelp: Delivery and take-out twice as popular as usual amid
30 coronavirus*, March 20, 2020, available at [https://thehill.com/policy/technology/488749-yelp-delivery-
31 and-take-out-twice-as-popular-as-usual-amid-coronavirus](https://thehill.com/policy/technology/488749-yelp-delivery-and-take-out-twice-as-popular-as-usual-amid-coronavirus), last accessed January 19, 2021.

32 ⁸ See Technomic and DoorDash, 2019 Economic Impact Report, *The Impact of DoorDash on
33 Economic Activity and Restaurant Resilience*, available at [https://doordashimpact.com/media/2019-
34 Economic-Impact-Report.pdf](https://doordashimpact.com/media/2019-Economic-Impact-Report.pdf), last accessed January 19, 2021.

1 Indeed, amidst the uncertainty of the novel virus, 68% of consumers now view ordering food online for
2 delivery as the safer option.⁹

3 28. The era of COVID-19 undoubtedly caused a significant revenue boom for third party
4 delivery services. SEC filings indicate that the top four U.S. food-delivery apps (DoorDash, Uber Eats,
5 GrubHub, and Postmates) collectively experienced a *\$3 billion increase* in revenue in just two quarters,
6 April through September, following the enactment of shelter-in-place restrictions throughout the nation.¹⁰

7 29. The ramp up in utilization of food delivery services also had a massive positive impact on
8 restaurant owners who were quickly on the brink of facing permanent closures during lockdown: 67% of
9 restaurant operators said DoorDash was crucial to their business during COVID-19 and 65% say they were
10 actually able to *increase* profits during this time because of DoorDash.

11 30. In the wake of the food delivery surge, Consumer Reports highlighted the need for fee
12 transparency for consumers who use these apps and services.¹¹ A research team investigated food delivery
13 companies and the report measured their compliance with new rules regarding fees enacted in seven US
14 cities aimed at protecting consumers and businesses during the pandemic. It found that these companies
15 continued to not comply with the new ordinances and continued to “employ design practices that obfuscate
16 fees.” They concluded that “[c]onsumers deserve to have informed choices to understand what they are
17 being charged for *and* how their dollars spent impacts the restaurants they support and patronize in their
18 communities.”

19 **B. Panda Express’s App and Website Fails to Bind Users to Any Terms of Service**

20 31. When a consumer downloads the Panda Express app, or uses the Panda Express website, he
21 may create an account in order to place an order for delivery or pickup.

22 32. In order to do so, a user enters in a name and contact information.

23
24 ⁹ *Id.*

25 ¹⁰ See Levi Sumagaysay, Market Watch, *The pandemic has more than doubled food-delivery apps’*
26 *business. Now what?*, last updated November 27, 2020, available at
<https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169>, last accessed
27 January 19, 2021.

28 ¹¹ See Consumer Reports, *Collecting Receipts: Food Delivery Apps & Fee Transparency*,
September 29, 2020, accessible at https://digital-lab-wp.consumerreports.org/wp-content/uploads/2020/09/Food-delivery_-Report.pdf, last accessed January 19, 2021.

1 **C. Panda Express Prominently and Plainly Represents a Flat \$2.95 “Delivery Fee” on its**
2 **App and Website**

3 33. Beginning in early 2020, Panda Express began prominently featuring low-cost delivery
4 promises on its mobile application and on its website.

5 34. Such representations often are made on the home screen of the app or website, and were
6 always made on the check-out screen of the app and website, prior to the finalization of an order. On that
7 screen, Panda Express promised a flat “Delivery Fee,” usually in the amount of \$2.95.

8 35. Specifically, for supposed “\$2.95 Delivery Fee” orders, the order finalization screen states:

9 Subtotal: [representing the cost of the food selected]

10 Delivery Fee: \$2.95

11 Tip: [a prepopulated amount, suggested by the app or website]

12 Taxes & Fees: [representing sales taxes and additional fees]

13 ORDER TOTAL: [adding up the above]

14 36. In short, there was no way for Plaintiffs or other users of the Panda Express mobile
15 application or website to *avoid* seeing Panda Express’s promises of a flat fee, \$2.95 delivery charge.

16 **D. Panda Express Omits and Conceals Material Facts About the Costs of the Panda**
17 **Express Delivery Service**

18 37. But those disclosures were false and misleading, and the delivery charge was not, in fact,
19 \$2.95.

20 38. That is because Panda Express applies a “Service Fee” exclusively to delivery orders, hides
21 that “Service Fee” from users behind a hyperlink, and misrepresents what the “Service Fee” is actually for:
22 a hidden delivery charge.

