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and the Certified Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

LEE, RONGHUI, an individual California
resident on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HUNGrypanda US INC., a Delaware
corporation; and DOES 1-10, inclusive,

Defendant.

Case No. CIVSB2126633

**DECLARATION OF TORY JOSEPH
FAVAROTE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT;
APPOINTMENT OF SETTLEMENT
ADMINISTRATOR; APPROVAL OF
CLASS NOTICE PACKET; SETTING OF
FINAL APPROVAL HEARING**

Date: August 1, 2024
Time: 8:30 a.m.
Judge: Hon. Jessica Morgan
Dept.: S-26

Action Filed: September 2, 2021
Trial Date: None

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DECLARATION OF TOREY JOSEPH FAVAROTE

I, Torey Joseph Favarote, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California, and before this Court. I am a partner at Gleason & Favarote LLP, attorneys of record for plaintiff Ronghui Lee and the Certified Class. I have responsibility for the handling of this matter along with my co-counsel Joseph R. Becerra of the Becerra Law Firm. I have personal knowledge of the facts stated herein and would and could testify competently thereto if sworn as a witness.

2. This is a wage and hour class action prosecuted by Ronghui Lee (hereinafter referred to as "Plaintiff" or "Lee") against his former employer HungryPanda US Inc. ("HungryPanda" or "Defendant") for numerous violations of the California Labor Code.

3. As an overview, Defendant is a delivery service company similar to Uber Eats and Doordash, but specifically tailored to the Chinese community. In its business endeavor, Defendant engaged Plaintiff and the Class of approximately 3,323 "Drivers" or "Contractors" to make food deliveries to Defendant's customers from restaurants and grocery stores via Defendant's mobile phone application. Defendant classified such Drivers as independent contractors, and the gravamen of the lawsuit is that such Drivers were misclassified and should have been classified as employees and subject to the protections and benefits of the wage and hour provisions of the California Labor Code and IWC Wage Orders. The Settlement reached is calculated based on the number of workweeks worked by each Class Member during the Class Period. Each Class Member's individual settlement share will be based proportionally on the number of "weeks worked" or "workweeks" during the Class Period. The Class is made up of approximately 3,323 Drivers who worked approximately 44,095 workweeks during the Class Period of September 2, 2017 through May 9, 2023, in California.

4. Defendant hires individual Drivers to monitor Defendant's web and smartphone-based ordering application (hereinafter the "HungryPanda App"), along with their personal cellphones for calls and electronic messages from human dispatchers and execute food delivery orders which are placed by Defendant's customers. Plaintiff alleges that Defendant misclassified

1 these Drivers as independent contractors during the Class Period.

2 **Procedural History of the Action**

3 5. On September 2, 2021, Plaintiff filed this wage and hour class action against
4 Defendant which asserts 12 causes of action rooted in the Labor Code that stemmed from
5 Defendant's uniform misclassification of all the Class Members as independent contractors instead
6 of employees.

7 6. On November 9, 2021, Plaintiff amended his Complaint to include a PAGA cause
8 of action after properly exhausting his administrative remedies with the California Labor &
9 Workforce Development Agency ("LWDA") on August 27, 2021. The LWDA did not respond or
10 otherwise express any intent to investigate Plaintiff's claims. Attached hereto as **Exhibit "5"** is a
11 true and correct copy of the First Amended Class Action Complaint.

12 7. After Defendant failed to answer or otherwise respond to the amended complaint
13 within the statutory time period, despite being properly served, the Court entered default against
14 HungryPanda on May 20, 2022. Thereafter, Defendant moved to set aside the default and after
15 multiple rounds of briefings and two oral arguments, the Court, on February 9, 2023, denied
16 Defendant's motion to set aside the default.

17 8. On March 24, 2023, Plaintiff moved for class certification which was granted by the
18 Court on May 9, 2023. Attached hereto as **Exhibit "2"** is a true and correct copy of the Order
19 certifying the Class in this Action. The Court certified the following class and subclasses:

20 **The Class:** All individuals currently or formerly employed by Defendant as an independent
21 contractor in the title of Driver, Contractor, or other similar titles/duties who performed deliveries
22 for Defendant and/or its customers in California at any time within the Class Period [September 2,
23 2017 through May 9, 2023].

24 A. **Subclass A:** All Class Members employed during the time from September 2, 2018,
25 through Class Certification [May 9, 2023], who terminated their employment relationship with
26 Defendant and did not receive all wages owed to them in accordance with Labor Code § 201-203
27 (The "Waiting Time Penalties Subclass").

28 B. **Subclass B:** All Class Members employed during the time from September 2, 2017,

1 through Class Certification [May 9, 2023], who received an unauthorized and/or unlawful
2 deduction to their pay (The “Wage Theft Subclass”).

3 C. **Subclass C:** All Class Members employed during the time from September 2, 2017,
4 through Class Certification [May 9, 2023], who incurred reasonable business expenses in the
5 discharge of their duties and were not reimbursed.

6 D. **Subclass D:** All Class Members employed during the time from September 2, 2020,
7 through Class Certification [May 9, 2023], who did not receive accurate itemized wage statements
8 in accordance with Labor Code § 226. (The “Wage Statement Subclass”).

9 E. **Subclass E:** All Class Members employed during the time from September 2, 2017,
10 through Class Certification [May 9, 2023], who were not paid all wages, including all correct
11 overtime wages, for time spent under Defendant’s control. (The “Unpaid Wages Subclass”).

12 F. **Subclass F:** All Class Members employed during the time from September 2, 2017,
13 through Class Certification [May 9, 2023], who were not provided with a legally sufficient meal
14 period, or a premium paid at their regular rate of pay in lieu thereof. (The “Meal Period
15 Subclass”).

16 G. **Subclass G:** All Class Members employed during the time from September 2, 2017,
17 through Class Certification [May 9, 2023], who were not provided with a legally sufficient rest
18 break, or a premium paid at their regular rate of pay in lieu thereof. (The “Rest Break Subclass”).

19 9. Following certification, Plaintiff moved for an order approving the class notice and
20 on August 11, 2023 the Court approved Plaintiff’s proposed class notice and its distribution to the
21 class and ordered that the notice be distributed via first-class mail and/or email in both English and
22 Chinese by ILYM Group, Inc. Attached hereto as **Exhibit “3”** is a true and correct copy of the
23 Court’s Order approving the Class Notice. Over Defendant’s objection, the Court also ordered
24 Defendant to provide the Class contact information to ILYM to facilitate sending the Class Notice.

25 10. After notice, approximately 3,323 Class Members did not opt out of the case and
26 are covered by the Settlement. Eighteen Class Members opted out of the Class after receiving the
27 notice and are not part of the settlement class.

1 **Discovery and Investigation**

2 11. Prior to the denial of Defendant's motion to set aside the default in this matter,
3 Plaintiff propounded, and Defendant responded (although mostly objections) to (1) Form
4 Interrogatories – General; (2) Form Interrogatories – Employment Law; (3) Special Interrogatories;
5 (4) Requests for Production of Documents; (5) Requests for Admissions. Following the denial of
6 Defendant's motion to aside default, Defendant refused to participate in the discovery process
7 requiring Plaintiff to subpoena Defendant as a non-party. Plaintiff subpoenaed the Class contact
8 information and after Defendant's motion to quash was denied by the Court, Defendant produced
9 the contact information. Over the course of the last 3 years, the bulk of Plaintiff's investigation
10 into the allegations in the Complaint consisted of interviewing class members and obtaining
11 documentary evidence from them regarding the claims at issue. Class Counsel's office, via a
12 Mandarin speaking staff member, conducted dozens of interviews, obtained numerous payroll
13 documents, and investigated various occurrences throughout the litigation including as to
14 Defendant's policies and practices as experienced by the Class Members and Defendant's conduct
15 throughout the Class Period. While the process was slow given the language barriers, the
16 investigation was successful in identifying numerous violations and assisted in obtaining
17 certification of the Class.

18 12. Additionally, as part of the mediation process, Defendant produced a detailed
19 declaration from its Senior Delivery Operations Manager, Shengzhi Liu, providing (i) the total
20 number of Class Members who worked during the Class Period; (ii) the total workweeks worked
21 by the Class Members during the Class and PAGA periods; (iii) the average amount of time (in
22 hours) that Class Members delivered per day; (iv) the aggregate number of work weeks that drivers
23 performed at least one delivery; (v) aggregate number of delivery trips made by the Class
24 Members; (vi) the average amount paid to Class Members per delivery; (vii) average number of
25 deliveries made by Class Members per day; (viii) the average distance traveled by Class Members
26 per delivery; and (ix) the average amount of time (in hours) that Class Members spent making a
27 delivery from when they accepted the delivery offer on the app until the delivery as completed.
28 Attached hereto as **Exhibit "4"** is a true and correct copy of the Verification provided and executed

1 by Shengzhi Liu.

2 13. In addition to this vital information that formed the basis to which Class Counsel
3 assessed the strengths and weaknesses of the case and the potential damages to the Class,
4 Defendant provided its legal basis for its position that the Order denying its motion to set aside the
5 default would prevail on appeal. The issue of the default was also a substantial risk factor
6 associated with analyzing the advantages and disadvantages of reaching a negotiated resolution on
7 behalf of the Class. Finally, the issue of Defendant's financial condition was a major risk factor for
8 the Class. Defendant is a start-up, niche, food delivery company with very few tangible assets.
9 Therefore, to establish its financial condition and the benefit to the Class of the Settlement,
10 Defendant, as part of this Settlement and Motion for Preliminary Approval, agreed to file the
11 following financial documents with the Court, under seal: (1) California and federal tax returns for
12 the last two years; (2) profit and loss statements for the last two years; (3) balance sheets for the
13 last two years.

14 14. The parties conducted a mediation in San Diego, California with renowned
15 wage/hour mediator Hunter Hughes on February 26, 2024. The case did not settle at mediation,
16 but the parties continued exchanging additional information. On June 24, 2024, the parties reached
17 a settlement and executed a Memorandum of Understanding ("MOU"). Thereafter, on July 9,
18 2024, the parties finalized and executed the Settlement that is before the Court. Attached hereto as
19 **Exhibit "1"** is a true and correct copy of the fully executed Settlement Agreement ("Settlement").

20 **Principal Terms of the Settlement**

21 15. HungryPanda will pay \$1,500,000.00 (the "Gross Settlement Fund") to settle the
22 Action on a class-wide basis for the approximately 3,323 Class Members. (Settlement, ¶ 21.) The
23 total number of Class Member workweeks settled under the Settlement Agreement is
24 approximately 44,095 (Settlement is calculated per workweek worked during the Class Period).
25 (Settlement, ¶ 21.)

26 16. From the Gross Settlement Fund will be paid (a) \$938,000 in *pro rata* awards to the
27 Class Members based on the number of workweeks worked between September 2, 2017 and May
28 9, 2023 (the "Net Settlement Amount") (b) a payment of \$150,000 for PAGA penalties with 75%

1 (\$112,500) going to the LWDA for its share of the civil penalties and \$37,500 (25%) going to
2 Class Members; (c) Class Representative Payment to Plaintiff in the amount of \$10,000.00 (as
3 approved by the Court) to compensate him for his services to the Class in pursuing the Action and
4 the risk he assumed on behalf of the absent Class Members; (d) Class Counsel Attorneys' Fees of
5 \$500,000 (33.33% of the Gross Settlement Fund as approved by the Court) to compensate them for
6 their services to the Class in prosecuting the Action and securing the Settlement, and Class
7 Counsels' litigation expenses of up to \$25,000 (as approved by the Court); (e) a payment to the
8 Settlement Administrator, ILYM Group, Inc. for its reasonable fees and expenses incurred in
9 administering the Settlement, which are estimated at approximately \$27,000.00; (f) any other fees
10 or expenses (other than attorneys' fees and expenses) incurred in implementing the terms and
11 conditions of Settlement and securing the judgment from the Court pursuant to the Settlement.
12 None of the Gross Settlement Amount will revert to Defendant. (Settlement, ¶¶ 11, 21, 24, 28, 39.)

13 17. The Individual Settlement Payments will be distributed to all Class Members as
14 follows:

- 15 ➤ Each Class Member's potential share of the Net Settlement Amount will be
16 calculated and apportioned from the Net Settlement Amount to Class Members on a
17 pro rata basis depending on the number of "weeks worked" or "workweeks"
18 (defined as any calendar week during the Class Period) in which a Class Member
19 performed at least one day of work for Defendant. Class Members do not need to
20 submit a claim to participate and receive their Individual Settlement Payment.
21 (Settlement ¶ 47)
- 22 ➤ Individual PAGA payments will be calculated and apportioned from the 25%
23 portion of the PAGA Settlement Amount allocated to PAGA Class Members on a
24 pro rata basis depending on the number of pay periods in which a PAGA Class
25 Member performed at least one day of work for Defendant during the PAGA Period.
26 PAGA Class Members do not need to submit a claim to participate in the PAGA
27 portion of the Settlement. (Settlement ¶ 48).

28 18. In the event of a dispute over a Class Member's Individual Settlement Payment, the

1 Settlement Administrator will resolve the dispute based on information provided by Defendant and
2 the Class Member. (Settlement, ¶ 55.) Before individual payroll taxes, and before PAGA
3 penalties, the average Individual Net Settlement Payment to Class Members is expected to be
4 approximately \$282.28. The average PAGA group member payment is approximately \$13.25, for
5 a total of approximately \$295.53 per Class Member on average.¹

6 19. Once the judgment becomes final and the settlement sum is paid in full, Class
7 Members will release their respective claims against Defendant and its related entities, under
8 California law that were raised or that could have been raised in the Action based on the facts
9 alleged in the Action. (Settlement, ¶ 31.) The Release Period is September 2, 2017 through July 1,
10 2024. (Settlement ¶ 35.)

11 20. Defendant will pay the Gross Settlement Fund amount as follows: First payment of
12 \$500,000 due within 10 calendar days of Final Approval, with the remaining \$1,000,000.00 due
13 within 6 months after the first payment (“Final Payment Date”). These funds are to be deposited in
14 an escrow account managed by the Settlement Administrator. (Settlement ¶ 41.)

15 21. Within 30 calendar days after preliminary approval of the Settlement is granted by
16 the Court, Defendant will provide the Settlement Administrator with data sufficient to calculate the
17 number of “weeks worked” or “workweeks” that each Class Member worked during the Class
18 Period and the number of pay periods worked during the PAGA Period according to Defendant’s
19 records. (Settlement ¶ 51.) Within 15 days of receiving the Class Members’ data, the Settlement
20 Administrator will send to all Class Members (in English and Chinese) the Class Notice, which
21 will show each Class Member his or her reported number of workweeks worked during the Class
22 Period and an estimate of his or her Individual Settlement Payment. (Settlement, ¶ 54.)

23 22. The Class Notice will be sent to the Class Members by First-Class U.S. Mail based
24 upon the last know addresses provided by Defendant, unless modified by any updated address
25 information that the Settlement Administrator obtains in the course of the administration of the
26 Settlement. (Settlement, ¶ 52.) For any notices returned, the Settlement Administrator will make

27 ¹ 25% of \$150,000 PAGA Allocation = \$37,500; \$37,500 ÷ 2,830 PAGA group members =
28 \$13.25.

1 reasonable efforts to find corrected addresses. (Settlement, ¶ 53.)

2 23. Class Members will have 60 calendar days after the Class Notice documents are
3 mailed to object to the Settlement. (Settlement ¶¶ 39, 59.) The objection process is simple and
4 straightforward, and only requires that the Class Member send a signed written explanation of their
5 objection with the case name and number and the grounds for the objection. (Settlement ¶ 25.)

6 24. In addition to filing these papers and the Settlement with the LWDA, Class Counsel
7 will provide any judgment within 10 days to the LWDA.

8 **The Claims Alleged in the Action**

9 25. Plaintiff and Class Counsel have determined that it is prudent to compromise and
10 settle the Class Members' misclassification claims and the derivative Labor Code causes of action.
11 Plaintiff alleges that the Class Members were misclassified as independent contractors and that
12 they should have been treated and paid as employees for all time worked for Defendant. Plaintiff
13 and the Class Members assert that Defendant's misclassification of them as independent
14 contractors, and not employees, created violations of the Labor Code pertaining to the payment of
15 employees, providing meal and rest breaks to employees, reimbursing employees for incurred and
16 necessary business expenses, and the prohibition of charging employees for necessary business
17 items. Plaintiff's theory of recovery is that under the California Supreme Court test set forth in
18 Dynamex Operations West, Inc. v. Superior Court of Los Angeles, 4 Cal. 5th 903 (2018), a case
19 involving delivery drivers, Plaintiff and the Class Members were, as a matter of law, employees
20 and entitled to all the protections of the California Labor Code. The facts of Dynamex bear a
21 striking similarity to the facts in this case, the defendant in Dynamex also hired delivery drivers,
22 who were all classified as independent contractors and had "to provide their own vehicles and pay
23 for all of their transportation expenses, including fuel, tolls, vehicle maintenance, vehicle liability
24 insurance, as well as all taxes and workers' compensation insurance." Dynamex at 917, (2018). In
25 that case, the California Supreme Court adopted the ABC Test for determining whether a driver is
26 properly classified as an employee or independent contractor. In 2019, the California legislature
27 moved to codify the "ABC Test" enunciated by the California Supreme Court in Dynamex as law
28 through Assembly Bill No. 5 ("AB 5"), which was originally codified in Labor Code § 2750.3, and

1 later became Labor Code § 2775. The statute created the presumption that all workers are
2 employees unless the employer can show that they meet every prong of the ABC Test. Labor Code
3 § 2775 (the “ABC Test”), provides:

4 “...for the purposes of wage orders of the Industrial Welfare Commission, a
5 **person providing labor or services for remuneration shall be considered an**
6 **employee rather than an independent contractor unless the hiring entity**
7 **demonstrates that all of the following conditions are satisfied:**

8 (A) The person is free from the control and direction of the hiring entity in
9 connection with the performance of the work, both under the contract for the
10 performance of the work and in fact.

11 (B) The person performs work that is outside the usual course of the hiring
12 entity's business.

13 (C) The person is customarily engaged in an independently established trade,
14 occupation, or business of the same nature as that involved in the work performed.”
15 Cal. Lab. Code § 2775 (West) (emphasis added).

