

## CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and Private Attorneys General Act (“PAGA”) Settlement Agreement (“Agreement”) is made by and between Plaintiff Jose Barragain (“Plaintiff”) and Defendant Panda Restaurant Group, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

### 1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s class action and representative lawsuit alleging wage and hour and reimbursement violations, as well as alleged violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) predicated on the same or similar facts and/or claims alleged in the lawsuit and/or any PAGA letter sent to the Labor and Workforce Development Agency (“LWDA”) by Plaintiff in or prior to the lawsuit, against Defendant captioned *Jose Barragain v. Panda Restaurant Group, Inc., et al.*, initiated on October 18, 2017, and pending in the Superior Court of the State of California, County of Los Angeles, Case No. BC680246.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement of this Action.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means any Settlement Class Member employed by Defendant in California and classified as a non-exempt hourly associate who worked for Defendant in a Panda Express restaurant during the PAGA Period.
- 1.5. “Class” means all current and former nonexempt, hourly associates of Defendant, who did not agree to arbitration or settle the released claims in this action whether individually or as a result of the class action matter and who worked in a Panda Express restaurant in California at any time from October 18, 2014, through the date of Preliminary Approval (“Settlement Class Members.”)
- 1.6. “Class Counsel” means Kevin Mahoney and George B. Singer of Mahoney Law Group, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address and Social Security

number, and number of Class Period Workweeks and PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” is defined as the time period from October 18, 2014, through the date of Preliminary Approval of the Class Settlement.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as the Class Representative.
- 1.14. “Class Representative Service Payments” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendant” means named Defendant Panda Restaurant Group, Inc.
- 1.17. “Defense Counsel” means Elizabeth Staggs Wilson, Esq., and Luis E. Lorenzana, Esq., of Littler Mendelson, P.C.
- 1.18. “Effective Date” means the later of: (i) the sixty-fifth (65th) day after the Court signs an Order granting Final Approval of the Settlement, provided no appeal has been initiated and no motion to vacate has been filed, whether by an absent Settlement Class Member who has timely intervened or moved to vacate the judgment, or by a Party or Class Counsel; or (ii) if such an appeal or motion to vacate is timely initiated, five (5) business days after final resolution of that appeal or motion (including any requests for rehearing or appeals, including petitions for certiorari), resulting in final judicial approval of the Settlement.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final

Approval of the Settlement.

- 1.22. "Gross Settlement Amount" means Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 3.1 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator's Expenses.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period, i.e., the "Class Settlement".
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Penalties and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Individual Class Payment or Class Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "Operative Complaint" means Plaintiff's Second Amended Complaint, which Plaintiff agreed to file as part of this Settlement to add a PAGA claim against Defendant, which is predicated on the same or similar facts and/or claims alleged in the Action and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Action, and will be considered filed sixty-five (65) days after Plaintiff's PAGA Notice is sent to the LWDA and Defendant.
- 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant in a Panda Express restaurant for at least one day during the PAGA Period.
- 1.32. "PAGA Period" means the period from September 7, 2021, through the date of

Preliminary Approval of the Class Settlement.

- 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34. "PAGA Notice" means Plaintiff Barragain's October 17, 2017, letter to Defendant and the LWDA, and Plaintiff's February 16, 2023 letter to Defendant and the LWDA. Plaintiff's PAGA Notices sufficiently provided notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,000.00) and the 75% to LWDA (\$30,000.00) in settlement of PAGA claims.
- 1.36. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Individual Class Payment or Class Settlement.
- 1.37. "Plaintiff" means Jose Barragain, the named Plaintiff in the Action.
- 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.41. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.42. "Released Parties" means: Defendant and any of its past, present and future direct or indirect parents, subsidiaries, predecessors, successors, assigns, and affiliates, joint ventures, as well as each of its past, present and future owners, officers, directors, employees, associates, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.
- 1.43. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Individual Class Payment or Class Settlement, or (b) fax, email, or mail his or her Objection to the Individual Class Payment or Class Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the

Administrator shall have an additional fourteen (14) days beyond when the Response Deadline has expired.