23 39. On ordering screen, and for the first time in the ordering process, Panda Express presents a
24 line item called “Taxes and Fees.” The ordering screen does not explain what “Taxes and Fees” are
25 comprised of.

26 40. Only if a user clicks on “Taxes and Fees” do two further line items appear: “Tax” and
27 “Service Fee.” “Tax” adds the locally applicable sales tax rate. “Service Fee” adds a further charge of 10%

1 of the total food cost. This “Service Fee” is exclusively applied by Panda Express to delivery orders, and
2 is therefore by definition an additional hidden delivery charge.

3 41. In fact, Panda Express does not apply this “Service Fee” to orders made on its app and
4 website when those orders are for in-store pickup.

5 42. In short, the disclosed “Delivery Fee” is not actually \$2.95. The *actual* “delivery fee”—the
6 extra charge for having food delivered as opposed to picking it up—is the listed “Delivery Fee” *plus* the
7 hidden “Service Charge” markup applied exclusively to delivery orders.

8 43. If that were not enough, Panda Express misrepresents the true nature of the “Service Fee.”

9 44. If a user clicks a further link next to “Service Fee,” a disclosure appears stating that the fee
10 “Helps maintain and improve your digital experience.”

11 45. This disclaimer is false. The “Service Fee” is not for “digital experience,” it is a hidden
12 delivery fee. This is necessarily true because the “Service Fee” is only assessed on delivery orders. It is
13 not assessed on orders placed through the mobile app or website that are for pickup—even though the same
14 so-called “digital experience” is used by a consumer for such an order.

15 46. Panda Express does not inform consumers the true costs of its delivery service and it
16 misrepresents its Delivery Fee as \$2.95, when in fact those costs are actually much higher.

17 **E. Other Restaurant Industry Actors and Panda Express Competitors Disclose Delivery**
18 **Fees Fairly and Expressly**

19 47. By unfairly obscuring its true delivery costs, Panda Express deceives consumers and gains
20 an unfair upper hand on competitors that fairly disclose their true delivery charges. For example, Panda
21 Express competitors Del Taco and El Pollo Loco both offer delivery services through their app and website.
22 But unlike Panda Express, Del Taco and El Pollo Loco fairly and prominently represent their true delivery
23 charges.

24 48. For example, Del Taco does not mark-up food charges for delivery orders through its app,
25 nor does it add an additional “service charge” to delivery orders. Instead, for delivery orders its ordering
26 screen presents the following:

27 Subtotal:

28 Tax:

1 Delivery Charge:

2 Tip:

3 49. All line-item amounts are **identical** for delivery and pick-up orders, except for the plainly
4 and fairly disclosed delivery charge—allowing consumers to understand the true cost of the delivery
5 service.

6 50. Similarly, Panda Express competitor El Pollo Loco does not mark-up food charges for
7 delivery orders through its app, nor does it add an additional “service charge” to delivery orders. Instead,
8 for delivery orders its ordering screen presents the following:

9 Subtotal:

10 Delivery Charge:

11 Tax:

12 51. All line-item amounts are **identical** for delivery and pick-up orders, except for the plainly
13 and fairly disclosed delivery charge—allowing consumers to understand the true cost of the delivery
14 service.

15 **F. Plaintiff Ross’s Experience**

16 52. Plaintiff Ross used the Panda Express app to make a purchase of food on December 25,
17 2020, in the total amount of \$29.78.

18 53. When using the app, and prior to placing his order, the Panda Express app stated that the
19 Delivery Fee was \$2.95.

20 54. However, Plaintiff’s purchase included a hidden “Service Fee” that in fact represented an
21 additional delivery fee. Panda Express charged Plaintiff a \$1.88 service fee on his order.

22 55. Upon information and belief, this same service fee is assessed only on delivery orders like
23 the one made by Plaintiff and would not have been assessed to Plaintiff had he picked up his order in
24 person from the Panda Express location.

25 56. Plaintiff would not have made the purchase if he had known the Panda Express delivery fee
26 was not in fact \$2.95.

27 57. If he had known the true delivery fee, he would have chosen another method for receiving
28 food from Panda Express or ordered food from another provider.