16 26. Plaintiff's theory of recovery for the entire case rests on the issue of
17 misclassification and the basis for his theory and the application of the ABC Test in his favor. To
18 that end, Plaintiff's theory of recovery is that Defendant utilized common control over the Drivers
19 throughout their shifts, including directing how the drivers were expected to interact with the
20 Defendant's customers. Plaintiff's theory is that this common evidence would prevent Defendant
21 from satisfying prong “A” of the ABC Test. Plaintiff also believed that there was a common
22 question of law as to whether the Drivers were free from Defendant's control under prong “A”
23 because they all work shifts where they use the Defendant's app or human dispatchers to get pick
24 up instructions from the Defendant. Additionally, Plaintiff's theory was that it is impossible for
25 Defendant to meet part “B” of the ABC Test because, despite Defendant's assertions that it is a
26 “tech company” and not a delivery company, that simply is not true.

27 27. However, Defendant contends Class Members worked independently without any
28 supervision under the terms of their agreements with Defendant. Defendant also argued
vehemently that the Class Members did not work set “shifts” and asserted that the Class Members
set their own schedules and that the Class Members were free to work whenever they wanted for
HungryPanda or any other “gig” company performing delivery or driving services. Defendant
further argued that, as of December 16, 2020, and the passage of California Proposition 22, the

1 App-Based Drivers and Services Act, codified under the Business and Professions Code §§ 7448 et
2 seq., it has complied with all of the requirements of that Act precluding any liability after
3 December 16, 2020. Defendant also argued that individual issues predominate the Proposition 22
4 inquiries.

5 28. On December 16, 2020, approximately one year after Defendant began operations,
6 California voters passed Proposition 22, which expressly permits app-based drivers to work as an
7 independent contract, notwithstanding the ABC Test:

8 [A]n app-based driver is an independent contractor and not an employee or agent with
9 respect to the app-based driver's relationship with a network company if the following
conditions are met:

10 (a) The network company does not unilaterally prescribe specific dates, times of day, or
11 a minimum number of hours during which the app-based driver must be logged into the
network company's online-enabled application or platform.

12 (b) The network company does not require the app-based driver to accept any specific
13 rideshare service or delivery service request as a condition of maintaining access to the
network company's online-enabled application or platform.

14 (c) The network company does not restrict the app-based driver from performing
15 rideshare services or delivery services through other network companies except during
16 engaged time.

17 (d) The network company does not restrict the app-based driver from working in any
other lawful occupation or business.

18 Cal. Bus. & Prof. Code § 7451(a)-(d).

19 29. Each of Plaintiff and the Class's non-wage claim causes of action rest on the issue
20 of misclassification. The failure to reimburse cause of action is premised on the requirements of
21 the Labor Code that employers reimburse employees for all necessary business expenses, here
22 Plaintiff and the Class's utilization of their personal cell phones and automobiles to complete
23 deliveries to Defendant's customers. Plaintiff's claims for failure to provide accurate itemized
24 wage statements, failure to maintain accurate payroll records, failure to pay all wages due on
25 termination, unfair business practices, and PAGA claims are all derivative of Plaintiff's
26 misclassification cause of action. Because the claims are derivative, they entail the same risks as
27 the other claims.

28 30. The Settlement was reached as a result of the extensive arm's-length negotiations

1 between experienced wage/hour class action counsel. Though cordial and professional, the
2 settlement negotiations have been adversarial and non-collusive in nature. The Settlement reached
3 is the product of substantial effort by the parties and their counsel after almost three years of very
4 hard-fought litigation. While Plaintiff believes that he has a high probability of success in
5 defending the default based upon the Court's thorough analysis and ruling, the potential for an
6 adverse order reversing the trial Court's order created concern. Additionally, the area of law on
7 "gig economy workers" such as delivery drivers is constantly in flux with the law changing rapidly
8 and the uncertainty regarding the application of Proposition 22 to this case. On top of all of those
9 uncertainties, is Defendant's financial condition, which was the seminal concern. The appeal
10 process could take years and Defendant has only been operating in California for the last 4 years
11 and asserts that it is not profitable. This Settlement is contingent on Defendant producing various
12 tax and income documents, under seal, to the Court as Defendant's financial condition is a major
13 factor in Plaintiff's assessment of the reasonableness of this Settlement. The likelihood of
14 Defendant being able to pay a large default judgment to the Class that is upheld by the Court of
15 Appeals years from now is perilous to say the least. Plaintiff and Class Counsel recognize the
16 inherent risks of litigation and understand the benefit of the Class receiving Settlement funds
17 immediately rather than risking potential unfavorable decisions on default, at the prove up trial, on
18 the damages awarded, and/or on an appeal that could take several more years to litigate. Further,
19 litigating and/or proving up Plaintiff and the Class's claims and damages, which involve 3,323
20 Class Members during the relevant periods, would have required substantial additional preparation
21 and discovery (i.e. subpoenas), as well as the consideration, preparation and analysis of expert
22 reports. Therefore, should litigation have progressed any further, each side would have incurred
23 significant expense. Plaintiff and his counsel understand that the financial condition of Defendant,
24 an unprofitable start-up company that only began operating in California in 2019, was a seminal
25 concern given the scope and size of the class and Defendant's likely inability to pay any large
26 judgment.

27 **31.** Plaintiff investigated and evaluated the factual strengths and weaknesses of the
28 Action before reaching the Settlement and engaged in sufficient investigation and formal and

1 informal discovery along with motion practice on the issue of Defendant's default and validity of
2 Plaintiff's issued subpoenas. Class Counsels' investigation as to the class claims, included
3 interviewing dozens of class members and reviewing documents produced by those Class
4 Members, including their payroll documents, photographs taken of work shifts that were worked
5 for Defendant, and policies and contracts provided to them by Defendant. Prior to default, Plaintiff
6 also propounded, and Defendant responded to written discovery including special interrogatories,
7 form interrogatories, requests for production of documents, and requests for admissions. Finally,
8 as part of the mediation of this matter, Defendant produced a verified declaration providing the key
9 class member data including pay and work shift information for the Class. The Settlement amount
10 is, of course, a compromise figure. It took into account risks related to the default being overturned
11 on appeal, damages, and all of the defenses asserted by Defendant.

12 **32.** Thus, the Settlement came only after counsel investigated the case and the parties
13 engaged in extensive motion practice, as set forth above. This litigation, therefore, has reached the
14 stage where the parties "certainly have a clear view of the strengths and weaknesses of their cases"
15 sufficient to support the Settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745
16 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986).

17 **33.** Plaintiff and his counsel have concluded it was reasonable to enter into the
18 Settlement at this stage of the litigation in the Action. Defendant will appeal the default entered
19 and has provided authority that the default can arguably only result in a limited judgment.
20 Moreover, if the default is reversed and the parties are forced to return to "square one", there are
21 arbitration agreements, and even getting past those issues there is a probability that Defendant
22 would defeat class certification or severely limit the size and scope of the Class based on its
23 arguments that it is in compliance with Prop 22.

24 **34.** There are significant risks that the default entered by the Court could be overturned
25 by the Court of Appeals in light of the complex and novel issues raised by a class-action default.
26 Defendant has argued that no class has ever recovered default damages in California. While
27 Plaintiff has relied on *Kass v. Young* (1977) 67 Cal.App.3d 100, 109— that case held that a class-
28 action default judgment was theoretically possible and *reversed* the class-action judgment before it.

1 35. Defendant also argues that *Kass* is distinguishable from the instant case. In *Kass*,
2 the class was well-defined to include 14,000 concert-goers who all suffered the same alleged
3 injury, paid an average ticket price of \$6.50, and sought exactly \$91,000 in collective damages.

4 36. Defendant argues that Plaintiff's complaint includes none of that information.
5 That in reviewing the complaint, no one can tell how many class members there are, how long the
6 class period will extend, how many violations are alleged, and what the estimated or maximum
7 damages would be in the case. If the trial court awards millions of dollars in a default proceeding
8 to that Class, HungryPanda will challenge that judgment on numerous grounds, including that it
9 violates HungryPanda's due process rights by forcing it to pay sums of money to absent Class
10 Members—when those sums and those absent Class Members were not identified in the complaint.
11 Defendant asserts the fact that this is a class action cannot vitiate HungryPanda's due process right
12 to have fair notice of its potential liability. (See *Federal Communications Commission v. Fox*
13 *Television Stations, Inc.* (2009) 556 U.S. 502 [describing constitutional fair-notice right]; *Duran v.*
14 *U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1 [court cannot use class-action device to vitiate rights a
15 defendant would have in an individual action].)

16 37. Additionally, if the default was overturned, Defendant asserts that it has valid
17 arbitration agreements with Plaintiff and the members of the Class that include class action
18 waivers. Notwithstanding that it filed a motion to compel arbitration at the beginning of this
19 litigation, Defendant argues that a class-action judgment would raise novel issues regarding the
20 parties' arbitration agreements. According to Defendant, a judgment in this case would essentially
21 nullify HungryPanda's arbitration agreement with every California Driver, including Drivers not
22 identified in the complaint, and even Drivers who joined HungryPanda *after the complaint was*
23 *filed*. The Federal Arbitration Act would foreclose such a result according to Defendant.
24 Defendant believes that the Court of Appeal would avoid this conflict by reversing the order
25 denying HungryPanda's motion to set aside the default.

26 38. Finally, with respect to the default and HungryPanda's appeal of it, if
27 HungryPanda is forced to obtain a bond pending appeal and the appeal is successful, Defendant
28 argues that Plaintiff would have to reimburse HungryPanda for the cost of that bond. This risk

1 provided a significant incentive for Plaintiff and the Class to settle this case *before* HungryPanda
2 takes an appeal from any judgment.

3 **39.** Even if the default is not set aside, Defendant argues that Plaintiff's recovery in
4 default is limited under Code of Civil Procedure section 580, which states that "(t)he relief granted
5 to the plaintiff" in a default action "cannot exceed that which he shall have demanded in his
6 complaint." Defendant argues that the California Supreme Court opinion in *Sass v. Cohen* (2020)
7 10 Cal.5th 861, 874, section 580 supports their argument and "ensure[s] that a defendant... is not
8 subject to open-ended liability" and has "adequate notice of the judgments that may be taken
9 against them."

10 **40.** Defendant argues that courts have construed section 580 strictly (*Greenup v.*
11 *Rodman* (1986) 42 Cal.3d 822, 826), and looked specifically to the "damages *amount* specifically
12 set out in the complaint," (*Becker v. S.P.V. Constr. Co, supra*, 27 Cal. 39 at p. 494). Where there is
13 "no specific amount of damages [] demanded, there is no adequate notice to the defendant—and a
14 default judgment entered under those conditions is void." (*Janssen, supra*, 57 Cal.App.4th at p.
15 279; see also *Electronic Funds Solutions, LLC v. Murphy*, (2005) 134 Cal.App.4th 1161, 1174
16 [finding that the plaintiff is required to provide notice of the maximum amount of defendant's
17 potential liability]; *Ludka v. Memory Magnetics International* (1972) 25 Cal.App.3d 316, 323.)

18 **41.** Defendant further argues that here, Plaintiff's complaint fails to give HungryPanda
19 any notice of the damages amount he seeks. According to HungryPanda, Plaintiff alleges a single
20 wage-statement violation in paragraphs 81-82 of the complaint, which carries a penalty of \$50.00
21 and in paragraphs 95-96, Plaintiff alleges at least one PAGA violation for \$100. But none of the
22 other allegations gives HungryPanda notice of the amounts sought and as a result, Defendant
23 argues that the Complaint does not permit Plaintiff to seek millions of dollars in a default action
24 but, that he is limited to \$150 as pled in the complaint.

25 **42.** Defendant further takes the position that Proposition 22 bars Plaintiff from
26 recovering any damages from 2021-2023. (See *James v. Uber Techs. Inc* (N.D. Cal 2021) 338
27 F.R.D. 123, 144 [Prop 22 "forecloses damages in this case for conduct that occurred after
28 December 16, 2020."].) Defendant argues that Prop 22 was passed by California voters in 2020

1 and made app-based delivery drivers independent contractors *as a matter of law*. (See Cal. Bus. &
2 Prof. Code, § 7451 [“Notwithstanding any other provision of law, ... an app-based driver *is* an
3 independent contractor and not an employee”].) Defendant asserts, without providing any
4 evidence, that it has fully complied with Prop 22 since it was passed and therefore the liability
5 period is limited in scope and the damages modest at best.

6 43. These uncertainties, along with the financial viability of a new start-up company
7 such as Defendant, bore heavily on the negotiations leading to the Settlement. In the face of these
8 legal and financial uncertainties, the parties agreed to a compromise Settlement of \$1,500,000. A
9 settlement is not judged *solely* against what might have been recovered had a plaintiff prevailed at
10 trial, nor does a settlement have to provide 100% of the damages sought to be fair and reasonable.
11 See *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246, 250 (2001) (“Compromise is
12 inherent and necessary in the settlement process ... [E]ven if the relief afforded by the proposed
13 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
14 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
15 settlement in which each side gives ground in the interest of avoiding litigation.”) (internal
16 quotation marks and citation omitted); *Officers for Justice*, 688 F.2d at 628 (“It is well-settled law
17 that a cash settlement amounting to only a fraction of the potential recovery will not . . . render the
18 settlement inadequate or unfair.”).

19 Plaintiff’s Exposure Analysis

20 44. This section of my declaration is presented to comply with *Kullar v Foot Locker*
21 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 120, 129, 132, *Clark v. American Residential Services*
22 *LLC* (2009) 175 Cal.App.4th 785, *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*
23 (2010) 186 Cal.App.4th 399 and *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576. The
24 evidence provided below is to enable the Court to “ensure that the recovery represents a reasonable
25 compromise” by providing “an understanding of the amount that is in controversy and the realistic
26 range of outcomes of the litigation” through submission of “data... that will enable the court to
27 make an independent assessment of the adequacy of the settlement terms.” *Kullar, supra*, 168
28 Cal.App.4th at 120 and 129.

1 **45. Plaintiff's Misclassification and Failure to Pay All Wages Claims** – This claim
2 and every derivative claim that flows from it was highly contested based on the application of first,
3 the Dynamex “ABC Test” from January 1, 2019 (Defendant began operations in California) to
4 December 15, 2020 and then from December 16, 2020 (passage of Proposition 22) to May 9, 2023
5 (the Class Period), the application of the App-Based Drivers and Services Act (“Prop. 22”). As set
6 forth above, because of the issue of Defendant’s default and its financial status (i.e. unprofitable),
7 my office did not value this case based on what the total judgment could be, but rather, what would
8 be a fair settlement amount for the Class given the financial limitations that were evident.

9 **46.** According to the verification provided by Defendant, when making deliveries, the
10 average Driver worked 4.69 hours/day and earned \$9.26 per delivery. The average Driver made
11 11.42 deliveries per workday and traveled (using their own transportation) approximately 4 miles
12 per delivery. As a result of that data, the average Driver earned approximately \$105.75 per
13 workday and worked 4.69 hours per “shift,” an hourly rate of \$22.55. However, there is no
14 accounting for the time spent “waiting to deliver” which forms the basis of most of the claims at
15 issue in this case. This assumed that the driver was working and under the control of Defendant on
16 a particular day from the time that they received their first call to the time that they completed their
17 last call. However, assuming that such Drivers should have received at least the minimum wage
18 for being under the control of Defendant and being prepared and “waiting” to deliver, the average
19 distribution amount of \$282.28 equates to a payout of more than 18 hours of “waiting to deliver”
20 pay (based on 2023 minimum wage of \$15.50/hour). Based on the fact that the average amount of
21 time (in hours) that Class Members delivered food for Defendant was approximately 4.5 hours per
22 day, the average payout to be received as part of this Settlement totals approximately 4 days of
23 “waiting to deliver” pay. Based on the fact that the Class Members earned approximately \$9.26
24 per delivery trip, the average settlement equates to pay for more than 30 deliveries. A limitation on
25 the data is that Defendant did not keep track of “continuous” hours worked, making it difficult and
26 time consuming, without specific declarations and instances from individual Class Members, to
27 calculate the number of shifts that were in excess of 8 hours per day.

28 **47.** One of the major hurdles in calculating unpaid wage damages in this case was how

1 to determine the level of control over the Drivers when they were waiting for the next delivery call.
2 We also had concern in calculating the total hours worked on a particular day assuming that all
3 time between the first delivery and the last was “work time” as opposed to time that Drivers could
4 engage in personal endeavors. To account for these variables would be difficult to compute so we
5 utilized a damage model that was based on the number of workweeks worked as opposed to
6 estimating hours worked. The more weeks worked by a Class Member the more compensation
7 under the Settlement they will receive. Additionally, and most importantly, the “sample” data we
8 had was limited given the default entered, Defendant’s position that as a non-party in default it had
9 limited obligations to produce information in discovery, and most importantly, Defendant’s
10 financial condition and its inability to pay any large class judgment. As a result of the foregoing
11 and all of the risks (default/appeal/Defendant’s financial condition/etc.), we believe that a
12 distribution of, on average, 18 hours of “waiting to deliver” pay is a reasonable settlement in this
13 case.

14 **48.** Furthermore, Defendant asserts that the Class Members have also signed arbitration
15 agreements with Defendant that contain class action waivers precluding them from participating in
16 any certified class -- further increasing the risk of proceeding on a class basis.

17 **49. *Plaintiff’s Expense Reimbursement Claim and Unlawful Deduction Claim*** --
18 Plaintiff contends that as a further consequence of Defendant’s treatment of the Class as
19 independent contractors and not employees, it failed to reimburse the Class for necessary business
20 expenses, including use of their vehicles/mileage to make deliveries and their mobile phones,
21 among other business expenses incurred in making deliveries for Defendant (e.g., mileage, etc.).
22 Further, Plaintiff alleges that Defendant charged Plaintiff for necessary and required business
23 expenses including food heating bags with the HungryPanda company logo used for food
24 deliveries and corporate HungryPanda signage for his automobile. Further, Plaintiff argued that he
25 and the Class were “fined” by Defendant if a delivery was not made to the satisfaction of the
26 customer. Defendant disputes Plaintiff’s allegations and asserted that Plaintiff and Class Members
27 were not required to use Defendant’s marketing materials and that there were no “fines” imposed
28 on couriers. Once again, this cause of action was contingent on the issue of the

1 employee/independent contractor analysis.

2 **50.** In this case, the data indicates that the average Class Member traveled
3 approximately 4 miles per delivery and made approximately 11.4 deliveries per shift, a total of
4 approximately 45 miles per work “shift,” a reimbursement requirement of \$28.57 per work shift,
5 based on the IRS mileage reimbursement rate of \$.655 per mile. Based on the limited data and
6 Defendant’s financial condition, Class Counsel believes that a settlement of \$21.28 per workweek
7 is a reasonable resolution of this cause of action as well.