- 1.45. "Settlement" means the disposition of the Action in its entirety effected by this Agreement and the Judgment.
- 1.46. "Workweek" means any week during which a Class Member worked for Panda Restaurant Group, Inc. in a Panda Express restaurant, and was assigned to work for at least one day, during the Class Period.

## 2. RECITALS.

- 2.1. On October 18, 2017, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) failure to pay minimum and overtime wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) unpaid wages during employment; (5) failure to reimburse for necessary business expenditures; (6) failure to pay all wages upon ending employment; (7) failure to keep accurate payroll records; (8) failure to reimburse necessary business expenditures; and (9) unfair competition. On December 26, 2017, Plaintiff amended his complaint to remove all but three causes of action: (1) unpaid minimum wages; (2) unpaid wages during employment; and (3) failure to reimburse necessary business expenses. Settlements in coordinated earlier-filed cases, *Javier Lopez Tapia v. Panda Express, LLC*; *Panda Express, Inc. and Panda Express (PR), Inc.*, Los Angeles County Superior Court Case No: BC607846 ("Tapia") and *Juan Castillo v. Panda Express, Inc. and Panda Restaurant Group, Inc.*, San Diego County Superior Court. Case No: BC607846 ("Castillo") resulted in all causes of action being resolved, leaving Plaintiff only a cause of action for failure to reimburse business expenses in the present matter. As part of this Settlement, Plaintiff will file a Second Amended Complaint (the Operative Complaint), which will add a PAGA claim against Defendant, which is predicated on the same or similar facts and/or claims alleged in the Action and/or any PAGA Notice sent to the LWDA by Plaintiff in or prior to the Action, and will be considered filed sixty-five (65) days after Plaintiff's PAGA Notice is sent to the LWDA and Defendant. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged. Defendant maintains, among other things, that it has complied with Federal and California law in all aspects. Nothing in this Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
- 2.2. On September 7, 2022, the Parties participated in an all-day mediation presided over by Hon. Carl J. West (Ret.) which led to this Agreement to settle the Action.
- 2.3. Prior to mediation, Plaintiff obtained, through informal discovery, Defendant's policies and procedures regarding associate uniforms and reimbursement for expenses. Class Members' total Workweeks, and Workweeks per year, and PAGA

Pay Periods were also provided by Defendant. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130 ("*Dunk/Kullar*").

2.4. The Court has not granted class certification.

2.5. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### 3. MONETARY TERMS.

3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 9 below, Defendant promises to pay Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) and to separately pay any and all employer payroll taxes owed on the wage portions of the Individual Class Payments. Defendant has no obligation to fund the Gross Settlement Amount through the Administrator prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. **To Plaintiff:** Class Representative Service Payments to the **Class Representative** of not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), to Plaintiff Jose Barragain in addition to any Individual Class Payment he is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on their Class Representative Service Payment.

3.2.2. **To Class Counsel:** A Class Counsel Fees Payment of not more thirty-five percent (35%) of the Gross Settlement, which is currently estimated to be Two Hundred Ten Thousand Dollars and Zero Cents (\$210,000.00) and a Class Counsel Litigation Expenses Payment of not more than Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00). Defendant will not oppose requests



for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Any reduction by the Court of Settlement Class Counsel's claimed attorneys' fees and/or reasonable costs/expenses shall not be sufficient grounds to void the Settlement. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. Plaintiff and Defendant shall bear their own attorney's fees and costs, except as provided herein.