1 of themselves and a Class of similarly situated persons defined as follows:

2 All persons within the United States who at any time between July 17, 2020, and
3 February 16, 2022 placed an order for delivery through Defendant's website or
4 mobile application where a Service Fee was charged in connection with that
5 delivery order

6 70. Excluded from the Class are Defendants, any entities in which they have a controlling
7 interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and members of such
8 persons' immediate families, and the presiding judge(s) in this case, and their staff. Plaintiffs reserve the
9 right to expand, limit, modify, or amend this class definition, including the addition of one or more
10 subclasses, in connection with his motion for class certification, or at any other time, based upon, *inter*
11 *alia*, changing circumstances and/or new facts obtained during discovery.

12 71. **Numerosity:** At this time, Plaintiffs do not know the exact size of the Class; however, due
13 to the nature of the trade and commerce involved, Plaintiffs believe that the Class members are well into
14 the thousands, and thus are so numerous that joinder of all members is impractical. The number and
15 identities of Class members is administratively feasible and can be determined through appropriate
16 discovery in the possession of the Defendant.

17 72. **Commonality:** There are questions of law or fact common to the Class, which include, but
18 are not limited to the following:

- 19 a. Whether during the class period, Defendant deceptively represented Delivery Fees
20 on food deliveries ordered through the Panda Express website and mobile app;
- 21 b. Whether Defendant's alleged misconduct misled or had the tendency to mislead
22 consumers;
- 23 c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business
24 practices under the laws asserted;
- 25 d. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 26 e. Whether Plaintiffs and members of the Class were harmed by Defendant's
27 misrepresentations;
- 28 f. Whether Plaintiffs and the Class have been damaged, and if so, the proper measure
of damages; and

1 g. Whether an injunction is necessary to prevent Defendant from continuing to
2 deceptively represent the amount of the delivery fee on food deliveries ordered
3 through the Panda Express website and mobile app.

4 73. **Typicality:** Like Plaintiffs, many other consumers ordered food for delivery from Panda
5 Express's website or mobile app, believing delivery to be the flat fee represented based on Defendant's
6 representations. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and each Class
7 member was injured by Defendant's false representations about the true nature of the delivery fee. Plaintiffs
8 and the Class have suffered the same or similar injury as a result of Defendant's false, deceptive and
9 misleading representations. Plaintiffs' claims and the claims of members of the Class emanate from the
10 same legal theory, Plaintiffs' claims are typical of the claims of the Class, and, therefore, class treatment
11 is appropriate.

12 74. **Adequacy of Representation:** Plaintiffs are committed to pursuing this action and have
13 retained counsel competent and experienced in prosecuting and resolving consumer class actions.
14 Plaintiffs will fairly and adequately represent the interests of the Class and does not have any interests
15 adverse to those of the Class.

16 75. **The Proposed Class and Satisfies the Rule 23(b)(2) Prerequisites for Injunctive Relief.**
17 Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making
18 appropriate final injunctive and equitable relief with respect to the Class as a whole. Plaintiffs remain
19 interested in ordering food for delivery through Panda Express's website and mobile app; there is no way
20 for them to know when or if Defendant will cease deceptively misrepresenting the cost of delivery.

21 76. Specifically, Defendant should be ordered to cease from representing their delivery service
22 as a flat fee and to disclose the true nature of their mark-ups.

23 77. Defendant's ongoing and systematic practices make declaratory relief with respect to the
24 Class appropriate.

25 78. **The Proposed Class Satisfies the Rule 23(b)(3) Prerequisites for Damages.** The
26 common questions of law and fact enumerated above predominate over questions affecting only individual
27 members of the Class, and a class action is the superior method for fair and efficient adjudication of the
28 controversy. The likelihood that individual members of the Class will prosecute separate actions is remote

1 due to the extensive time and considerable expense necessary to conduct such litigation, especially when
2 compared to the relatively modest amount of monetary, injunctive, and equitable relief at issue for each
3 individual Class member.

4 **CAUSES OF ACTION**

5 **FIRST CLAIM FOR RELIEF**

6 **Violation of California’s Unfair Competition Law (“UCL”)**
7 **Cal. Bus. & Prof. Code § 17200, *et seq.***

8 79. Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

9 80. California Business & Professions Code § 17200 prohibits acts of “unfair competition,”
10 including any “unlawful, unfair or fraudulent business act or practice.” Panda Express’s conduct related to
11 deceptively representing that it provides a flat Delivery Fee of \$2.95 on food deliveries ordered through its
12 website and mobile app violates each of the statute’s “unfair,” “unlawful,” and “fraudulent” prongs.

13 81. The UCL imposes strict liability. Plaintiffs need not prove that Panda Express intentionally
14 or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices
15 occurred.