8 **51. Meal/Rest Break, Failure to Pay Wages Due at Termination, Failure to Provide**
9 **Itemized Wage Statements and PAGA Claims** -- Plaintiff’s claims for failure to provide lawful
10 meal and rest breaks pursuant to Labor Code §§ 226.7, 512, and 1198; claim for failure to pay all
11 wages due at termination of employment pursuant to Labor Code § 203; claim for failure to
12 provide accurate itemized wage statements pursuant to Labor Code section 226; claim for unfair
13 business practices in violation of Business & Professions Code section 17200; and claim for civil
14 penalties pursuant to PAGA are derivative of their other claims. Since these claims are derivative,
15 they entail the same risks as the claims outlined above and we believe the settlement is fair and
16 reasonable in light of those risks.

17 **Class Representative Enhancement**

18 **52.** I believe that the Class Representative Enhancement of \$10,000.00 to Plaintiff, Mr.
19 Lee, is fair and reasonable. Mr. Lee spoke at length with Class Counsel, took efforts to educate
20 himself about the nature of the case, and carefully reviewed the Settlement and what was required
21 of him as a class representative. Had it not been for Mr. Lee in stepping forward and prosecuting
22 this litigation, and the steps he took to make sure he could competently and adequately represent
23 the Class through these final steps, the Settlement may have fallen apart, and the Class Members
24 could have received nothing. Over the last three years, Mr. Lee has spent significant time meeting
25 with me, both over the phone and in person on numerous occasions to review documents, execute
26 declarations and otherwise support the litigation. As I do not speak Mandarin, Mr. Lee and I would
27 communicate via an interpreter, further complicating matters and requiring our meetings to go
28 longer than are typical.

1 **53.** There are few individuals that are willing to act as class representatives and provide
2 the work, diligence and willingness to assume a substantial risk if HungryPanda had prevailed in
3 this case. The class representative's willingness to assume the financial risk is significant.
4 California law states that the losing party must pay the prevailing party's costs. As such, if Mr.
5 Lee did not prevail in this case, he could have been subjected to a cost award in the amount of tens
6 of thousands of dollars for litigation and also risks being blacklisted not only in the general job
7 market but in the much smaller job market available to those like him who do not speak English
8 fluently. The risk to him is much higher than the average class representative as he is part of a
9 smaller and much better connected employment community, and his other options are much more
10 limited than the average worker who speaks English fluently. As such, Class Counsel believes that
11 the requested enhancement for the class representative is fair and reasonable.

12 **54.** This declaration is also submitted in support of my qualifications as class action
13 counsel.

14 **Class Counsel Torey Joseph Favarote's Qualifications**

15 **55.** My firm and I have extensive experience handling wage and hour class actions
16 and/or representative actions in state and federal courts. I personally have been practicing since
17 1998 and started as an associate at Brobeck, Phleger and Harrison, LLP in the Employment Group.
18 I spent the majority of my five years there handling wage and hour class actions. In the
19 approximately 26 years that I have been practicing law, I estimate that I have been counsel of
20 record on at least 100 wage and hour class actions and/or representative actions and have dedicated
21 at least 75 percent of my time over my career handling wage and hour cases.

22 **56.** I am admitted, in good standing, to practice as an attorney in the State of California
23 and have never been subject to discipline by the State Bar of California.

24 **57.** I am admitted to practice in all California state courts as well as in the following
25 federal courts: Northern District of California, Central District of California, Southern District of
26 California, Eastern District of California, and the Ninth Circuit Court of Appeals.

27 **58.** I and my firm Gleason & Favarote, LLP have been counsel of record in the
28 following wage and hour class and/or representative actions.

- a. Joshua Loughrie et al. v. Target Corporation., Case No. CIVDS1804580
- b. Alexander Duarte v. LAZ Parking, et al., LASC Case No. BC646274
- c. Peter Thom v. PMAB-3, LLC, et al., Case No. 30-2015-00825585-CU-OE-CXC
- d. Nathan A. Scholz, et al. v. Tom James Company, et al., Case No. BC499218
- e. Keith Lee v. American Linehaul Corporation, et al., Case No. BC589745
- f. Nathan Pulley v. Stein Mart, Inc., Case No.: 34-2015-00186167
- g. La Tina Sankey v. Aéropostale West, Inc., Case No.: BC457468
- h. Angel Pakaz v. Aéropostale West, Inc., Case No.: BC493736
- i. Andrea Ware v. Soho House West Hollywood, LLC, et al., Case No.: BC496246
- j. Xiao Ping Zhu v. TAWA Supermarket, Inc., Case No.: BC398659
- k. Ivan Rojo v. FMI, Inc., Case No.: BC426208

Attorneys' Fees & Costs

59. In the present case, Class Counsel is requesting \$500,000 for attorneys' fees, 33.33% of the gross settlement. Class Counsel believes that this is appropriate based upon a common fund and/or Lodestar analysis which will be explained in detail in the motion for final approval of settlement and Class Counsels' request for fees and costs at the final fairness hearing if preliminary approval is granted. This Settlement is for \$1,500,000.00 and Class Counsel believes that pursuant to Laffitte v. Robert Half International Inc., 1 Cal.5th 480, 503 (2016) and Lealao v. Beneficial California, Inc., 82 Cal.App.4th 19, that this request is fair and reasonable in view of the typical common fund attorneys' fees awards and similar California class action wage and hour settlements, and the hours worked on this case. Class Counsel will file a detailed statement of time worked and costs at the time of final approval.

60. The Parties have agreed on ILYM Group, Inc. and respectfully request this Court appoint them to oversee the notice and claims administration procedures. The costs of the claims administration is estimated to be approximately \$27,000.00.

61. I declare under penalty of perjury under the laws of the United States of America

1 and the State of California that the foregoing is true and correct, and that this declaration is made
2 and executed on this 10th day of July, 2024, at Long Beach, California.

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Torey Joseph Favarote

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), is made and entered into by Plaintiff Ronghui Lee (the “Named Plaintiff”) and the certified class he represents, and Defendant HungryPanda US Inc. (“HungryPanda” or “Defendant”) (collectively, “the Parties”), to settle and completely resolve the action captioned *Lee v. HungryPanda US Inc.*, Case No. CIVSB2126633 (San Bernardino County Superior Court) (the “Action”).

I. RECITALS

1. WHEREAS, on September 2, 2021, Named Plaintiff filed the Action against HungryPanda in San Bernardino Superior Court;

2. WHEREAS, on November 29, 2021, Named Plaintiff filed a first amended complaint;

3. WHEREAS, on May 20, 2022, the Court entered a default against HungryPanda;

4. WHEREAS, on February 9, 2023, the Court denied HungryPanda’s motion to set aside default in the Action;

5. WHEREAS, on May 9, 2023, the Court certified a class consisting of individuals currently or formerly employed by Defendant as an independent contractor in the title of Driver, Contractor, or other similar titles/duties who performed deliveries for Defendant and/or its customers in California;

6. WHEREAS, class notice was sent to the class and eighteen (18) individuals sent notices opting out of the class;

7. WHEREAS, on February 26, 2024, Named Plaintiff and Defendant attended a mediation session with experienced professional mediator Hunter Hughes, and, in preparation for the mediation, engaged in informal exchanges of information and data, which enabled a thorough evaluation of the claims, and the likely outcomes, risks, and expense of pursuing litigation;

8. WHEREAS, following mediation, the Parties reached an agreement in principle to resolve the Action;

9. WHEREAS, HungryPanda has committed to Plaintiffs that it will make reasonable efforts to produce accurate Class Data (as defined below), without guaranteeing the Class Data accuracy

10. WHEREAS, the Parties now wish to resolve the Action pursuant to the terms of this Agreement.

II. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the meanings set forth below:

11. "Attorneys' Fees and Costs" means attorneys' fees sought by Class Counsel for litigation and resolution of the Action, and all reasonable costs incurred by Class Counsel in the Action as outlined in this Agreement. Subject to review and approval by the Court, Class Counsel may request attorneys' fees not to exceed \$500,000.00 (33.3% of the total Gross Settlement Fund), which shall be paid from the Gross Settlement Fund. Subject to review and approval by the Court, Class Counsel may request up to \$25,000.00 to cover the Class Counsel's actual and documented costs, which shall be subject to proof, and which shall be paid from the Gross Settlement Fund.

12. "Class Counsel" means Becerra Law Firm and Gleason & Favarote LLP.

13. "Class Counsel Award" means any attorneys' fees, expenses or costs awarded to Class Counsel by the Court.

14. "Class List" means a confidential list of all Class Members. The Class List will include information sufficient to calculate the number of "weeks worked" or "workweeks" that each Class Member worked during the Class Period and the number of pay periods worked during the PAGA Period according to HungryPanda's records, plus (to the extent the information is reasonably available to HungryPanda in an electronic format), each Class Members' last known

current address and Social Security number/Taxpayer Identification number (collectively, the “Class Data”).

15. “Class Period” means the period from September 2, 2017 through May 9, 2023.

16. “Certified Class” or “Class Members” means: All individuals currently or formerly employed by Defendant as an independent contractor in the title of Driver, Contractor, or other similar titles/duties who performed deliveries for Defendant and/or its customers in California at any time within the Class Period that did not opt-out.

17. “Court” means the Superior Court of California for the County of San Bernardino.

18. “Effective Date” means the later of: (i) if no timely objections are filed, or if filed, are withdrawn prior to final approval, the date upon which the Court enters an order granting Final Approval of the Settlement Agreement; or (ii) if timely objections are filed and not withdrawn, then either five (5) calendar days from the final resolution of any appeals timely filed or the expiration date of the time for filing or noticing any such appeals, provided that the Settlement is finally approved without material modification.

19. “Final Approval” means the entry of an order that the Named Plaintiff and HungryPanda will jointly seek from the Court, and the entry of which shall reflect the Court’s Judgment finally approving the Settlement Agreement.

20. “Final Approval Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order and after the date the Settlement Administrator mails Notice Packets to Class Members for purposes of: (i) entering Final Approval; (ii) determining whether the Settlement Agreement shall be approved as fair, reasonable, and adequate; and (iii) ruling upon an application by Class Counsel for Attorneys’ Fees and Costs and Named Plaintiff’s Service Payment.

21. “Gross Settlement Fund” means the maximum total amount of the settlement, which shall be \$1,500,000.00. This sum shall include all payments made to Class Members and PAGA Class Members, the Service Payment, all Settlement Administration Costs, Class Members’ shares of any applicable tax payments, all Attorneys’ Fees and Costs, the LWDA

Payment for a release of the California Labor Code Private Attorneys General Act claims, and any and all costs associated with administration and distribution of the settlement fund. Except as provided herein, each side is to bear its own fees and costs. In no event will HungryPanda be required to pay more than the amount of the Gross Settlement Fund. The Gross Settlement Fund was calculated with, and is premised on, the understanding that there are 3,323 Class Members who worked 44,095 workweeks between September 2, 2017 and May 9, 2023, and for 37,526 pay periods during the PAGA liability period.

22. “Individual Settlement Payment” means each Class Member’s respective share of the Net Settlement Amount.

23. “Individual PAGA Payment” means each PAGA Class Member’s respective share of the 25% of the PAGA Settlement Amount allocated to PAGA Class Members.

24. The “Net Settlement Amount” shall be the Gross Settlement Fund less the Attorneys’ Fees and Costs, the Service Payment, the LWDA Payment, PAGA Settlement Payments, and administration costs, as approved by the Court. The Net Settlement Amount shall be available for distribution to the Certified Class on a pro rata basis based on the number of workweeks worked during the Class Period (“Class Member Payments”).

25. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector’s full name, address, and signature; (ii) the case name and case number; and (iii) the grounds for the objection. Unless the Court orders otherwise, any Class Member who does not submit a timely written objection to the Settlement, who fails to appear at the Final Approval Hearing to lodge his or her objection, or who fails to otherwise comply with the specific and technical requirements of this Paragraph, will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise.

26. “Notice Packet” means the Notice of Class Action Settlement, substantially in the form attached as **Exhibit A**. Named Plaintiff’s counsel’s will provide HungryPanda’s counsel an opportunity to review the class notice.

27. "PAGA Period" means the period from September 20, 2020 through May 9, 2023.

28. "PAGA Settlement Amount" means the total of \$150,000.00 for resolution of the PAGA claims, with 75% payable to the California Labor & Workforce Development Agency ("LWDA Payment") and 25% payable to the PAGA Class. The portion of the PAGA Settlement Amount payable to the PAGA Class shall be distributed on a pro rata basis based on the number of pay periods worked during the PAGA Period ("PAGA Settlement Payments"). PAGA Settlement payments will be treated 100% as penalties and reported on an IRS Form 1099.

29. "PAGA Class" or "PAGA Class Members" means the members of the Certified Class as defined above who performed deliveries for Defendant and/or its customers in California at any time during the period from September 20, 2020 through May 9, 2023.

30. "Preliminary Approval" means the Court order granting preliminary approval of this Settlement Agreement.

31. "Released Class Claims": Upon final approval of the Long Form Agreement and Defendant's complete funding of the settlement, each Class Member will release the Released Parties (defined below) of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation claims for: (1) willful misclassification in violation of Labor Code § 226.8, (2) failure to pay all wages due in violation of Labor Codes §§ 204, 515, 1194, 1198, Code of Regulation §11010 and the IWC Wage Orders, (3) failure to pay timely wages in violation of Labor Codes §§ 204, 206, 206.5, 207, 209, 210 and 215, (4) failure to pay minimum wage in violation of Labor Codes §§ 1194, 1194.2, 1197.1, 1199, Code of Regulation § 11090, and the IWC Wage Orders, (5) failure to pay overtime wages in violation of Labor Codes § 510, 558, 1194, 1198, (6) failure to provide meal periods in violation of Labor Codes §§ 226.7, 512, Code of Regulation Title 8, §11070, (7) failure to provide rest periods in violation of Labor Codes §§ 226.7, 512, 1198, the IWC Wage Orders, and Code of Regulation Title 8, §11090(11), (8) unlawful deduction of wages and wage theft in violation of Labor Codes §§ 221-224, 400-410, 450-452, 1198, 2928 and the IWC Wage Orders, (9) failure to

reimburse business expenses in violation of Labor Code § 2802, (10) failure to pay wages at termination in violation of Labor Codes §§ 201-203, (11) failure to provide itemized wage statements and accurate time records in violation of Labor Codes §§ 226, 1174(d), (12) violation of California's Unfair Competition Law, Business & Professions Codes §§ 16600, §17200-17208. Out of an abundance of caution, the Released Class Claims include any claims based on the identical factual predicate as that underlying the claims in the Action. The period of the Released Class Claims shall extend to the limits of the Release Period.

32. "Released PAGA Claims": Upon final approval of the Long Form Agreement and Defendant's complete funding of the settlement, each PAGA Class Member will release the Released Parties of all claims pursuant to the California Labor Code Private Attorneys General Act (codified in Labor Code § 2698 *et seq.*) based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation PAGA claims for: (1) willful misclassification in violation of Labor Code § 226.8, (2) failure to pay all wages due in violation of Labor Codes §§ 204, 515, 1194, 1198, Code of Regulation §11010 and the IWC Wage Orders, (3) failure to pay timely wages in violation of Labor Codes §§ 204, 206, 206.5, 207, 209, 210 and 215, (4) failure to pay minimum wage in violation of Labor Codes §§ 1194, 1194.2, 1197.1, 1199, Code of Regulation § 11090, and the IWC Wage Orders, (5) failure to pay overtime wages in violation of Labor Codes § 510, 558, 1194, 1198, (6) failure to provide meal periods in violation of Labor Codes §§ 226.7, 512, Code of Regulation Title 8, §11070, (7) failure to provide rest periods in violation of Labor Codes §§ 226.7, 512, 1198, the IWC Wage Orders, and Code of Regulation Title 8, §11090(11), (8) unlawful deduction of wages and wage theft in violation of Labor Codes §§ 221-224, 400-410, 450-452, 1198, 2928 and the IWC Wage Orders, (9) failure to reimburse business expenses in violation of Labor Code § 2802, (10) failure to pay wages at termination in violation of Labor Codes §§ 201-203, (11) failure to provide itemized wage statements and accurate time records in violation of Labor Codes §§ 226, 1174(d). Out of an abundance of caution, the Released PAGA Claims include any claims based on the identical factual

predicate as that underlying the claims in the Action. The period of the Released PAGA Claims shall extend to the limits of the Release Period.

33. “Released Claims” means the Released Class Claims and the Released PAGA Claims.

34. “Released Parties” means HungryPanda and each of its past, present, and/or future, direct, and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures.

35. “Release Period” shall be the period of September 2, 2017 to July 1, 2024, or the date of Preliminary Approval, whichever date is earlier.

36. “Response Deadline” means the deadline by which Class Members must postmark or fax to any Notices of Objection or disputes to workweeks. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the sixtieth (60th) day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

37. “Settlement Administration Costs” means all reasonable costs for claims administrator services (including mailing of notice), which shall be subject to proof, to be provided by the Settlement Administrator, in an amount not to exceed \$27,000.00. The Settlement Administrator will also handle all of the printing, mailing, and processing of all Class Member and PAGA Class Member 1099 forms, perform TIN/SSN matching, and all other verification processes to ensure accuracy and prevent duplications before distributing funds. The Settlement Administration Costs will be paid from the Gross Settlement Fund. In the event the allocated Settlement Administration Costs exceed the actual costs incurred by the Settlement Administrator, the difference shall be a part of the Net Settlement Amount and distributed the Class Members.

38. “Settlement Administrator” means ILYM Group, which the Parties have agreed to, subject to approval by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or

otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

39. "Service Payment" means the amount to be paid to Named Plaintiff, subject to final approval by the Court, in recognition of his effort and work in prosecuting the Action on behalf of Class Members. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Named Plaintiff will request Court approval of a Service Payment of \$10,000.00. The Service Payment shall be treated 100% as non-wages and reported on an IRS Form 1099.

III. TERMS OF AGREEMENT

40. Preliminary Approval Motion. The Parties agree to present the Settlement for Preliminary Approval, and consent to continued jurisdiction if Preliminary Approval is granted, in the Court, and Named Plaintiff further agrees to endeavor in good faith to file a Motion for Preliminary Approval, including all executed and necessary exhibits, within thirty (30) calendar days of executing this Settlement Agreement.

41. Funding of the Gross Settlement Fund. Defendant will pay the Gross Settlement Fund amount as follows: First payment of \$500,000 due within 10 calendar days of Final Approval, with the remaining \$1,000,000 due within 6 months after the first payment ("Final Payment Date"). These funds are to be deposited in an escrow account managed by the Settlement Administrator.