- 3.2.3. **To the Administrator:** An Administrator Expenses Payment not to exceed Twelve Thousand Dollars (\$12,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than Twelve Thousand Dollars (\$12,000.00), the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
  - 3.2.4.1. **Tax Allocation of Individual Class Payments.** Five percent (5%) of each Participating Class Member's Individual Class Payment will be allocated to lost wages ("Wage Portion") and ninety-five percent (95%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of reimbursement expenses ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 and the Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
  - 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain

amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00) to be paid from the Gross Settlement Amount, with 75% (\$30,000.00) allocated to the LWDA PAGA Payment and 25% (\$10,00.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Workweeks and PAGA Pay Periods. Based on a review of its records to date, Defendant estimates there are six hundred and two (602) Class Members who are or were associates of Defendant who worked in a Panda Express restaurant, and who collectively worked a total of sixty-six thousand nine hundred nineteen (66,919) Workweeks through September 7, 2022. Based on a review of its records, Defendant estimates there are 65 Aggrieved Employees who worked a total of 1,338 PAGA Pay Periods.

4.2. Class Data. Not later than twenty-one (21) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.



- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, for the Wage Portion, by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within twenty-one (21) business days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) business days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, if requested by the Class Member prior to the void date.
- 4.4.3. For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient"). The Parties have designated the Make-A-Wish Foundation-Greater Los Angeles as the Cy Pres Recipient. The Parties, Class

Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members or Aggrieved Employees (including, but not limited to: retirement plans, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, paid time off, sick leave plans, PTO plans, pension plans, or any other benefit plan). It is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which Plaintiff, Class Members and Aggrieved Employees may be entitled under any benefits plans.)

**5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, Class Members, Aggrieved Employees and Class Counsel will release claims against all Released Parties as follows:

- 5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, releases and discharges Released Parties from all claims, transactions, or occurrences that occurred during the Class Period and PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint; (b) any and all claims arising from Plaintiff's employment with Defendant and the termination of Plaintiff's employment with Defendant; and (c) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, and ascertained during the Action and released under 5.2 and 5.3, below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff represents that he is unaware of any such claims. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**

**HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

- 5.2 Release by Participating Class Members Who Are Not Aggrieved Employees. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- 5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees. All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action including, (1) failure to pay Aggrieved Employees for all hours worked; (2) failure to provide compliant meal periods or premium compensation in lieu thereof; (3) failure to provide compliant rest periods or premium compensation in lieu thereof; (4) failure to provide accurate itemized wage statements; (5) failure to pay all wages due at separation; (6) failure to pay earned wages to Aggrieved Employees; and (7) failure to reimburse for necessary business expenses.
- 5.4 Release by PAGA Counsel. PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

**6. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree Plaintiff will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to

any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) signed declarations from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [and/or] the Administrator; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Make-a-Wish Foundation-Greater Los Angeles. In their Declarations, Plaintiff and Class Counsel's Declarations shall state whether they are aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 **Responsibilities of Class Counsel.** Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.3 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns. If the Court declines to approve the Settlement, the entire Agreement is deemed void and unenforceable as if no settlement of any claim was ever reached. All negotiations, statements and proceedings and data relating thereto shall be protected by California Evidence Code §1152 and shall be without prejudice to the rights of any of the Parties.

## **7. AMENDED COMPLAINT TO ADD PAGA.**

- 7.1 As part of this Settlement, Plaintiff will file a Second Amended Complaint alleging the claims for (1) failure to reimburse for all business expenses incurred by the Settlement Class Members on behalf of Defendant (Violation of Labor Code §§ 2800 and 2802); and (2) violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) predicated on the same or similar facts and/or claims alleged in the Action and/or any PAGA Notice sent to the LWDA by Plaintiff in or prior to the Action, as well as any claims that could have been pled under the California Labor Code and California Industrial Welfare Commission Wage Orders, based upon the failure to reimburse all reasonable business expenses. Plaintiff will

provide Defendant's counsel the opportunity to review the Second Amended Complaint before filing it with the Court. Before filing the Second Amended Complaint, Plaintiff will also submit a PAGA Notice comporting with this Agreement and will provide Defendant's counsel the opportunity to review the PAGA Notice and provide comments prior to submitting it to the LWDA. Plaintiff will provide this PAGA Notice to Defendant within seven (7) days of signing this Agreement and will provide a stipulation and proposed order for leave to file the Second Amended Complaint sixty-five (65) days after the date the PAGA Notice is submitted to the LWDA. Upon final approval by the Court, the claims released by the Participating Class Members and Aggrieved Employees will include all claims pleaded in the Second Amended Complaint in the Action and any PAGA Notice sent to the LWDA by Plaintiff; and as set forth in Paragraphs 5.1-5.3.:

- 7.2 Defendant will be permitted to file an Answer within thirty (30) days of the Second Amended Complaint operative filing date, i.e., sixty-five (65) days after Plaintiff submits the PAGA Notice.

## **8. SETTLEMENT ADMINISTRATION.**

- 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 No later than five (5) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) business days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish

translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 8.4.3 Not later than five (5) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4 The deadlines for Class Members' written objections, challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.4.5 If the Administrator, Defendant or Class Counsel are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties, by and through their respective counsel of record, will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

## 8.5 Requests for Exclusion (Opt-Outs).

- 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement by stating in writing that the Class Member does not want to be included in the Settlement of the lawsuit entitled *Jose Barragain v. Panda*



*Restaurant Group, Inc., et al.*, Case No. BC680246, and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.4 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Aggrieved Employees may not object to the PAGA Penalties.
- 8.6 Challenges to Calculation of Workweeks or PAGA Pay Periods. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges. Defendant's records shall presumptively control unless the Class Member can produce documentation evidence of other Workweeks or PAGA Pay Periods worked during the Class Period.
- 8.7 Objections to Settlement.

- 8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payment.
- 8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).
- 8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement. Aggrieved Employees may not object to the PAGA Penalties.
- 8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
  - 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
  - 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
  - 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written

reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

## 9. **CLASS AND AGGRIEVED EMPLOYEE SIZE ESTIMATES.**

- 9.1 Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are six hundred and two (602) Class Members and 66,919 Total Workweeks during the Class Period and there were 65 Aggrieved Employees who worked a total of 1,338 Pay Periods during the PAGA Period.

- 9.2 In no event shall Defendant be liable for the payment of any amounts exceeding the Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00).

**10. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) business days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. The Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until the Effective Date.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires

a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph.

- 10.6 Subject to the obligation(s) of mutual full cooperation that will be set out in the final Settlement Agreement, either Plaintiff or Defendant may terminate this Settlement if after submitting the settlement for approval to the Court, the Court declines to enter the preliminary approval order, the final approval order, or judgment in substantially the form submitted by the Parties, or if an appeal opposing the judgment is not ultimately dismissed. The terminating Party shall give to the other Party (through its/his counsel) written notice of its decision to terminate no later than fourteen (14) days after receiving notice that one of the enumerated events has occurred. Termination shall have the following effects:
- (a) The Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms.
  - (b) In the event the Agreement is terminated, Defendant shall have no obligation to make any payments to any party, Participating Class Member, Aggrieved Employee or Class Counsel.
  - (c) The preliminary approval order, final approval order and judgment shall be vacated.
  - (d) The Settlement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions prior to the Settlement.
  - (e) Except as otherwise discoverable, neither this Agreement nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.
- 10.7 If 10% or more Settlement Class Members timely opt out of the class settlement, Defendant shall have the sole and absolute discretion to rescind/void the Agreement within fifteen (15) r days after receiving from the Settlement Administrator the final list of opt-outs. Defendant agrees to meet and confer in good faith with Class Counsel before rescinding or voiding this Agreement. In the event that Defendant elects to rescind/void the Agreement, Defendant shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of the

Agreement for failure to satisfy a condition of settlement, and the Agreement shall become null and void and have no further force or effect.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members. Class Counsel will be able to reference the Settlement on its website for purposes of marketing without naming the Defendant or



Defendant's counsel directly or indirectly. Plaintiff nor Plaintiff's counsel shall be responsible for any disclosure due to any public filings in this Action. This paragraph shall not act as a bar to Plaintiff and Class Counsel performing their duty to the Class. At any point, Class Counsel and Plaintiff agree not to publicize the terms of this Settlement with the media, including but not limited to, any newspaper, journal, magazine, website, social media platform and/or online reporter of settlements or on any website.

- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
  - 12.8.1 Modification of Agreement. This Agreement, and all parts of it, may be

amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

- 12.9 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.11 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.12 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.13 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff and Class Counsel shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.15 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.16 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kevin Mahoney, Esq.  
[kmahoney@mahoney-law.net](mailto:kmahoney@mahoney-law.net)  
George B. Singer, Esq.  
[gsinger@mahoney-law.net](mailto:gsinger@mahoney-law.net)  
MAHONEY LAW GROUP, APC  
249 East Ocean Boulevard, Suite 814  
Long Beach, CA 90802  
Telephone: (562) 590-5550  
Facsimile: (562) 590-8400

To Defendant:

Elizabeth Staggs Wilson, Esq.  
Luis E. Lorenzana, Esq.  
LITTLER MENDELSON, P.C.  
633 West 5th Street, 63rd Floor  
Los Angeles, CA 90071  
Telephone: 213.443.4300  
E-mail: [Estaggs-wilson@littler.com](mailto:Estaggs-wilson@littler.com);  
[llorenzana@littler.com](mailto:llorenzana@littler.com)

12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. Plaintiff will file a notice of settlement with the Court on the day Plaintiff and Class Counsel sign this Agreement; and Plaintiff will submit the required notices to the LWDA upon signature of this Agreement, Preliminary Approval and Final Approval. The Parties further agree that upon the signing of this Agreement, pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: Jun 1, 2023  
\_\_\_\_\_, 2023

By:

  
DocuSign Envelope ID: 52531041-FB71

Jose Barragain (Plaintiff)

Dated: \_\_\_\_\_, 2023

By:

Peggy Cherng, Co-Founder, Co-Chief  
Executive Officer and Co Chairman, Panda  
Restaurant Group, Inc.

Kevin Mahoney, Esq.  
[kmahoney@mahoney-law.net](mailto:kmahoney@mahoney-law.net)  
George B. Singer, Esq.  
[gsinger@mahoney-law.net](mailto:gsinger@mahoney-law.net)  
MAHONEY LAW GROUP, APC  
249 East Ocean Boulevard, Suite 814  
Long Beach, CA 90802  
Telephone: (562) 590-5550  
Facsimile: (562) 590-8400

To Defendant:

Elizabeth Staggs Wilson, Esq.  
Luis E. Lorenzana, Esq.  
LITTLER MENDELSON, P.C.  
633 West 5th Street, 63rd Floor  
Los Angeles, CA 90071  
Telephone: 213.443.4300  
E-mail: [Estaggs-wilson@littler.com](mailto:Estaggs-wilson@littler.com);  
[llorenzana@littler.com](mailto:llorenzana@littler.com)

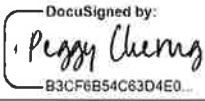
12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Jose Barragain (Plaintiff)


May 31, 2023  
Dated: \_\_\_\_\_, 2023

By:   
B3CF6B54C83D4E0...  
Peggy Cherng, Co-Founder, Co-Chief  
Executive Officer and Co Chairman, Panda  
Restaurant Group, Inc.

APPROVED AS TO FORM ONLY:


Dated: May 31, 2023

**MAHONEY LAW GROUP, APC**

  
\_\_\_\_\_  
Kevin Mahoney, Esq.  
George B. Singer, Esq.  
Attorneys for Plaintiff, JOSE BARRAGAIN

Dated: May 31, 2023

**LITTLER MENDELSON, PC**

  
\_\_\_\_\_  
Elizabeth Staggs Wilson, Esq.  
Luis Lorenzana, Esq.  
Attorneys for PANDA RESTAURANT GROUP, INC.