16 82. A business act or practice is “unfair” under the UCL if it offends an established public
17 policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and that
18 unfairness is determined by weighing the reasons, justifications, and motives of the practice against the
19 gravity of the harm to the alleged victims.

20 83. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members
21 of the public.

22 84. A business act or practice is “unlawful” under the UCL if it violates any other law or
23 regulation.

24 85. Panda Express committed unfair and fraudulent business acts and practices in violation of
25 Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting on its website
26 and mobile app that it provides a flat \$2.95 Delivery Fee for food orders, when, in reality, it hides delivery
27 charges through the assessment of an elusive “service fee” exclusively charged to delivery customers.

1 86. Defendant’s acts and practices offend an established public policy of fee transparency in
2 the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous activities that are
3 substantially injurious to consumers.

4 87. The harm to Plaintiffs and the Class outweighs the utility of Defendant’s practices. There
5 were reasonably available alternatives to further Defendant’s legitimate business interests, other than the
6 misleading and deceptive conduct described herein.

7 88. Defendant’s conduct also constitutes an “unlawful” act under the UCL because, as detailed
8 in Plaintiffs’ Second Claim for Relief below, it also constitutes a violation of sections 1770(a)(5) and (a)(9)
9 of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq., infra*, in that
10 Panda Express deceptively represents that it provides a flat fee for delivery for food orders made on its
11 website or mobile app; in reality, however, this marketing message is false because Panda Express’s so-
12 called “service fee” is assessed exclusively on delivery customers and is therefore by definition a delivery
13 charge.

14 89. Panda Express’s business practices have misled Plaintiffs and the proposed Class and will
15 continue to mislead them in the future.

16 90. Plaintiffs relied on Defendant’s misrepresentations about the falsely advertised cost of
17 delivery in choosing to utilize the Panda Express food delivery service in ordering food from Defendant’s
18 website or mobile app.

19 91. By falsely marketing the true costs of food delivery, Panda Express deceived Plaintiffs and
20 Class members into making online food purchases they otherwise would not make.

21 92. Had Plaintiffs known the truth of the delivery service fee, *i.e.*, that Panda Express’s “Service
22 Fees” were in all reality “delivery fees,” they would have chosen another method for receiving food from
23 Panda Express or ordered food from another provider.

24 93. As a direct and proximate result of Panda Express’s unfair, fraudulent, and unlawful
25 practices, Plaintiffs and Class members suffered and will continue to suffer actual damages. Defendant’s
26 fraudulent conduct is ongoing and present a continuing threat to Class members that they will be deceived
27 into ordering food for delivery under the false belief that delivery was \$2.95.
28

1 94. As a result of its unfair, fraudulent, and unlawful conduct, Panda Express has been unjustly
2 enriched and should be required to disgorge its unjust profits and make restitution to Plaintiffs and Class
3 members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

4 **SECOND CLAIM FOR RELIEF**
5 **Violation of California’s Consumer Legal Remedies Act (“CLRA”)**
6 **Cal. Civ. Code § 1750, *et seq.***

7 95. Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

8 96. This cause of action is brought pursuant to the Consumers Legal Remedies Act (CLRA),
9 California Civil Code § 1750, *et seq.* Plaintiffs and each member of the proposed Class are “consumers”
10 as defined by California Civil Code § 1761(d). Defendant’s sale of food products to consumers for delivery
11 ordered through its website and mobile app were “transactions” within the meaning of California Civil
12 Code § 1761(e). Defendant’s online delivery service utilized by Plaintiffs and the Class is a “service”
13 within the meaning of California Civil Code § 1761(b). The food products purchased by Plaintiffs and the
14 Class are “goods” within the meaning of California Civil Code § 1761(a).

15 97. Defendant violated and continues to violate the CLRA by engaging in the following
16 practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiffs and the Class which
17 were intended to result in, and did result in, the sale of Panda Express food orders for delivery:

- 18 a. “Representing that goods or services have . . . characteristics . . . that they do not
19 have” (a)(5); and
20 b. “Advertising goods or services with intent not to sell them as advertised” (a)(9).

21 98. Specifically, Panda Express advertises to customers that use of its delivery service is a flat
22 fee of \$2.95, but this is false because Defendant imposes hidden delivery charges to consumers by covertly
23 applying a “Service Fee” exclusively to delivery orders and misrepresenting that it is actually a delivery
24 charge.

25 99. At no time does Panda Express disclose the true nature of its delivery fee to consumers;
26 instead, it repeatedly conceals and misrepresents this material information at several steps of the transaction
27 process.