42. Non-Reversionary Settlement. Class Members are entitled to one hundred percent (100%) of the Net Settlement Amount. Defendant maintains no reversionary right to any portion of the Net Settlement Amount, including any increase in the Net Settlement Amount resulting from a reduction in the Service Payment, Class Counsel Award, the PAGA Settlement Amount, and/or the Settlement Administration Costs. If there are any reductions in the Service Payment, Class Counsel Award, the PAGA Settlement Amount, and/or the Settlement Administration Costs, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for

each Class Member so that the amount actually distributed to Class Members equals one hundred percent (100%) of the corresponding Net Settlement Amount.

43. Conditions. Settlement is conditioned upon the releases described herein. Defendant agrees to waive all rights to appeal the default that was entered by the Court on May 20, 2022, as a part of this Agreement, and agrees to waive its right to appeal Final Approval of the Settlement. No party waives any right to bring a claim that another party breached the terms of the Settlement.

44. Attorneys' Fees and Costs. Class Counsel shall apply to the Court for the Attorneys' Fees and Costs, as defined above.

45. Service Payment. Named Plaintiff shall apply to the Court for the Service Payment, as defined above. The Service Payment will be paid from the Gross Settlement Fund and will be in addition to Named Plaintiff's Individual Settlement Payment paid pursuant to the Settlement Agreement. The Settlement Administrator shall issue an IRS Form 1099 to Named Plaintiff reflecting his Service Payment. Named Plaintiff agrees to assume responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law to be paid by him, if any, from his Service Payment. Named Plaintiff is not responsible for any share of taxes owed by Defendant.¹

46. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the PAGA Settlement Amount will be designated for satisfaction of Named Plaintiff's and PAGA Class Members' PAGA claims in this case.

47. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount to Class Members on a pro rata basis depending on the number of "weeks worked" or "workweeks" (defined as any calendar week

¹ For clarity, as provided in Paragraph 65, if the Court prohibits the Parties from reporting payments on IRS Form 1099s and HungryPanda is required to pay or withhold payroll taxes, then the Parties agree to meet and confer to try to find a mutually agreeable solution. If the Parties cannot agree to a solution, then HungryPanda has the right to terminate the settlement; in that scenario, HungryPanda will be responsible for paying all settlement administration costs incurred as of the date of the termination.

during the Class Period) in which a Class Member performed at least one day of work for Defendant. Class Members do not need to submit a claim to participate and receive their Individual Settlement Payment.

48. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated and apportioned from the 25% portion of the PAGA Settlement Amount allocated to PAGA Class Members on a pro rata basis depending on the number of pay periods in which a PAGA Class Member performed at least one day of work for Defendant during the PAGA Period. PAGA Class Members do not need to submit a claim to participate in the PAGA portion of the Settlement.

49. Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

50. Notice to Labor and Workforce Development Agency. Within ten (10) calendar days of the entry of the Court's order granting Preliminary Approval, Class Counsel will notify the LWDA of that order consistent with Labor Code sections 2699(1)(2)–(3).

51. Preparation of Class Data. Within thirty (30) calendar days of the entry of the Court's order granting Preliminary Approval, Defendant will provide the Settlement Administrator and Class Counsel with Class Data sufficient to calculate the number of "weeks worked" or "workweeks" that each Class Member worked during the Class Period and the number of pay periods worked during the PAGA Period according to HungryPanda's records. The Class Data provided to the Settlement Administrator and Class Counsel will be treated as confidential and will not be disclosed to anyone, except as may be required to applicable tax authorities or otherwise as required by law, pursuant to HungryPanda's express written consent, or by order of the Court.

52. Notice by First-Class U.S. Mail. Within fifteen (15) calendar days after receiving the Class Data from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

53. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail within three (3) business days of receipt to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such remailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address, and/or Social Security number/Taxpayer Identification number of the Class Member involved, and will then perform a single re-mailing within three (3) business days of receipt. Class Members will have until the later of ten (10) calendar days from the date of the re-mailing or the Response Deadline, to submit a Notice of Objection or workweeks dispute.

54. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement Agreement's principal terms; (iii) the settlement class definition; (iv) the total number of workweeks each respective Class Member worked for HungryPanda during the Class Period; (v) the total number of pay periods each PAGA Class Member worked for Hungry Panda during the PAGA Period; (vi) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vii) each PAGA Class Member's estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (viii) the dates which comprise the Class Period and the PAGA Period; (ix) instructions on how to submit Notices of Objection and workweeks disputes; (x) the deadlines by which the Class Member must postmark or fax Notices of Objection and workweeks disputes; (xi) the claims to be released; and (xii) the Settlement Administrator's contact information, including the website address where the electronic versions of the materials in the Notice Packet will be available. The Parties' proposed Notice Packet is attached hereto as **Exhibit A**.

55. Disputed Information in Notice Packets. Class Members will have an opportunity to dispute the individualized information provided in their Notice Packets. To the extent Class Members dispute their work dates or the number of workweeks or pay periods on record, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate by the Response Deadline. The Settlement Administrator will decide the dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision as to the merits of the dispute. All disputes will be decided by the Settlement Administrator within fifteen (15) business days of the Response Deadline.

56. Releases. Upon final approval of the Long Form Agreement and Defendant's complete funding of the settlement, each Class Member will release the Released Parties of the Released Class Claims and the Released PAGA Claims.

57. Cooperation. So long as HungryPanda is not in default of its payment obligations under this settlement, if a Class Member or PAGA Class Member brings an action for a Released Claim, Class Counsel will cooperate with HungryPanda's counsel to obtain dismissal of those claims (with each Party responsible for its own attorneys' fees).

58. No Additional Opt Outs. Other than the eighteen (18) individuals who submitted opts out of the Certified Class, no additional opt outs will be permitted.

59. Notice of Objection Procedures. To object to the Settlement Agreement, a Class Member must mail or fax a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline. The Notice of Objection must be signed by the Class Member and contain all information required by this Settlement Agreement. The postmark or fax-stamp date will be deemed the exclusive means for determining that the Notice of Objection is timely. The Settlement Administrator will notify any person from whom it receives a Notice of Objection that is not timely and/or valid if, in fact, such Notice of Objection is not timely and/or valid. Any disputes regarding the timeliness, validity or effectiveness of a Notice of Objection shall be decided by the Settlement Administrator consistent with the terms of this Agreement, and with the Parties' input, if

appropriate. Class Members who fail to object in the manner specified above will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement, unless they appear at the Final Approval Hearing and state their objection at that time. Class Members who submit timely Notices of Objection may appear at the Final Approval Hearing in order to have their objections heard by the Court. If the Court permits, Class Members who have not submitted a written Notice of Objection in compliance with the Settlement Agreement may still appear at the Final Approval Hearing and present their objections. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement.

60. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that identifies the number of Class Members who have objected to the Settlement, and whether any Class Member has submitted a challenge to any information contained in his or her Notice Packet. Additionally, the Settlement Administrator will provide counsel for both Parties with any updated reports regarding the administration of the Settlement Agreement as needed or requested, as consistent with the terms of the Settlement Agreement.

61. Distribution Timing of Payments. Within twenty-one (21) calendar days of the later of the Final Payment Date or the Effective Date, the Settlement Administrator will issue the LWDA Payment to the LWDA, the Individual Settlement Payments and Individual PAGA Payments to the Class Members, the Class Counsel Award to Class Counsel, and the Service Payment to Named Plaintiff. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement in the amount approved by the Court.

62. Un-cashed Settlement Checks. Individual Settlement Payment and/or Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar

days after issuance will be void. Funds from the uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500 et seq., for the benefits of those Class Members and PAGA Class Members who did not cash their checks, until such time they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code Section 384, as the entire Net Settlement Amount (plus the PAGA Settlement Amount) will be paid to the Class Members and PAGA Class Members, whether or not they all cash their Individual Settlement Payment and/or Individual PAGA Payment checks.

63. Certification of Completion. Upon completion of the administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

64. Hungry Panda’s Financial Information. Defendant will file the following financial documents with the Court under seal as part of the settlement approval process.

- (i) HungryPanda’s California and Federal tax returns for the last 2 years (2023 and 2022). If the 2023 returns are not available by the time Plaintiff files his motion for preliminary approval, HungryPanda will provide the 2021 and 2022 tax returns.
- (ii) HungryPanda’s profit and loss statements for the last two years (2023 and 2022).
- (iii) HungryPanda’s balance sheets for the last two years (2023 and 2022).

HungryPanda’s accountants will also provide certified copies of the aforementioned documents to Class Counsel accountants and/or financial expert.

65. Taxes. Named Plaintiff, Class Member and PAGA Class Member payments will not be reduced by any employer or employee tax withholdings. Named Plaintiff, Class Members, and PAGA Class Members will be responsible for any of their individual federal, state, and/or local tax obligations and/or consequences that may arise out of the payments made pursuant to this settlement. If the Court prohibits the Parties from reporting payments on IRS Form 1099s and

HungryPanda is required to pay or withhold payroll taxes, then the Parties agree to meet and confer to try to find a mutually agreeable solution. If the Parties cannot agree to a solution, then HungryPanda has the right to terminate the settlement; in that scenario, HungryPanda will be responsible for paying all settlement administration costs incurred as of the date of the termination.

66. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Named Plaintiff and Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Neither this Agreement, nor any of its attachments, should be interpreted to contain or constitute representations or advice regarding any U.S. federal or state tax issue. Class Members will be specifically informed that neither Defendant nor Class Counsel make any representations regarding the tax implications of any amounts paid under this Settlement Agreement and that if Class Members have any questions regarding those implications, they can and should consult a tax expert. It is expressly understood that Named Plaintiff, Class Members, PAGA Class Members, and Class Counsel are not responsible for any of HungryPanda's own required tax payments.

67. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Named Plaintiff, Class Members, and Class Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

68. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY," AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR

PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

70. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally approve the Settlement; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, except as expressly agreed upon in writing by the Parties, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

71. Termination of Settlement Agreement. Named Plaintiff and Defendant will each have the right to unilaterally terminate this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within ten (10) business

days of any of the following occurrences; provided, however, that the Parties agree to cooperate in good faith to address any issues the Court raises in connection with issuing Preliminary and/or Final Approval of the Settlement:

- (a) the Court rejects, materially modifies, materially amends or changes, or declines to issue a Preliminary Approval or a Final Approval with respect to the Settlement Agreement and the Parties are not permitted to remedy any deficiencies the Court identifies;
- (b) an appellate court reverses the Final Approval, and the Settlement Agreement is not reinstated without material change by the Court on remand;
- (c) any court incorporates terms into, or deletes or strikes terms from, or modifies, amends, or changes the Preliminary Approval, the Final Approval, or the Settlement Agreement in a way that Named Plaintiff or Defendant reasonably consider material, unless the modification or amendment is accepted in writing by all Parties, except that, as provided above, the Court's approval of Attorneys' Fees and Costs, Class Counsel Awards, and the Service Payment, or their amounts, is not a condition of the Settlement Agreement; or
- (d) as provided for in paragraph 65 (Taxes).

72. Preliminary Approval Hearing. Named Plaintiff will obtain a hearing date before the Court to request Preliminary Approval and the entry of an order: (i) granting preliminary approval to the proposed Settlement Agreement; (ii) setting a deadline for Class Counsel to file an application for attorney's fees and costs and an application for the Service Payment; and (iii) setting a date for a Final Approval Hearing. The Preliminary Approval order will provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Named Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet, which will include

the proposed Notice of Class Action Settlement, attached as **Exhibit A**. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval.

73. **Final Approval Hearing and Entry of Judgment.** Upon expiration of the deadlines to postmark Notices of Objection (and no earlier than one hundred (100) calendar days after the date on which Named Plaintiff files his motion for Preliminary Approval) and with the Court's permission, a Final Approval Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) the Service Payment; (iv) the Class Counsel Award; and (v) all Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Class Counsel will also be responsible for drafting the Class Counsel Award and Service Payment application to be heard at the Final Approval Hearing, which may be filed concurrently with a motion requesting final approval.

74. **Judgment and Continued Jurisdiction.** Upon Final Approval of the Settlement by the Court or after the Final Approval Hearing, the Parties will present a proposed form of Judgment to the Court for its approval, which Class Counsel shall submit to the Court that (i) approves the Settlement Agreement, adjudging the terms thereof to be fair, reasonable, adequate, and directing consummation of its terms and provisions; (ii) approving Class Counsel's application for an award of attorney's fees and costs; (iii) approving the Service Payment; (iv) approving the PAGA Settlement Amount; (v) the Settlement Administrator's fees from the Gross Settlement Amount; and (vi) barring all Class Members from prosecuting against the Released Parties, or any of them, any of the Released Claims. As required by California Rule of Court 3.769(h), after entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) Settlement administration matters; and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

75. **Exhibits Incorporated by Reference.** The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as

though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

76. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms and, should this Settlement Agreement receive Final Approval, its terms will supersede all prior written or oral agreements between the Parties.

77. Amendment or Modification. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

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

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

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

81. Execution and Counterparts. This Settlement Agreement may be executed in one or more counterparts. Electronic or facsimile signatures will be accepted as an original signature. All executed counterparts and each of them will be deemed to be one and the same instrument.

Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

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

84. Waiver of Certain Appeals. With the exception of a right to appeal the reduction of any award of attorneys' fees, costs, and expenses as provided herein, Named Plaintiff and Defendant hereby waive their right to appeal or seek other judicial review of any order that is materially consistent with the terms of this Settlement Agreement.

85. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. A statement regarding Defendant's denial of liability shall be included in the notice sent to Class Members and PAGA Class Members. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant

of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

86. Media Restrictions. The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the facts, amount, or terms of the Settlement. Prior to the Court's preliminary approval of the Agreement neither Named Plaintiff nor their counsel shall publicize the terms of this Agreement in any medium, or initiate or issue any press release or have any communications to the press or media concerning the lawsuit, or the settlement of the lawsuit, except as posted by the Settlement Administrator in accordance with this Agreement, as ordered by the Court, or unless otherwise required by law. If counsel for any of the Parties receives an inquiry about the settlement from the media prior to final approval of the Agreement, counsel may respond by confirming the terms of the settlement which are publicly available. Notwithstanding the foregoing, nothing will prevent Named Plaintiff's counsel from communicating confidentially with Class Members as necessary to fulfill their obligations as class counsel. The Parties and their counsel agree that they will not disparage or encourage or induce others to disparage the other Party.

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

88. Disputes Regarding Settlement Agreement. Any disputes arising out of or relating to this Agreement will be submitted to Hunter Hughes or a mutually agreeable mediator for mediation. The Parties will equally split the costs of the mediator, and the Parties will bear their own attorneys' fees and other costs incurred.

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

90. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the advice of counsel. Further, Named Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

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

92. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

93. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, with retention of jurisdiction by the Court as provided therein, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms.

Agreed to this ___ day of July, 2024.

09/07/2024

Dated: July __, 2024

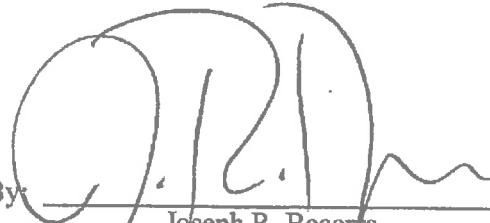
By: 
Ronghui Lee (Jul 9, 2024 04:38 PDT)
Ronghui Lee
Plaintiff and Class Representative

Dated: July _7_, 2024

By: Kelu Liu
HungryPanda US Inc.

Approval as to Form and Content by Counsel:

Dated: July 8, 2024

By: 
Joseph R. Becerra
Torey Joseph Favarote
Attorneys for Plaintiff Ronghui Lee and the
Certified Class

Gibson, Dunn & Crutcher LLP

Dated: July 8, 2024

By: 
Michael Holecek

Attorneys for Defendant HungryPanda US Inc.

EXHIBIT A
**(Notice of Class and PAGA Action
Settlement)**

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT

This is an Official Court Notice of a Proposed Settlement in the following lawsuit:
Lee v. HungryPanda US Inc., San Bernardino County Superior Court Case No.
CIVSB2126633

Name [insert name]

Correction to Address Needed?

Address [insert address]

Contact the Settlement Administrator.

CLASS MEMBERS ARE HEREBY NOTIFIED AS FOLLOWS:

A proposed settlement (the "Settlement") has been reached in the above-referenced class and representative action lawsuit that was certified by the Court on May 9, 2023 and is currently pending in the Superior Court for the County of San Bernardino (the "Action"). Because your rights may be affected by this Settlement, it is important that you read this notice carefully.

Records show that you are a member of the class of employees certified by the Court in this Action on May 9, 2023. You are a class member because you: (i) performed deliveries for HungryPanda US Inc. ("HungryPanda") under the title of Driver, Contractor, or other similar position in California at some point during the period from September 2, 2017 through May 9, 2023, and (ii) did not request to be excluded from that class ("Class" or "Class Member"). After certification, plaintiff Ronghui Lee ("Plaintiff") and HungryPanda reached a proposed Settlement on behalf of all Class Members for all alleged claims in the period September 2, 2017 through July 1, 2024 (the "Class Period"). Because you are a Class Member, you are entitled to participate in the Settlement discussed in this notice and receive a settlement payment.

Based on information contained in HungryPanda's records, you worked [insert number] weeks during the Class Period and thus are eligible to receive a class settlement payment in the gross estimated amount of \$[insert amount]. Plaintiff has also sued under the Private Attorneys General Act of 2004 Labor Code § 2698 et seq. ("PAGA") seeking civil penalties for the same claims. Based on information contained in HungryPanda's records, you worked [insert number] pay periods during the PAGA Period of September 20, 2020 through May 9, 2023 and thus are eligible to receive a PAGA settlement payment in the gross estimated amount of \$[insert amount].

As explained in more detail below, *you do not need to take any action to receive your Settlement payment*. As a Class Member, you will receive Settlement funds and be bound by the release of any claims described in this notice.

A. PURPOSE OF THIS NOTICE

On May 9, 2023, the Court certified the following class: All individuals currently or formerly employed by HungryPanda as an independent contractor in the title of Driver, Contractor, or other similar titles/duties who performed deliveries for Defendant and/or its customers in California at any

time within the Class Period that did not opt-out. (“Class”). After certification, notice was sent to the Class, informing the Class Members of their right to request exclusion from the Class by “opting out.” You are getting this notice because you are a Class Member—i.e., you performed deliveries for HungryPanda in California during the Class Period and did not opt out of the Class.

Plaintiff and HungryPanda reached a proposed Settlement on behalf of all Class Members for the Class Period. This notice is intended to inform you of the class action Settlement and your options (*i.e.*, participating and objecting).

B. DESCRIPTION OF THE ACTION

Plaintiff sued HungryPanda claiming that since 2017 HungryPanda has misclassified its delivery drivers, made unlawful deductions to its delivery driver’s wages, and performed unlawful background checks on its delivery drivers, resulting in unpaid wages, unprovided meal periods and rest breaks, unreimbursed business expenses, failure to pay all wages owed and due at discharge, failure to provide accurate wage statements, violations of California’s unfair competition law (“UCL”), and civil penalties due under the Labor Code Private Attorneys General Act (“PAGA”). Plaintiff also alleged that HungryPanda failed to pay overtime wages, failed to pay wages at the correct regular rate (including, overtime, meal or rest period premiums), failed to provide compliant meal and rest periods or premiums therefor, failed to timely pay wages during employment or at discharge or termination, failed to accurately record time, including all time worked, failed to provide one day’s rest in seven, violated provisions of the Industrial Welfare Commission Wage Orders and owed civil penalties, including under PAGA, for all of the foregoing alleged violations. Plaintiff claims that HungryPanda owes Class Members wages, penalties, liquidated damages, interest, injunctive relief, declaratory relief, accounting, plus attorneys’ fees and court costs. HungryPanda disputes these allegations and believes it complied with the law.

On May 20, 2022, the Court entered in a default against HungryPanda for failing to timely answer Plaintiff’s Complaint. Plaintiff engaged in significant efforts to obtain the facts regarding the claims asserted and the value of those claims. The parties engaged in prolonged litigation on what documents and records should be disclosed, and the Court ordered the production of a list of all Class Members. Ultimately the parties agreed to attend mediation and engaged in an informal exchange of information. The parties disagree as to the probable outcome of the Action with respect to liability and damages if the Action were not settled. While Plaintiff and HungryPanda are prepared to proceed with litigating the Action, including an appeal of the default, each side recognizes that litigating is a risky and costly proposition and that each may not prevail on any or all of the claims.

This Settlement is the result of good-faith and arm’s-length negotiations between the Plaintiff and HungryPanda. Each side agrees that given the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and is in the best interests of the Class Members.

On [date of preliminary approval] the Court granted preliminary approval of this proposed Settlement of the Action. The Court will decide whether to give final approval to the proposed Settlement at a hearing scheduled for [INSERT DATE] (“Final Approval Hearing”). See below for details. The date of the Final Approval Hearing is subject to be changed.

You may access the key documents in this case on the Settlement Administrator's website at **[INSERT URL]**, including the operative First Amended Complaint, the PAGA Notice Letter, the Settlement Agreement and all amendments thereto, this Notice Packet, the orders granting preliminary and final approval, and the final judgment. All of these documents, including the final judgment.

C. SUMMARY OF TERMS OF THE PROPOSED SETTLEMENT

Subject to the Court's approval, the terms of the Settlement are as follows:

1. The settlement amount is \$1,500,000.00 (the "Settlement Amount") from which HungryPanda would pay: (a) a minimum of \$788,000.00 for payment to Settlement Members; (b) a maximum of \$500,000.00 (33.33% of the Settlement Amount) for the payment of Class Counsel's attorney fees plus litigation costs up to \$25,000.00; (c) \$150,00.00 allocated for settlement of the PAGA claims, 75% (approximately \$112,500.00) of which will go to the State of California for its share of the PAGA Settlement Amount and 25% (approximately \$37,500.00) of which will be distributed to the Class Members who worked during the PAGA Period; (d) a maximum of \$10,000.00 for the payment of a class representative service payment to the named Plaintiff for her service to the Class in bringing the case on behalf of the Class; and (e) a maximum of \$27,000.00 for Settlement Administration Costs. The Settlement Amount shall be reported entirely on an IRS form 1099. In the event that the maximum sums stated in subsections (b)-(e) are not approved and awarded by the Court, the unapproved and awarded sums shall be added to the Class Recovery (subsection (a)). None of these sums shall revert to HungryPanda. The amount set forth above in subsection (a) is referred to herein as the "Class Recovery."

2. The Class Recovery will be allocated among Class Members based upon calculations made using HungryPanda's records. Specifically, a participating Class Member's share of the Net Settlement, will be calculated by reference to the number of workweeks all Class Members worked during the Class Period. Each workweek or pay period worked by Class Members, will be equal to one (1) settlement share. The total number of settlement shares for all Class Members will be added together for the Class Period. The resulting sum for the Class period will be divided into the Net Settlement Amount resulting in a dollar figure. That figure will then be multiplied by each Class Member's number of settlement shares to determine the Class Member's *pro rata* portion of the Net Settlement Amount (the "Individual Class Member Award"). As discussed above, each Individual Class Member's Award shall be reported using a Form 1099.

3. The PAGA Recovery will be allocated among Class Members based upon calculations made using HungryPanda's records. Specifically, a Class Member's share of the PAGA Payment will be calculated by reference to the number of pay periods worked during the PAGA Period. Each pay period worked by Class Members will be equal to one (1) PAGA settlement share. The total number of PAGA settlement shares for all Class Members will be added together and the resulting sum will be divided into \$37,500.00 to reach a per share dollar figure. That figure will then be multiplied by each Class Member's number of PAGA settlement shares to determine the Class Member's *pro rata* portion of the PAGA Payment (the "PAGA Settlement Payment"). 100% of each PAGA Settlement Payment shall, for tax purposes, be designated as penalties and shall be reported using a Form 1099.

4. Based on the foregoing methodology, your estimated Individual Class Member Recovery is shown on page 1 of this notice. PLEASE NOTE that your Final Individual Settlement Member Total Recovery may be more or less than the amount stated above after accounting for all sums payable from the Settlement Amount.

5. Each Class Member consents to the following releases (“Releases”) to the Released Parties, defined as HungryPanda and each of its past, present, and/or future, direct, and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures:

Each Class Member will release the Released Parties of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation claims for: (1) willful misclassification in violation of Labor Code § 226.8, (2) failure to pay all wages due in violation of Labor Codes §§ 204, 515, 1194, 1198, Code of Regulation §11010 and the IWC Wage Orders, (3) failure to pay timely wages in violation of Labor Codes §§ 204, 206, 206.5, 207, 209, 210 and 215, (4) failure to pay minimum wage in violation of Labor Codes §§ 1194, 1194.2, 1197.1, 1199, Code of Regulation § 11090, and the IWC Wage Orders, (5) failure to pay overtime wages in violation of Labor Codes § 510, 558, 1194, 1198, (6) failure to provide meal periods in violation of Labor Codes §§ 226.7, 512, Code of Regulation Title 8, §11070, (7) failure to provide rest periods in violation of Labor Codes §§ 226.7, 512, 1198, the IWC Wage Orders, and Code of Regulation Title 8, §11090(11), (8) unlawful deduction of wages and wage theft in violation of Labor Codes §§ 221-224, 400-410, 450-452, 1198, 2928 and the IWC Wage Orders, (9) failure to reimburse business expenses in violation of Labor Code § 2802, (10) failure to pay wages at termination in violation of Labor Codes §§ 201-203, (11) failure to provide itemized wage statements and accurate time records in violation of Labor Codes §§ 226, 1174(d), (12) violation of California’s Unfair Competition Law, Business & Professions Codes §§ 16600, §17200-17208. Out of an abundance of caution, the Released Class Claims include any claims based on the identical factual predicate as that underlying the claims in the Action. The period of the Released Class Claims shall extend to the limits of the Release Period. The Release Period is from September 2, 2017 to July 1, 2024.

Each PAGA Class Member will release the Released Parties of all claims pursuant to the California Labor Code Private Attorneys General Act (codified in Labor Code § 2698 et seq.) based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation PAGA claims for: (1) willful misclassification in violation of Labor Code § 226.8, (2) failure to pay all wages due in violation of Labor Codes §§ 204, 515, 1194, 1198, Code of Regulation §11010 and the IWC Wage Orders, (3) failure to pay timely wages in violation of Labor Codes §§ 204, 206, 206.5, 207, 209, 210 and 215, (4) failure to pay minimum wage in violation of Labor Codes §§ 1194, 1194.2, 1197.1, 1199, Code of Regulation § 11090, and the IWC Wage Orders, (5) failure to pay overtime wages in violation of Labor Codes § 510, 558, 1194, 1198, (6) failure to provide meal periods in violation of Labor Codes §§ 226.7, 512, Code of Regulation Title 8, §11070, (7) failure to provide rest periods in violation of Labor

Codes §§ 226.7, 512, 1198, the IWC Wage Orders, and Code of Regulation Title 8, §11090(11), (8) unlawful deduction of wages and wage theft in violation of Labor Codes §§ 221-224, 400-410, 450-452, 1198, 2928 and the IWC Wage Orders, (9) failure to reimburse business expenses in violation of Labor Code § 2802, (10) failure to pay wages at termination in violation of Labor Codes §§ 201-203, (11) failure to provide itemized wage statements and accurate time records in violation of Labor Codes §§ 226, 1174(d). Out of an abundance of caution, the Released PAGA Claims include any claims based on the identical factual predicate as that underlying the claims in the Action. The period of the Released PAGA Claims shall extend to the limits of the Release Period. The Release Period is from September 2, 2017 to July 1, 2024.

D. TO PARTICIPATE IN THE SETTLEMENT

To participate in the Settlement, you do not need to take any further action. Upon final approval from the Court, you will receive a Settlement check for an amounts as described above on page 1.

E. TO OBJECT TO THE SETTLEMENT

You may object to the Settlement by submitting a written objection to the Settlement Administrator at the address listed in this notice. You may also object in person or through counsel at the final approval hearing on the date noticed below. The order granting preliminary approval and setting the final approval hearing will also be provided on the Settlement Administrator's website at [Website URL]. You may not "opt out" of the Settlement as you have already been provided an opportunity to do so after receiving the class notice on certification.

Class Counsel's application for fees will be filed with the Court on or before [INSERT DATE]. You may access that document any time after that date through the San Bernardino Superior Court's Online Case Access system, which can be accessed by logging in at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Users will be required to accept the terms of use and enter the case number (CIVSB2126633) to obtain case documents. Users may incur fees charged by the San Bernardino Superior Court for providing electronic public access to court records. If you believe you have a basis to object, you may do so by submitting a written objection in the manner described below.

All objections should contain the objectors full name, address, and signature, as well as the case name and case number (Ronghui Lee v. HungryPanda US Inc. San Bernardino Superior Court Case Number CIVSB2126633). While not required, any objection may state and explain why you object to the proposed Settlement or to the requested attorney's fees and whether you or someone on your behalf intends to appear at the Final Approval Hearing. All written objections and supporting papers must be filed or postmarked on or before [INSERT DATE] and sent to the Settlement Administrator at the address at the end of this notice. Regardless of whether you submit an objection, or explain any objection, you may appear, at your own expense, at the Final Approval Hearing, discussed below.

You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no Settlement payments will be sent out and the lawsuit will continue; if that is what you want to happen, you can object.

F. DISPUTES AS TO WORKWEEKS OR PAY PERIODS CREDITED

For each Class Member, the weeks worked during the applicable Class Period will be calculated from HungryPanda's records. If you disagree with the numbers reported above, you may submit evidence to the Settlement Administrator on or before **[INSERT DATE]**, with documentation to establish the number of workweeks or pay periods you claim to have actually worked for HungryPanda in California during the Class Period or PAGA Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will review HungryPanda's records and evaluate the evidence submitted by the Class Member in good faith to determine how many workweeks or pay periods should be credited to each Class Member.

G. TAXES

For tax reporting purposes, any payments made to Settlement Class Members shall be reported using an IRS Form 1099. **Neither Defendant nor Class Counsel make any representations regarding the tax implications of any amounts paid under this Settlement Agreement and if you have any questions regarding those implications, you can and should consult a tax expert.** HungryPanda, Plaintiff, and their attorneys make no representation as to the tax treatment or legal effect of the payments called for hereunder, and cannot and do not provide you tax advice in this regard.

H. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the administrative costs, and the class representative service payment on **[INSERT DATE AND TIME]** in Department S-26 of the San Bernardino County Superior Court located at 247 West 3rd St. San Bernardino, California 92415. The date of the Final Approval Hearing is subject to change.

I. ADDITIONAL INFORMATION

It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the Settlement Administrator to report any change of your address after you receive this Notice.

This Notice only summarizes the Action, the Settlement, and other related matters. *Please do not contact the Court or the Court Clerk about this notice.* For additional information, you may access the publicly available information regarding this lawsuit. That information is available online at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>, or at the office of the clerk of the San Bernardino County Superior Court, located at 247 West 3rd St. San Bernardino, California 92415. You may also contact the Settlement Administrator at:

NAME OF ADMINISTRATOR

ADDRESS

TOLL-FREE PHONE NUMBER; FAX

E-MAIL ADDRESS

DOCUMENT URL

The attorneys for the class ("Class Counsel") is:

JOSEPH R. BECERRA
BECERRA LAW FIRM
3646 Long Beach Blvd., Suite 203
Long Beach, CA 90807
Telephone: (213) 542-8501
Facsimile: (213) 542-5556
Email: jbecerra@jrbecerrallaw.com

TOREY JOSEPH FAVAROTE
GLEASON & FAVAROTE LLP
3646 Long Beach Blvd., Suite 203
Long Beach, CA 90807
Telephone: (213) 542-8501
Facsimile: (213) 542-5556
Email: tfavarote@gleasonfavarote.com

The attorneys for HungryPanda are:

MICHAEL HOLECEK

ALEXA YARNELL
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
Email: mholeccek@gibsondunn.com
ayarnell@gibsondunn.com

***PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE. ***THIS IS NOT
AN ADVERTISEMENT FROM A LAWYER******

EXHIBIT 2

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 09 2023

BY [Signature]
RAFAEL HERNANDEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

LEE, RONGHUI, an individual California
resident on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HUNGRYPANDA US INC., a Delaware
corporation; and DOES 1-10, inclusive,

Defendant.

Case No. CIVSB2126633

~~[REDACTED]~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION, APPOINTMENT OF
CLASS REPRESENTATIVE AND
APPOINTMENT OF CLASS COUNSEL

Judge: Hon. David Cohn
Dept.: S-26

Action Filed: September 2, 2021
Trial Date: None

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**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION,
APPOINTMENT OF CLASS REPRESENTATIVE AND APPOINTMENT OF CLASS COUNSEL**

FILED BY FAX

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PROPOSED ORDER

On March 24, 2023, plaintiff Lee Ronghui ("Plaintiff") filed a motion for class certification, appointment as class representative, and appointment of class counsel. As defendant HungryPanda US Inc. is in default the motion was decided on the papers.

The Court, having reviewed Plaintiff's Motion and the pleadings and file herein, the Court ORDERS as follows:

1. Plaintiff's Motion for Class Certification is GRANTED;
2. The Court certifies one class consisting of "All individuals currently or formerly employed by Defendant as an independent contractor in the title of Driver, Contractor, or other similar titles/duties who performed deliveries for Defendant and/or its customers in California at any time within the Class Period";
3. The Class Period runs from September 2, 2017 through the date of this Order;
4. The Court certifies the following subclasses:
 - a. **Subclass A:** All Class Members employed during the time from September 2, 2018, through Class Certification, who terminated their employment relationship with Defendant and did not receive all wages owed to them in accordance with Labor Code § 201-203 (The "Waiting Time Penalties Subclass").
 - b. **Subclass B:** All Class Members employed during the time from September 2, 2017, through Class Certification, who received an unauthorized and/or unlawful deduction to their pay (The "Wage Theft Subclass").
 - c. **Subclass C:** All Class Members employed during the time from September 2, 2017, through Class Certification, who incurred reasonable business expenses in the discharge of their duties and were not reimbursed. (The "Expense Reimbursement Subclass").
 - d. **Subclass D:** All Class Members employed during the time from September 2, 2020, through Class Certification, who did not receive accurate itemized wage statements in accordance with Labor Code § 226. (The "Wage

Statement Subclass”).

e. **Subclass E:** All Class Members employed during the time from September 2, 2017, through Class Certification, who were not paid all wages, including all correct overtime wages, for time spent under Defendant’s control. (The “Unpaid Wages Subclass”).

f. **Subclass F:** All Class Members employed during the time from September 2, 2017, through Class Certification, who were not provided with a legally sufficient meal period, or a premium paid at their regular rate of pay in lieu thereof. (The “Meal Period Subclass”).

g. **Subclass G:** All Class Members employed during the time from September 2, 2017, through Class Certification, who were not provided with a legally sufficient rest break, or a premium paid at their regular rate of pay in lieu thereof. (The “Rest Break Subclass”).

5. Plaintiff Lee, Ronghui is designated as Class Representative of the Plaintiff Class and Subclasses; and

6. Gleason & Favarote, LLP and Becerra Law Firm are designated as Class Counsel for the Certified Plaintiff Class and Subclasses.

IT IS SO ORDERED

Dated: 5/9, 2023


HON. DAVID COHN
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On March 24, 2023, I served a copy(ies) of the following document(s):

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION, APPOINTMENT OF CLASS REPRESENTATIVE AND
APPOINTMENT OF CLASS COUNSEL**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Attorney	Party(ies) Served	Method of Service
Mollie M. Burks Seth Weisburst Annette Rose GORDON REES SCULLY MANSUKHANI, LLP 275 Battery Street, Suite 2000 San Francisco, CA 94111 Tel: (415) 875-3360, Fax: (415) 986-8054 mburks@grsm.com sweisburst@grsm.com arose@grsm.com	Attorneys for Defendant HUNGrypANDA US INC.	Email

- ☐ [BY MAIL] I placed the sealed envelope(s) for collection and mailing by following the ordinary business practice of Gleason & Favarote, LLP, Long Beach, California. I am readily familiar with Gleason & Favarote, LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.
- ☐ [BY OVERNIGHT COURIER] I caused the sealed envelope(s) to be delivered by a commercial courier service for overnight delivery to the offices of the addressee(s).
- ☐ [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by Ace Attorney Service, Inc. this date.
- ☐ [BY FACSIMILE TRANSMISSION] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.
- ☒ [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic transmission to the e-mail address indicated for the party(ies) listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on March 24, 2023, at Long Beach, California.