28 100. Pursuant to § 1782(a) of the CLRA, Plaintiffs’ counsel notified Defendant in writing by

1 certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the problems
2 associated with the actions detailed above and give notice to all affected consumers of Defendant’s intent
3 to act. If Defendant fails to respond to Plaintiffs’ letter or agree to rectify the problems associated with the
4 actions detailed above and give notice to all affected consumers within 30 days of the date of written notice,
5 as proscribed by §1782, Plaintiffs will move to amend his Complaint to pursue claims for actual, punitive
6 and statutory damages, as appropriate against Defendant. As to this cause of action, at this time, Plaintiffs
7 seek only injunctive relief.

8 **THIRD CLAIM FOR RELIEF**
9 **Violation of Michigan Consumer Protection Act (“MCPA”)**
10 **M.C.L. §§ 445.903, *et seq.***

11 101. Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

12 102. This cause of action is brought pursuant to Michigan’s Consumer Protection Act, M.C.L.
13 §§ 445.903, *et seq.* Defendant’s sale of food products to consumers for delivery ordered through its website
14 and mobile app were “transactions” within the meaning of the MCPA.

15 103. Defendant violated and continues to violate the MCPA by engaging in the following
16 practices proscribed by the MCPA in transactions with Plaintiff Scott and the Class which were intended
17 to result in, and did result in, the sale of Panda Express food orders for delivery:

- 18 a. “Representing that goods or services . . . have . . . characteristics . . . that they do not
19 have” (1)(c);
- 20 b. “Advertising or representing . . . services with intent not to dispose of those . . .
21 services as advertised or represented” (1)(g); and
- 22 c. “Failing to reveal a material fact, the omission of which tends to mislead or deceive
23 the consumer, and which fact could not reasonably be known by the consumer”
24 (1)(s).

25 104. Specifically, Panda Express advertises to customers that use of its delivery service is a flat
26 fee of \$2.95, but this is false because Defendant imposes hidden delivery charges to consumers by covertly
27 applying a “Service Fee” exclusively to delivery orders and misrepresenting that it is actually a delivery
28 charge.

- 1 (b) For declaratory and injunctive relief as set forth above;
- 2 (c) For an order requiring Defendant to disgorge and make restitution of all monies it acquired
- 3 by means of the unlawful practices set forth above;
- 4 (d) For compensatory damages according to proof;
- 5 (e) For punitive damages according to proof;
- 6 (f) For reasonable attorneys' fees and costs of suit;
- 7 (g) For pre-judgment interest; and
- 8 (h) Awarding such other and further relief as this Court deems just, proper and equitable.

9 **JURY DEMAND**

10 Plaintiffs hereby demand a jury trial on all claims so triable.

11

12 Dated: December 5, 2022

KALIELGOLD PLLC

13 

14 By: _____

15 Jeffrey D. Kalief
16 Sophia G. Gold

17 *Attorneys for Plaintiffs and the Proposed Class*

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1 **PROOF OF SERVICE**

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

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

5 On **December 5, 2022**, I served the document(s) described as:

6 **SECOND AMENDED CLASS ACTION COMPLAINT**

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

9 **SEE ATTACHED SERVICE LIST**

10 [] **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons
11 at the addresses listed in the Service List and placed the envelope for collection and mailing,
12 following our ordinary business practices. I am readily familiar with KalielGold PLLC's practice
13 for collecting and processing correspondence for mailing. On the same day that the correspondence
14 is placed for collection and mailing, it is deposited in the ordinary course of business with the
15 United States Postal Service, in a sealed envelope with postage fully prepaid.

16 [] **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be
17 sent from e-mail address ngarcia@kalielgold.com to the persons at the e-mail addresses listed in
18 the Service List. I did not receive, within a reasonable time after the transmission, any electronic
19 message or other indication that the transmission was unsuccessful.

20 [X] **BY NOTICE OF ELECTRONIC FILING:** I electronically served the document(s) with the by
21 using the CaseAnywhere system. Participants in the case who are registered CaseAnywhere users
22 will be served by the CaseAnywhere system. Participants in the case who are not registered
23 CaseAnywhere users will be served by mail or by other means permitted by the court rules.

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

26 Executed this **December 5, 2022**, at Los Angeles, California.

27 NEVA R. GARCIA
28 Type or Print Name


Signature

SERVICE LIST

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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 **May 12, 2023**, I served the document(s) described as:

AMENDED JOINT STIPULATION 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:

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 KalielGold 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.

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 **May 12, 2023**, at Los Angeles, California.

NEVA R. GARCIA
Type or Print Name



Signature

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