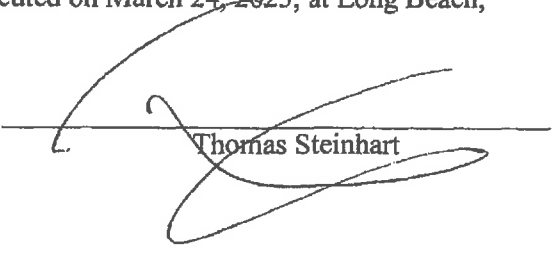

Thomas Steinhart

EXHIBIT 3

ORIGINAL

JOSEPH R. BECERRA (SBN: 210709)
BECERRA LAW FIRM
4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
Telephone: (213) 542-8501
Facsimile: (213) 542-5556
Email: jbecerra@jrbecerrallaw.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 11 2023

TOREY JOSEPH FAVAROTE (SBN: 198521)
GLEASON & FAVAROTE LLP
4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
Telephone: (213) 542-8501
Facsimile: (213) 542-5556
Email: tfavarote@gleasonfavarote.com

BY 
JESSICA MORALES, DEPUTY

Attorneys for Plaintiff Ronghui Lee
on behalf of the certified class and
all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

LEE, RONGHUI, an individual California
resident on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HUNGRYPANDA US INC., a Delaware
corporation; and DOES 1-10, inclusive,

Defendant.

Case No. CIVSB2126633

PLAINTIFF'S PROPOSED CLASS
NOTICE; ~~PROPOSED~~ ORDER
APPROVING CLASS NOTICE

Judge: Hon. David Cohn
Dept.: S-26

Action Filed: September 2, 2021
Trial Date: None

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PLAINTIFF'S PROPOSED CLASS NOTICE; ~~PROPOSED~~ ORDER APPROVING CLASS NOTICE

FILED BY FAX

1 Plaintiff Ronghui Lee ("Plaintiff") respectfully requests that the Court enter an Order
2 approving the distribution of the proposed class notice attached hereto as **Exhibit A** (the "Class
3 Notice") to the class and subclasses certified by this Court on May 9, 2023.

4 The Class Notice complies with all requirements of California Rule of Court 3.766(d) as it
5 contains: (1) a brief explanation of the case, including the basic contentions; (2) a statement that
6 the court will exclude the member from the class if the member so requests by a specified date;
7 (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement
8 that the judgment, whether favorable or not, will bind all members who do not request exclusion;
9 and (5) a statement that any member who does not request exclusion may, if the member so
10 desires, enter an appearance through counsel.

11 Plaintiff's proposed Class Notice adequately explains the litigation and the class members'
12 options in a straightforward and simple manner including the claims at issue, their rights, how to
13 opt out, that those who remain in this Class will be bound by any judgment, and that they may
14 appear with their own counsel. Plaintiff will bear the cost of distributing the Class Notice via a
15 reputable third-party administrator ILYM Group, Inc.

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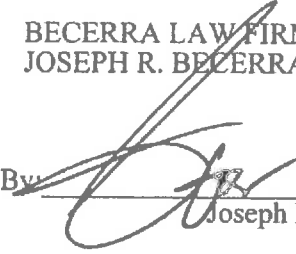
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1 Plaintiff believes that distribution of the Class Notice by U.S. mail and/or e-mail is the best
2 method to ensure notice to the class, especially given Defendant's contention that it does not have
3 home addresses for all of the class members. The Class Notice shall be distributed in both English
4 and mandarin Chinese, as Class Counsel believes that the majority of the class members speak
5 mandarin Chinese as their native language.

6 Dated: August 9, 2023

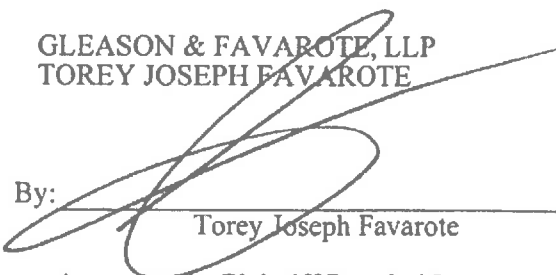
BECERRA LAW FIRM
JOSEPH R. BECERRA

7
8
9 By:  Joseph R. Becerra

10 Attorneys for Plaintiff Ronghui Lee
11 on behalf of the certified class and
12 all other aggrieved employees

13 Dated: August 9, 2023

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

14
15 By:  Torey Joseph Favarote

16 Attorneys for Plaintiff Ronghui Lee
17 on behalf of the certified class and
18 all other aggrieved employees
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[PROPOSED] ORDER

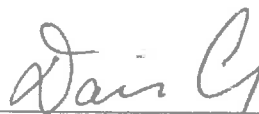
On good cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Court Approves Class Counsel's proposed Class Notice and its distribution to the class.
2. Plaintiff will bear the cost of distributing the Class Notice.
3. The Class Notice will be distributed via first class mail and/or email in both English and mandarin Chinese, by ILYM Group, Inc.

Dated: _____

8/11/23



Hon. David Cohn
Judge of the Superior Court

EXHIBIT A

Lee, Ronghui v. HungryPanda US Inc.
San Bernardino County Superior Court
Case No. CIVSB2126633

The Superior Court authorized this notice.
This is not a solicitation from a lawyer, you are not being sued.

A CLASS ACTION LAWSUIT MAY AFFECT YOUR RIGHTS

HungryPanda US, Inc.'s records indicate that you worked for HungryPanda, US Inc. as a delivery driver or courier between September 2, 2017 and May 9, 2023 and may be owed unpaid wages and related penalties by HungryPanda US, Inc.

A class action lawsuit has been certified against HungryPanda US, Inc. ("HungryPanda") by a delivery driver ("Representative Plaintiff") for unpaid wages, related penalties, unlawful fines and deductions to pay, and unpaid expenses for the use of its employees' personal cellular telephones, vehicles, and other equipment for work. "Certified" means the Court has decided that HungryPanda's employees' claims should be decided together as a class action. The Court has not decided whether any money is owed. **You are not being sued. This is only a notice to inform you of your legal rights.**

IF YOU WORKED FOR HUNGrypANDA, INC. AS A DRIVER, COURIER, CONTRACTOR, OR SIMILAR TITLES/DUTIES BETWEEN SEPTEMBER 2, 2017 AND MAY 9, 2023 THEN YOU MUST ACT BY [30 days from mailing], 2023 IF YOU WISH TO NOT BE PART OF THE CLASS. PLEASE READ THIS NOTICE FOR MORE INFORMATION TO HELP YOU DECIDE. IT IS UNLAWFUL FOR HUNGrypANDA TO SPEAK TO YOU ABOUT YOUR DECISION OR TO RETALIATE AGAINST YOU IN ANY WAY FOR DECIDING TO REMAIN IN THE CLASS.

Summary:

On September 2, 2017, Representative Plaintiff sued HungryPanda claiming that HungryPanda has intentionally misclassified its delivery drivers as independent contractors. Representative Plaintiff alleges that HungryPanda's misclassification of the delivery drivers resulted in a failure to pay minimum wages, overtime wages, provide legally adequate meal periods and rest breaks, unlawfully deducted wages and took money from its delivery drivers, failed to pay all wages at termination, failed to provide adequate wage statements, and failed to reimburse necessary business expenses like for the use of personal cellular telephones, vehicles, fuel, tolls, and other necessary equipment. HungryPanda failed to timely respond to the complaint in this matter and is in "default" meaning that they cannot present a defense to Representative Plaintiff's case. The Court has not decided if any money is owed. If Representative Plaintiff's lawsuit is successful, you may be entitled to a share of any money recovered as a result of settlement or trial.

YOUR RIGHTS AND OPTIONS	
DO NOTHING	Stay in this lawsuit. Await the outcome. Share in possible money recovered. Give up the right to file your own lawsuit. By doing nothing, you will remain in the class and will be entitled to a share of any money recovered. By doing nothing you give up any rights to sue HungryPanda on your own about the same legal claims that have been certified as a class action in this lawsuit.
ASK FOR EXCLUSION	Leave this lawsuit. Get no money recovered from this lawsuit. Keep your right to file your own lawsuit. If you ask to be excluded from this lawsuit you will receive nothing from any settlement or judgment, but you will keep the

	right to file your own lawsuit with your own attorney (subject to any applicable statutes of limitations). If you request to be excluded you will not get the benefit of HungryPanda already being in default if you file your own action.
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What Is The Lawsuit About?

Representative Plaintiff has alleged that HungryPanda did not pay all wages owed to its delivery drivers because it knowingly and unlawfully misclassified them as independent contractors and not as employees. This intentional misclassification resulted in a failure to pay for all time worked, including time spent waiting for delivery assignments, failure to pay overtime, a failure to give delivery drivers paid 10-minute rest breaks for every 4 hours worked or major fraction thereof, unpaid 30-minute duty free meal periods, and wage statements clearly showing the hours worked by the delivery drivers, rates of pay, and how much they earned for that time worked. Plaintiff also alleges that HungryPanda does not pay the delivery drivers all wages earned at the end of their employment, does not provide adequate reimbursement for the use of the delivery driver's personal property for its delivery business, and unlawfully takes money from its delivery drivers in the form of fines, fees, and deductions. Representative Plaintiff's lawsuit is trying to recover these unpaid wages, expenses, and the related penalties for HungryPanda's allegedly unlawful employment policies from September 2, 2017 to May 9, 2023. If Representative Plaintiff is successful, then everyone who stays in the class receives a share of the money recovered. If Representative Plaintiff is not successful, then HungryPanda pays nothing, and the class members do not get any money.

Representative Plaintiff has brought this lawsuit as a class action. A class action is a lawsuit that combines the claims of all employees into a single lawsuit. In order to continue the lawsuit the Court was first required to approve the case as a class action by "certifying" the class action. On May 9, 2023, the San Bernardino County Superior Court certified the lawsuit as a class action, which now requires Representative Plaintiff to send this notice to all class members so they can choose to stay in the class, and possibly get money, or leave the class so they can file their own lawsuit with their own lawyer. The San Bernardino County Superior Court approved the following groups to be in this class action:

The Class: All individuals currently or formerly employed by Defendant as an independent contractor in the title of Driver, Contractor, or other similar titles/duties who performed deliveries for Defendant and/or its customers in California at any time within the Class Period.

Subclass A: All Class Members employed during the time from September 2, 2018, through Class Certification, who terminated their employment relationship with Defendant and did not receive all wages owed to them in accordance with Labor Code § 201-203 (The "Waiting Time Penalties Subclass").

Subclass B: All Class Members employed during the time from September 2, 2017, through Class Certification, who received an unauthorized and/or unlawful deduction to their pay (The "Wage Theft Subclass").

Subclass C: All Class Members employed during the time from September 2, 2017, through Class Certification, who incurred reasonable business expenses in the discharge of their duties and were not reimbursed. (The "Expense Reimbursement Subclass").

Subclass D: All Class Members employed during the time from September 2, 2020, through Class Certification, who did not receive accurate itemized wage statements in accordance with Labor Code § 226. (The "Wage Statement Subclass").

Subclass E: All Class Members employed during the time from September 2, 2017, through Class Certification, who were not paid all wages, including all correct overtime wages, for time spent under Defendant's control. (The "Unpaid Wages Subclass").

Subclass F: All Class Members employed during the time from September 2, 2017, through Class Certification, who were not provided with a legally sufficient meal period, or a premium paid at their regular rate of pay in lieu thereof. (The "Meal Period Subclass").

Subclass G: All Class Members employed during the time from September 2, 2017, through Class Certification, who were not provided with a legally sufficient rest break, or a premium paid at their regular rate of pay in lieu thereof. (The "Rest Break Subclass").

How Do I Know If I Am A Class Member?

You are a class member if you worked for HungryPanda between September 2, 2017 to May 9, 2023, as an hourly employee. If you received this notice, you are likely a class member. If you have any questions about whether you are a class member you can contact the settlement administrator at _____ or Class Counsel at the number listed below.

What If I Want To Stay A Class Member?

YOU DO NOT NEED TO DO ANYTHING TO STAY A CLASS MEMBER. Representative Plaintiff and his lawyers will continue to fight to recover money which will be shared with you if any is recovered. You will be bound by any judgment entered by the Court in Representative Plaintiff's lawsuit and you cannot file your own lawsuit with your own attorney. **It is illegal for HungryPanda to retaliate against you for choosing to remain in the class. HungryPanda may not speak to you about remaining in or leaving the class. If HungryPanda approaches you or speaks to you about this opt out notice, please contact Representative Plaintiff's counsel below immediately.** If you do not exclude yourself from the Class you may choose to enter an appearance through an attorney at your own expense.

What If I Want To Exclude Myself?

If you do not want to stay in the class, then you must fill out the attached "Request for Exclusion" postcard and mail it by [30 days from mailing], 2023. If you do not stay in the class, then you will not receive a share of any money recovered but you will keep your right to file your own lawsuit with your own attorney at your own expense.

Who Are Representative Plaintiff's And The Certified Class' Lawyers And How Can I Get More Information?

Representative Plaintiff's and the Certified Class' lawyers are below:

BECERRA LAW FIRM

Joseph R. Becerra (SBN 210709)
jbecerra@jrbecerrallaw.com
4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
Tel: (213) 542-8501
Fax: (213) 542-5556

GLEASON & FAVAROTE LLP
Torey Joseph Favarote (SBN: 198521)
tfavarote@gleasonfavarote.com
4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
Tel: (213) 452-0510
Fax: (213) 452-0514

For additional information about this action, you may also contact the Class Administrator at _____.

DO NOT CONTACT THE COURT, THE COURT WILL NOT GIVE YOU ANY INFORMATION ABOUT THE LAWSUIT.

REQUEST FOR EXCLUSION FROM CLASS ACTION

LEE, RONGHUI v. HUNGrypANDA US, INC.

San Bernardino County Superior Court

Case No. CIVSB2126633

THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN ([30 days from mailing], 2023)
IT MUST BE SENT VIA U.S. MAIL TO:

ONLY SUBMIT THIS IF YOU DO NOT WANT TO BE IN THE CASE.

It is my decision **NOT** to participate in the Lee, Ronghui v. HungryPanda US, Inc., class action.
I understand that by excluding myself from the case, I will not be bound by a judgment or
settlement, if any, in this case, and I am preserving my right to pursue my own individual claims.

Print Name: _____

Signature: _____

Date: _____

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PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On August 9, 2022, I served a copy(ies) of the following document(s):

**PLAINTIFF'S PROPOSED CLASS NOTICE; [PROPOSED] ORDER APPROVING
CLASS NOTICE**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Attorney	Party(ies) Served	Method of Service
Mollie M. Burks Seth Weisburst Rahcel Winterle Annette Rose GORDON REES SCULLY MANSUKHANI, LLP 275 Battery Street, Suite 2000 San Francisco, CA 94111 Tel: (415) 875-3360, Fax: (415) 986-8054 mburks@grsm.com sweisburst@grsm.com rwinterle@grsm.com arose@grsm.com	Attorneys for Default Defendant/Non- Party HUNGRYPANDA US INC.	First Class Mail

☒ [BY MAIL] I placed the sealed envelope(s) for collection and mailing by following the ordinary business practice of Gleason & Favarote, LLP, Long Beach, California. I am readily familiar with Gleason & Favarote, LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☐ [BY OVERNIGHT COURIER] I caused the sealed envelope(s) to be delivered by a commercial courier service for overnight delivery to the offices of the addressee(s).

☐ [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by Ace Attorney Service, Inc. this date.

☐ [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic transmission to the e-mail address indicated for the party(ies) listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on August 9, 2022, at Long Beach, California.

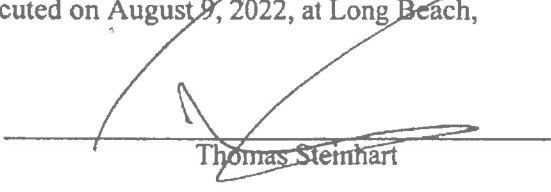

Thomas Steinhart

EXHIBIT 4

VERIFICATION

1. I, Shengzhi Liu, am the Senior Delivery Operation Manager at HungryPanda US, Inc. In that role, I am familiar with HungryPanda's data regarding drivers who perform deliveries on the HungryPanda platform. I have been authorized by HungryPanda US, Inc. to sign this Verification on its behalf in connection with the litigation titled *Lee Ronghui v. HungryPanda US Inc.* (Case No. CIVSB2126633).
2. I have reviewed the data provided below, and based on my own best knowledge and/or information provided to me by others knowledgeable of the matters set forth herein, I verify that the data below is true and correct.
3. When I refer to the "class period" below, I mean the period of time from September 2, 2017, through May 9, 2023. When I refer to the "PAGA period," I mean the period of time from August 27, 2020, through May 9, 2023. "Pre Prop 22" means the period of time from September 2, 2017, through December 31, 2020, and "Post Prop 22" means the period of time from January 1, 2021, through May 9, 2023.
4. HungryPanda US Inc. started its operations in California in 2019. Accordingly, the relevant data below starts from 2019 and is limited to California delivery orders.
5. When I refer to delivery time, I mean the period of time from when a driver accepts a delivery offer to the time the delivery is completed. I understand that Plaintiff in this case contends that drivers should be compensated for the time they purportedly spend waiting for and/or reviewing delivery offers. HungryPanda does not have data regarding how much time drivers purportedly spend waiting for and/or reviewing delivery offers. Because HungryPanda considers drivers to be independent contractors, they have the freedom to work whenever they choose, or they can choose not to work at all. HungryPanda does not instruct drivers to wait for delivery offers.

Number of Actual Drivers

6. HungryPanda's data shows the total number of actual drivers who delivered on the HungryPanda app:
- a. Class Period: 3,323
Pre Prop 22: 1,124
Post Prop 22: 2,484
 - b. PAGA Period: 2,830
Pre Prop 22: 600
Post Prop 22: 2,484
7. Some drivers delivered on the HungryPanda app during both the Pre and Post Prop 22 periods, so there is an overlap in drivers.
8. The figures above differ from the class list previously provided in this case. Upon further review, the class list was overinclusive because it included (1) "test" accounts that were not actually used by HungryPanda drivers, (2) accounts from HungryPanda drivers who never made any deliveries in California, (3) accounts that belonged to HungryPanda drivers who accepted an order but never started nor made a single delivery, and (4) an account that belonged to a HungryPanda driver who did not make any deliveries during the class period.

Delivery Time in Excess of 3.5 Hours in a Day

9. HungryPanda's data shows the following number of times that drivers delivered in excess of 3.5 hours in a day:
- c. Class period: 110,635
 - i. Pre Prop 22: 34,008
 - ii. Post Prop 22: 76,627
 - d. PAGA period: 90,804
 - i. Pre Prop 22: 14,177
 - ii. Post Prop 22: 76,627

10. Importantly, this data does *not* show the number of times that drivers *continuously* worked more than 3.5 hours in a day. For example, if a driver spent 2 hours of delivery time in the morning, then took a break for 2 hours, and then spent 2 hours of delivery time in the evening, that would be counted as a day in which the driver delivered in excess of 3.5 hours, even though that time was not continuous.
11. HungryPanda's data does not show the number of times that drivers delivered for a continuous period of time in excess of 3.5 hours. This is because drivers may take meal and rest breaks whenever they want, and drivers generally do not report those meal and rest breaks to HungryPanda. In addition, drivers are sometimes fulfilling deliveries on other, competing platforms at the same time that they are fulfilling deliveries for HungryPanda.

Delivery Time in Excess of 5 Hours in a Day

12. HungryPanda's data shows the following number of times that drivers delivered in excess of 5 hours in a particular day:
- a. Class period: 80,236
Pre Prop 22: 25,148
Post Prop 22: 55,088
 - a. PAGA period: 66,000
Pre Prop 22: 10,912
Post Prop 22: 55,088
13. Importantly, this data does *not* show the number of times that drivers *continuously* worked more than 5 hours in a day. For example, if a driver spent 3 hours of delivery time in the morning, then took a break for 2 hours, and then spent 3 hours of delivery time in the evening, that would be counted as a day in which the driver delivered in excess of 5 hours, even though that time was not continuous.

14. HungryPanda's data does not show the number of times that drivers delivered for a continuous period of time in excess of 5 hours. This is because drivers may take meal and rest breaks whenever they want, and drivers generally do not report those meal and rest breaks to HungryPanda. In addition, drivers are sometimes fulfilling deliveries on other, competing platforms at the same time that they are fulfilling deliveries for HungryPanda.

Average Amount of Delivery Time Per Day

15. HungryPanda's data shows the average amount of time (in hours) that drivers delivered per day:

- a. Class period: 4.69
 - 2019: 5.34
 - 2020: 5.34
 - 2021: 5.14
 - 2022: 4.28
 - 2023: 3.63
- b. PAGA period: 4.59
 - 2020: 5.44
 - 2021: 5.14
 - 2022: 4.28
 - 2023: 3.63

16. The averages above only account for days in which a driver made a delivery. The averages do not include days where a driver made no deliveries at all. HungryPanda does not have data showing the amount of time that a driver purportedly worked on days where the driver did not perform any deliveries.

Aggregate Number of Delivery Weeks

17. HungryPanda's data shows the aggregate number of weeks that drivers performed at least one delivery:
- a. Class period: 44,095
 - Pre Prop 22: 10,965

Post Prop 22: 33,130

- b. PAGA period: 37,526
Pre Prop 22: 4,396
Post Prop 22: 33,130

18. I understand that Plaintiff contends some drivers worked on weeks during which the drivers performed no deliveries. But as explained above in Paragraph 5, the drivers are independent contractors and they have the freedom to work whenever they choose, or they can choose not to work at all. HungryPanda does not instruct drivers to wait for delivery offers.

Aggregate Number of Trips

19. HungryPanda's data shows the aggregate number of trips made by drivers:

- a. Class period: 2,103,459
Pre Prop 22: 561,297
Post Prop 22: 1,542,162
- b. PAGA period: 1,785,036
Pre Prop 22: 242,874
Post Prop 22: 1,542,162

20. The data above is not limited to trips that drivers completed by car. It also includes trips that drivers completed through other transportation means, such as by foot, e-scooters, and e-bikes.

Average Payments Per Trip

21. HungryPanda's data shows the average amount paid to the drivers per trip:

- a. Class period: \$9.26
2019: Data Unavailable
2020: \$9.53
2021: \$9.42
2022: \$9.31
2023: \$8.74
- b. PAGA period: \$9.25
2020: \$9.32

2021: \$9.42
2022: \$9.31
2023: \$8.74

Average Number of Trips Per Day

22. HungryPanda's data shows the average number of trips made by the drivers per day:

a. Class period: 11.42

2019: 9.97
2020: 11.89
2021: 12.30
2022: 11.13
2023: 9.98

b. PAGA period: 11.44

2020: 12.12
2021: 12.30
2022: 11.13
2023: 9.98

23. The data above accounts for days in which a driver made a trip; it does not include days where a driver did not make any trip at all.

Average Distance Per Trip

24. HungryPanda's data shows the average distance per trip:

a. Class period: 4.02

2019: 4.66
2020: 1.92
2021: 4.97
2022: 4.53
2023: 4.46

b. PAGA period: 4.32

2020: 2.01
2021: 4.97
2022: 4.53
2023: 4.46

25. The data above is not limited to trips that drivers completed by car. It also includes trips that drivers completed through other transportation means, such as by foot, e-scooters, and e-bikes.

Average Amount of Delivery Time

26. HunryPanda's data shows the average amount of time (in hours) the drivers spent making a delivery from when they accepted the delivery offer on the app until the delivery was completed.

- a. Class period: 0.41
 - 2019: 0.54
 - 2020: 0.45
 - 2021: 0.42
 - 2022: 0.38
 - 2023: 0.36
- b. PAGA period: 0.40
 - 2020: 0.45
 - 2021: 0.42
 - 2022: 0.38
 - 2023: 0.36

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

Executed on 3/19/2024 [date] in Milpitas [city/country].



Shengzhi Liu

EXHIBIT 5

ORIGINAL

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Email: tfavarote@gleasonfavarote.com

Attorneys for Plaintiff Ronghui Lee
on behalf of himself and all others
similarly situated and all other aggrieved
employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

LEE, RONGHUI, an individual California
resident on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HUNGRYPANDA US INC., a Delaware
corporation; and DOES 1-10, inclusive,

Defendant.

Case No. CIVSB2126633

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES**

1. INTENTIONAL MISCLASSIFICATION OF
EMPLOYEES AS INDEPENDENT
CONTRACTORS (LAB. CODE § 226.8)
2. FAILURE TO PAY ALL WAGES DUE
(LAB. CODE §§ 204, 515, 1194, 1198,
CAL. CODE OF REG. § 11010 AND THE
IWC WAGE ORDERS.)
3. FAILURE TO TIMELY PAY ALL WAGES
(LAB. CODE §§ 204, 206, 206.5, 207,
209, 210, AND 215)
4. FAILURE TO PAY MINIMUM WAGE
(LAB. CODE §§ 1194, 1194.2, 1197.1,
1199, CAL. CODE OF REG. § 11090 AND
THE IWC WAGE ORDERS)
5. FAILURE TO PAY OVERTIME WAGES
(LAB. CODE §§ 510, 558, 1194, 1198)
6. FAILURE TO PROVIDE MEAL PERIODS
(LAB. CODE §§ 226.7, 512, CAL. CODE
REG. TITLE 8, § 11070)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 29 2021

BY Crystal K. D'Amico
CRYSTAL K. D'AMICO, DEPUTY

FILED BY FAX

7. FAILURE TO PROVIDE REST PERIODS (LAB. CODE §§ 226.7, 512, 1198, THE IWC WAGE ORDERS AND CAL. CODE OF REG. TITLE 8 AND §11090(11))
8. UNLAWFUL DEDUCTION OF WAGES, WAGE THEFT AND UNLAWFULLY PASSING ALONG THE COSTS OF DOING BUSINESS TO EMPLOYEES (LAB. CODE §§ 221- 224, 400-410, 450-452, 1198, 2928 AND THE IWC WAGE ORDERS.)
9. FAILURE TO REIMBURSE BUSINESS EXPENSES (LAB. CODE §§ 2802)
10. FAILURE TO PAY WAGES AT TERMINATION (LAB. CODE §§ 201, 202, AND 203)
11. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LAB. CODE § 226) AND KEEP ACCURATE TIME RECORDS (LAB. CODE § 1174(d))
12. VIOLATION OF THE UNFAIR COMPETITION LAW (BUS. & PROF. CODE §§ 16600, 17200-17208)
13. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE §§ 2698 ET SEQ. ("PAGA")

DEMAND FOR TRIAL BY JURY

Plaintiff RONGHUI LEE (herein referred to as "Plaintiff"), an individual California resident on behalf of himself and all others similarly situated, and all other aggrieved employees, has brought this action against Defendant HUNGRYPANDA US INC., a Delaware corporation and DOES 1-10 (hereafter referred to as "Defendant"). Plaintiff is informed and believes, and on that basis alleges as follows:

I. INTRODUCTION

1. This is a civil action seeking recovery for Plaintiff and all others similarly situated for unpaid overtime (including double time) wages, compensation for each meal period not provided, damages and penalties for failure to comply with wage statement provisions, plus attorneys' fees and costs under California Labor Code sections §§ 201, 202, 203, 204, 206, 206.5, 207, 209, 210, 215, 218.5, 218.6, 221-224, 226(a), 226(e), 226.7, 226.8, 432.7, 400-410, 450-452, 510, 512, 515, 515(d), 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2928, 2699 *et. seq.*,

1 section 1021.5 of the California Code of Civil Procedure, IWC Wage Order 9-2001, and California
2 Code of Regulations §§ 11010, 11070, 11090, as well as civil penalties for the same under
3 California Labor Code section 2698 *et. seq.* ("PAGA"). Plaintiff, on behalf of himself and all
4 others similarly situated, also seeks monetary recovery for Defendant's violations of California
5 Business and Professions Code sections 16600 and 17200, *et seq.*, including full restitution and/or
6 disgorgement of all compensation retained by Defendant as a result of its unlawful, fraudulent
7 and/or unfair business acts and practices.

8 2. Defendant operates and, at all times during the relevant liability period (four years
9 prior to the filing of the Complaint in this matter), has done business as an on-demand courier
10 service in San Bernardino County and throughout the state of California. In its endeavor,
11 Defendant hires individuals they call Drivers or contractors (hereinafter and collectively, including
12 all similarly dutied positions, "Drivers") who monitor Defendant's web and smartphone-based
13 ordering application (hereinafter the "HungryPanda App"), along with their personal cellphones for
14 calls and electronic messages from human dispatchers, and execute any orders which are placed by
15 Defendant's customers. Defendant misclassifies these Drivers as independent contractors. This
16 lawsuit challenges Defendant's wage and hour practices as they concern these Drivers.

17 3. Drivers who work for Defendant, including Plaintiff, regularly work more than 8
18 hours in a day and/or 40 hours in a work week. Drivers are misclassified by Defendant as
19 independent contractors, and therefore, under Defendant's policies, not eligible for almost any of
20 the protections provided to employees under the Labor Code.

21 4. The Drivers are not independent contractors by law, as they do not (1) provide
22 services directly to Defendant rather than to customers of the contracting business; (2) act free
23 from the control and direction of the Defendant in connection with the performance of the work,
24 both under the contract for the performance of the work and in fact; (3) provide services directly to
25 the Defendant rather than to Defendant's customers; (4) contract freely with other businesses to
26 perform the same type of work as provided to Defendant; (5) set their own negotiable rates; and
27 (6) set their own hours and location of work. Instead, the opposite of all these elements is true, as
28 the Drivers are assigned shifts within specific geographic areas, and make deliveries based on

1 Defendant's policies and rates, interact primarily with Defendant's customers according to
2 Defendant's extensive rules, and are prohibited from providing similar services to any other
3 business providing the same services.

4 The Drivers also do not meet any of the requirements to be classified as independent
5 contractors under any legal theory, including but not limited to Proposition 22, because Defendant
6 (1) sets the hours of work, (2) does not permit the Drivers to decline requests in their assigned
7 regions, (3) requires the Drivers to request leave, (4) has specific rules regarding punctuality and
8 attendance, (5) requires the Drivers to wear Defendant's uniform and use Defendant's provided
9 tools and materials, (6) and controls every part of the customer interaction with specific scripts,
10 rules and procedures which limit what the Drivers may say and do at nearly all times.

11 5. With respect to Plaintiff and the other putative class members, Defendant's
12 compensation program for its Drivers results in at least the following uniform policies and
13 practices that are in violation of California law:

- 14 a. It is the Defendant's uniform policy and procedure to misclassify its Drivers as
15 independent contractors and to not pay them overtime pay for hours over 8 in a day
16 or 40 in a week. Defendant also pays productivity bonuses which are not included
17 in the regular rate of pay, either for computing the proper overtime wages for
18 Drivers and/or the proper meal and rest period premium to be paid to Drivers in lieu
19 of providing lawful meal and rest breaks pursuant to the California Labor Code.
- 20 b. It is the Defendant's uniform policy and procedure to not provide and/or to refuse to
21 allow Drivers to take a first meal period within five hours of their shift beginning,
22 and/or a second meal period for shifts in excess of ten hours a day.
- 23 c. It is the Defendant's uniform policy and practice to not pay Drivers reporting time
24 pay for each shift in which the Drivers are required to report for work and then not
25 put to work for at least half of their scheduled shift, nor for time in which they are
26 on-call, ready, willing and able to work.
- 27 d. It is the Defendant's uniform policy and procedure to not provide and/or to refuse to
28 allow Drivers to take paid off-duty rest breaks within the first the first 4 hours of

1 their shift or every major fraction thereof for shifts lasting longer than 3.5 hours.

2 Furthermore, Defendant did not provide paid off-duty rest breaks for any subsequent
3 4-hour periods worked or major fraction thereof.

4 e. It is the Defendant's uniform policy and procedure to require Drivers to be on call
5 and monitoring the HungryPanda App, and any other methods of communication
6 with Defendant, at all times during their shift depriving them of any off duty meal
7 periods and/or rest breaks.

8 f. It is the Defendant's uniform policy and practice to pay Drivers only a small fee and
9 a small portion of their mileage for each delivery made, and not for all the time
10 spent working or otherwise under Defendant's control, which regularly results in the
11 Drivers being paid below minimum wage.

12 g. It is Defendant's uniform policy and practice to pass along all the costs of doing
13 business to the Drivers including but not limited to the costs of vehicle insurance,
14 unemployment insurance, workers compensation coverage, gas and wear and tear on
15 the vehicles they used to make deliveries for Defendant, upkeep of Defendant's
16 marketing and delivery materials, the costs of using the Drivers' mobile phones as
17 well as any accompanying voice, SMS, and data plan in order to use the
18 HungryPanda App, the costs of taxes, tickets, parking, tolls, and for the Drivers to
19 otherwise indemnify Defendant against any and all losses whatsoever.

20 h. It is Defendant's uniform policy and practice to make unlawful deductions to the
21 Drivers' wages, to withhold money payable to the Drivers at Defendant's sole
22 discretion, to require the forfeiture of wages, to claw back wages already paid, and
23 to require deposits/bonds of money in order to work for Defendant.

24 i. It is Defendant's uniform policy and practice to deny the Drivers any and all paid
25 time off, including sick days and paid family leave.

26 j. It is Defendant's uniform policy and practice to not regularly pay Drivers for their
27 labor, both while employed and promptly at termination. Defendant at times has
28 completely withheld wages, both as a disciplinary action, in times of unprofitability,

1 and arbitrarily as a means of exerting pressure on Drivers.

2 k. It is Defendant's uniform policy and procedure to not present Drivers with accurate
3 and properly itemized wage statements, instead providing at most, extremely limited
4 data in the HungryPanda App which in nearly all respects fails to be a legally
5 sufficient wage statement under California Labor Code §226(a) including but not
6 limited to failing to provide: a wage statement produced by the employer; listing the
7 correct total number of hours worked; listing the correct rates of pay for all hours
8 worked; listing the number of straight time and overtime hours worked; providing
9 the employee's ID number of last four digits of their social security number; and
10 providing the correct name and address of the employer and all deductions.

11 6. Plaintiff, on behalf of himself and all similarly situated current and former Drivers
12 that were classified as independent contractors of Defendant, seeks repayment of wages subject to
13 wage theft, payment of unpaid wages, including unpaid overtime wages and unpaid minimum
14 wages, reimbursement for business expenses and costs of doing business passed on to the Drivers,
15 plus damages and penalties for the unpaid wages, wage theft, business expenses, costs of doing
16 business, inaccurate and improperly itemized wage statements, compensation for unpaid and not
17 provided meal periods and rest breaks, waiting time penalties, statutory damages, punitive
18 damages, liquidated damages, and attorneys' fees, interest, and costs pursuant to statute.

19 7. Plaintiff, on behalf of himself and all putative Class Members, also seeks injunctive
20 relief, restitution, and disgorgement of all benefits Defendant has enjoyed from the above-
21 mentioned unlawful activity, wage theft, and illegal business contracts pursuant to Business and
22 Professions Code sections 16600, and 17200-17208. Plaintiff also seeks all available remedies and
23 penalties as an aggrieved employee, and for all other similarly aggrieved employees, on behalf of
24 the State of California pursuant to PAGA.

25 **II. JURISDICTION AND VENUE**

26 8. The California Superior Court has jurisdiction in this matter due to Defendant's
27 violations of the Labor Code, including but not limited to sections 226, 226.7, 510, 512, 515, 558,
28 1174, 1194, 1198 and Business and Professions Code sections 17203 and 17204, the Industrial

1 Welfare Commission (hereinafter "IWC") Wage Order(s) and related common law principles. The
2 California Superior Court also has jurisdiction in this matter because both the individual and
3 aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits
4 of the Superior Court and will be established at trial, according to proof.

5 9. Venue as to Defendant is proper in San Bernardino County and in this judicial
6 district, pursuant to California Code of Civil Procedure sections 395(a) and 395.5 because
7 Defendant operates throughout the State of California and extensively in San Bernardino County,
8 and many of the breaches occurred and liability for the acts complained of herein arose in San
9 Bernardino County and in this judicial district. Defendant operates their on-demand courier
10 service, and transacts business, including engaging in the conduct giving rise to liability in this
11 action within San Bernardino County.

12 **III. PARTIES**

13 **A. Plaintiff**

14 10. Plaintiff Ronghui Lee is a California resident and an individual over the age of
15 eighteen and is employed by Defendant as a Driver.

16 11. Within the last four years, Plaintiff worked for Defendant as a Driver, and in so
17 doing was required by Defendant to work more than 8 hours per day and in excess of 40 hours per
18 week without being paid overtime compensation. Often Plaintiff would wait during his assigned
19 shift for deliveries to come in but was not paid for this time, including when he worked more than
20 8 hours in a day. Plaintiff was not free to decline delivery requests in his assigned geographic
21 delivery area.

22 12. Plaintiff is only paid for the deliveries that he made and a small portion of the
23 mileage he drove and not for the time he spent working, this resulted in him being paid less than
24 minimum wage. Plaintiff was not paid for all of the time he spent working for Defendant,
25 including time spent complying with Defendants numerous requirements and rules.

26 13. Plaintiff is subject to all of Defendant's uniform policies including but not limited to
27 those which: require him to cover almost all business expenses for Defendant including but not
28 limited to the cost of the vehicle he uses, insurance, workers compensation, taxes, fuel, the cost of

1 his own background check, HungryPanda branded “warming boxes,” uniforms, car decals, and
2 promotional materials; make deductions from his wages if he is late for a shift, does not show up
3 for a shift, if he leaves a shift early, or violate nearly any rule set and changed at any time by
4 HungryPanda; had deductions made from his wages if a customer refused to pay for a meal or
5 requested a refund for any reason, fail to pay all wages at termination; and failed to provide meal
6 periods and rest breaks.

7 **B. Defendant**

8 14. Defendant is a Delaware corporation operating throughout California, as an on-
9 demand courier and delivery service operated primarily through the HungryPanda App.

10 15. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of Defendant sued herein as DOES 1 through 10, inclusive, are currently unknown to
12 Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and
13 believes, and based thereon alleges, that DOES 1 through 10 are now, or at all times mentioned in
14 this Complaint were doing business in the state of California, and that each of the defendants
15 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
16 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
17 capacities of the defendants designated hereinafter as DOES when such identities become known.

18 16. Plaintiff is informed and believes, and based thereon alleges, that each defendant
19 acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint
20 scheme, business plan or policy to perform the unlawful acts and practices described herein, and
21 the acts of each defendant are legally attributable to the other defendants as each defendant has
22 ratified, approved, and authorized the acts of each of the remaining defendants with full knowledge
23 of said acts.

24 **IV. CLASS ACTION ALLEGATIONS**

25 17. Plaintiff brings this action as a class action on behalf of himself and all other
26 persons similarly situated, pursuant to Code of Civil Procedure section 382. The “Class Period” is
27 four (4) years from the filing of this Complaint up to and including the time of trial for this matter.
28 The class which Plaintiff seeks to represent is composed of and defined as follows:

1 **All individuals employed by Defendant as an independent contractor in**
2 **the job title of “Driver,” “Contractor” or other similar titles/duties who**
3 **performed deliveries for Defendant and/or its customers in California at**
4 **any time within the Class Period.**

5 18. Plaintiff is informed and believes that the class consists of five hundred or more
6 persons. The membership of the class is so numerous and dispersed geographically that actual
7 joinder of all of the class members is impracticable.

8 19. During this litigation, Plaintiff may find it appropriate or necessary to amend the
9 definition of the class. Plaintiff reserves his right to continue to refine the class definition prior to
10 class certification. Similarly, although subclasses are not anticipated at this time, Plaintiff reserves
11 the right to move for certification of subclasses divided along any reasonable point of distinction
12 that might exist among class members.

13 20. Ascertainable Class: The proposed class is ascertainable in that class members can
14 self-identify their membership status with reference to the class descriptions and class members
15 can also be identified and located using information contained in Defendant’s payroll and
16 personnel records.

17 21. Numerosity: The potential quantity of members of the class as defined is so
18 numerous that joinder of all members would be unfeasible and impractical. The disposition of their
19 claims through this class action will benefit both the parties and this Court. Although the number
20 of members of the putative class is unknown to Plaintiff at this time, Plaintiff is informed and
21 believes that putative class members number in excess of 500 individuals.

22 22. Typicality: The claims of Plaintiff are typical of the claims of all members of the
23 putative class because all members of the class suffered violations of their legal rights and
24 sustained injuries and damages from Defendant’s common course of conduct in violation of law, as
25 alleged herein. Specifically, Defendant’s employment and payroll policies experienced by Plaintiff
26 are developed and overseen by a centralized administration and applied uniformly throughout its
27 California operations. Similarly, Defendant distributed the same policy materials, job description,
28 and employment contract to Plaintiff and its other California-based Drivers, without distinction as

1 to their geographic location within the state.

2 23. Adequacy: Plaintiff is an appropriate and legally adequate representative of the
3 class and will fairly protect the interests of the members of the class, has no interest antagonistic to
4 the members of the class, and will vigorously pursue this suit via attorneys who are competent,
5 skilled and experienced in litigating large class actions of this type.

6 24. Superiority: The nature of this action and the laws available to Plaintiff make use of
7 the class action format, which is a particularly efficient and appropriate procedure to afford relief to
8 Plaintiff and the putative class for the wrongs alleged herein, as follows:

- 9 a. The case involves a large corporate Defendant and a large number of individual
10 class members with many relatively small claims who share common issues of law
11 and fact;
- 12 b. If each individual member of each of the class was required to file an individual
13 lawsuit, the Defendant would necessarily gain an unconscionable advantage because
14 Defendant would be able to exploit and overwhelm the limited resources of each
15 individual member of the class with Defendant's vastly superior financial and legal
16 resources;
- 17 c. Requiring each individual member of the class to pursue an individual remedy
18 would discourage the assertion of lawful claims by the members of the class who
19 would be disinclined to pursue an action against Defendant because of an
20 appreciable and, in the case of putative class members who continue in Defendant's
21 employ, a justifiable fear of retaliation and permanent damages to their lives, careers
22 and well-being;
- 23 d. Proof of the common and unlawful business acts and practices experienced by
24 Plaintiff is representative of the class and will establish the right of each of the
25 members of the class to recover on the causes of action alleged herein;
- 26 e. The prosecution of separate actions by the individual members of the class, even if
27 possible, would create a substantial risk of inconsistent or varying verdicts or
28 adjudications among the individual members of the class and would establish

1 potentially incompatible standards of conduct for Defendant; or legal determinations
2 with respect to individual members of the class which would, as a practical matter,
3 be dispositive of the interest of the other members of the class who are not parties to
4 the adjudications or which would substantially impair or impede the ability of the
5 members of the class to protect their interest;

- 6 f. The cost to the court system of adjudicating a multitude of individual actions would
7 be substantial and unduly burden the Court and the litigants; and
8 g. Finally, the alternative of filing a claim with the California Labor Commissioner is
9 not superior, given the lack of discovery in such proceedings, the availability of
10 fewer remedies, and the fact that the losing party has the right to a trial de novo in
11 the Superior Court.

12 25. Existence and Predominance of Common Questions of Fact and Law: Common
13 questions of law and fact predominate over questions affecting only individual members of the
14 putative class including, without limitation:

- 15 a. Whether members of the class are, as a matter of law, classified properly as
16 independent contractors;
17 b. Whether Defendant intentionally misclassified the members of the class as
18 independent contractors;
19 c. Whether members of the class worked more than 8 hours in a day and/or 40 hours in
20 a workweek without being paid proper overtime for such overtime hours worked at
21 the proper premium pay rate including all bonuses;
22 d. Whether members of the class were not paid a minimum wage;
23 e. Whether members of the class were not paid reporting time pay for when Defendant
24 required members of the class to report for work and then were not put to work for
25 at least half of their scheduled shift;
26 f. Whether members of the class were not paid for all "on-call" time that they were
27 under the control of the Defendant;

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- 1 g. Whether members of the class worked more than five hours without Defendant
2 providing a meal period, or pay in lieu thereof, as required by Labor Code section
3 512;
- 4 h. Whether members of the class worked more than ten hours without Defendant
5 providing a second meal period, or pay in lieu thereof, as required by Labor Code
6 section 512;
- 7 i. Whether members of the class worked more than 3.5 hours without being provided
8 with an off-duty paid 10-minute rest break, or pay in lieu thereof, as required by
9 IWC Wage Order 9-2001;
- 10 j. Whether the members of the class were subject to unlawful wage deductions and
11 wage theft;
- 12 k. Whether class members were reimbursed for all business expenses;
- 13 l. Whether Defendant unlawfully passed along to cost of doing business onto the class
14 members;
- 15 m. Whether the class received wage statements that failed to include the hourly and
16 overtime rates of pay, or any other item required by Labor Code section 226(a);
- 17 n. Whether the class was injured by Defendant's failure to include the hourly and
18 overtime rates of pay and the corresponding number of hours worked at each rate on
19 their wage statements;
- 20 o. Whether the failure to include the hourly and overtime rates of pay, or any other
21 item required by Labor Code section 226(a) was "knowing and intentional";
- 22 p. Whether the failure to provide wage statements as required by Labor Code section
23 226(a) to the class was "knowing and intentional";
- 24 q. Whether Defendant maintained an illegal labor contract and non-compete agreement
25 in violation of Business and Professions Code sections 16600 and Labor Code
26 Section 432.5;
- 27 r. Whether Defendant's conduct constitutes unfair competition within the meaning of
28 Business and Professions Code sections 17200 and 17203;

- 1 s. Whether the members of the class are entitled to injunctive relief;
2 t. Whether the members of the class are entitled to restitution;
3 u. Whether Defendant is liable for pre-judgment interest;
4 v. Whether Defendant is liable for statutory penalties; and
5 w. Whether Defendant is liable for attorneys' fees and costs.

6 26. The predominance of these common questions creates a well-defined community of
7 interests among the Plaintiff and the members of the putative class.

8 **V. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

10 **INTENTIONAL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS**

11 27. Plaintiff incorporates the allegations contained in paragraphs 1 through 26 at this
12 point as though set forth in full.

13 28. For the four (4) year period preceding the filing of the Complaint, Defendant had a
14 uniform practice and procedure of intentionally misclassifying its Drivers as independent
15 contractors in order to systematically underpay them and evade the labor laws and regulations of
16 the state of California. It was Defendant's uniform policy and practice to have Plaintiff and the
17 putative class sign employment contracts which unlawfully classified them as independent
18 contractors despite requiring the Drivers to personally perform all services under the control of
19 Defendant who would set the Drivers' time of work, place of work, rates, and manner of work.
20 Defendant gave the Drivers no discretion to reject delivery requests and unilaterally assigned them
21 to geographic locations they could not stray from. Defendant also required Plaintiff and the
22 putative class to use their branded tools and materials and wear Defendant's uniforms. Plaintiff
23 and the putative class clearly do not meet any legal test for being considered independent
24 contractors, either under Labor Code section 2750.3, Proposition 22, and/or the "ABC test" set by
25 AB 5 or the California Supreme Court.

26 29. Plaintiff and the putative class believe Defendant's conduct in misclassifying them
27 as independent contractors was intentional in violation of Labor Code section 226.8.

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1 30. As a result of the unlawful acts of Defendant, Plaintiff and the putative class have
2 been deprived of all benefits of being considered an employee including but not limited to,
3 overtime wages, minimum wages, business expenses reimbursement, and/or other compensation in
4 amounts to be determined at trial, and are entitled to recover such amounts from Defendant, in
5 addition to the statutory penalties provided in Labor Code section 226.8, plus interest thereon,
6 attorneys' fees and costs.

7 31. As a proximate result of the aforementioned violations, Plaintiff and the putative
8 class have been damaged in an amount according to proof at the time of trial, but in an amount that
9 exceeds the minimum jurisdiction of this Court.

10 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

11 **FAILURE TO PAY ALL WAGES DUE**

12 32. Plaintiff incorporates the allegations contained in paragraphs 1 through 30 at this
13 point as though set forth in full.

14 33. California Code of Regulations section 11010 5(A), titled "Reporting Time Pay,"
15 states that: Each workday an employee is required to report for work and does report, but is not put
16 to work or is furnished less than half said employee's usual or scheduled day's work, the employee
17 shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours
18 nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the
19 minimum wage.

20 34. California Code of Regulations section 11010 5(B) states that: If an employee is
21 required to report for work a second time in any one workday and is furnished less than two hours
22 of work on the second reporting, said employee shall be paid for two (2) hours at the employee's
23 regular rate of pay, which shall not be less than the minimum wage.

24 35. For the four (4) year period preceding the filing of the Complaint, Defendant had a
25 uniform practice and procedure of failing to compensate Plaintiff and the putative class for
26 reporting time pay when they reported to work as directed and were not put to work for at least half
27 of their shift. Furthermore, Plaintiff and the putative class were not paid reporting time pay when
28 required to report for a second, third or fourth time in a workday. Plaintiff and the putative class

1 were often required wait without pay until being requested to perform a delivery via the
2 HungryPanda App, but could be disciplined or fired if they were not ready to take a delivery at a
3 moments notice. This policy triggered Defendant's responsibility to pay reporting time pay when
4 Plaintiff and the putative class were not put to work. Defendant also did not pay for all of the time
5 that Plaintiff and the putative class were under its control, including but not limited to before, after
6 or between orders/deliveries.

7 36. Plaintiff and the putative class regularly worked shifts for Defendant but were never
8 paid reporting time pay, they were only paid a small fee for mileage and each delivery they made.

9 37. As a result of the unlawful acts of Defendant, Plaintiff and the putative class have
10 been deprived of reporting time pay and/or other compensation in amounts to be determined at
11 trial, and are entitled to recover such amounts from Defendant, plus interest thereon, attorneys' fees
12 and costs.

13 38. Defendant's pattern, practice and uniform administration of its corporate policy and
14 practice to not pay Plaintiff and the putative class all reporting time pay as described herein, is
15 unlawful and creates entitlements pursuant to Labor Code sections 1194, 1198, IWC Wage Order
16 9-2001, and California Code of Regulations, section 11010 *et seq.* Plaintiff and the putative class
17 are entitled to recover from Defendant the full amount of the wages due and unpaid, plus interest,
18 reasonable attorneys' fees and costs of suit.

19 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

20 **FAILURE TO TIMELY PAY ALL WAGES**

21 39. Plaintiff incorporates the allegations contained in paragraphs 1 through 38 at this
22 point as though set forth in full.

23 40. Labor Code section 204 requires that: Labor performed between the 1st and 15th
24 days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
25 month during which the labor was performed, and labor performed between the 16th and the last
26 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
27 following month.

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1 41. For the four (4) year period preceding the filing of the Complaint, Defendant had a
2 uniform practice and procedure of failing to pay Plaintiff and the putative class twice monthly, or
3 even weekly, instead at its own discretion would withhold payment of wages in times of
4 unprofitability, due to an alleged violation of HungryPanda's extensive rules, or in order to place
5 pressure on the Drivers. Labor Code sections 204, 206 and 207 require an employer to pay
6 employees all wages it reasonably knows are due at least twice monthly. Defendant's practice of
7 paying wages at its own discretion violates these Labor Code sections.

8 42. As a result of Defendant's practices Plaintiff and the putative class have been
9 deprived of the benefits of a regular paycheck and the value of being promptly paid all wages owed
10 to them.

11 43. Defendant's pattern, practice and uniform administration of its corporate policy and
12 practice to not timely pay Plaintiff and the putative class all wages when due, as described herein,
13 is unlawful and creates entitlements pursuant to Labor Code sections 210, 225.5, 1194, 1198, and
14 IWC Wage Order 9-2001. Plaintiff and the putative class are entitled to recover from Defendant
15 penalties and 25% of all withheld wages, liquidated damages, plus interest, reasonable attorneys'
16 fees and costs of suit.

17 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

18 **FAILURE TO PAY MINIMUM WAGE**

19 44. Plaintiff incorporates the allegations contained in paragraphs 1 through 43 at this
20 point as though set forth in full.

21 45. California Labor Code section 1197.1 mandates that "Any employer or other person
22 acting either individually or as an officer, agent, or employee of another person, who pays or
23 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
24 local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages,
25 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
26 Section 203."

27 46. For the four (4) year period preceding the filing of the Complaint, Defendant had a
28 uniform practice and procedure of failing to pay Plaintiff and the putative class minimum wage,

1 instead paying Plaintiff and the putative class a small fee for each delivery and a small fee for the
2 mileage they drove. It was Defendant's uniform practice to not pay Plaintiff and the putative class
3 for all time spent working for Defendant, resulting in Plaintiff and the putative class being
4 chronically and significantly paid less than the minimum wage. Labor Code sections 1194, 1194.2,
5 1197.1, 1198, 1199, Cal. Code of Reg. § 11090 and IWC Wage Order 9 make it unlawful to require
6 or suffer any employee to work without at least minimum wage compensation for that time spent
7 working under the employer's control.

8 47. As a result of Defendant's practices Plaintiff and the putative class have been
9 deprived of a minimum wage and all wages unpaid to them. It is the Defendant's uniform policy
10 and procedure to require Drivers to be on call and monitoring the HungryPanda App, and any other
11 required methods of communication with Defendant, at all times during their shift but to not pay
12 them for this time spent under Defendant's control.

13 48. Defendant's pattern, practice and uniform administration of its corporate policy and
14 practice to not timely pay Plaintiff and the putative class minimum wage, is unlawful and creates
15 entitlements pursuant to Labor Code sections 1194, 1194.2, 1197.1, 1198, 1199, Cal. Code of Reg.
16 § 11090 and IWC Wage Order 9-2001. Plaintiff and the putative class are entitled to recover from
17 Defendant, penalties, withheld wages, liquidated damages, interest, reasonable attorneys' fees and
18 costs of suit.

19 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

20 **FAILURE TO PAY OVERTIME WAGES**

21 49. Plaintiff incorporates the allegations contained in paragraphs 1 through 48 at this
22 point as though set forth in full.

23 50. IWC Wage Order 9-2001 states: that employees must be paid one half their regular
24 hourly rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in
25 any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work
26 in a workweek. Furthermore, employees must be paid two times their regular hourly rate for all
27 hours worked in excess of twelve (12) hours in a workday and for all hours worked in excess of
28 eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

1 51. For the four (4) year period preceding the filing of the Complaint, Defendant had a
2 uniform practice and procedure of misclassifying its Drivers as independent contractors and not
3 paying them for hours worked over 8 hours per day or 40 hours in a week as well as applicable
4 double-time, or for all of the time that they are under the control of the Defendant, including “on-
5 call” and/or standby time before, after or between orders/deliveries in violation of Labor Code
6 sections 1194, 1198, 510, 515(d), 558, IWC Wage Order 9-2001, and California Code of
7 Regulations, section 11090(3).

8 52. As a result of Defendant’s practices, Plaintiff and the putative class have been
9 deprived of all overtime wages owed to them.

10 53. Defendant’s pattern, practice and uniform administration of its corporate policy and
11 practice to not timely pay Plaintiff and the putative class minimum wage, is unlawful and creates
12 entitlements pursuant to Labor Code sections 1194, 1194.2, 1197.1, 1199, Cal. Code of Reg.
13 § 11090 and IWC Wage Order 9-2001. Plaintiff and the putative class are entitled to recover from
14 Defendant, penalties, withheld wages, liquidated damages, interest, reasonable attorneys’ fees and
15 costs of suit.

16 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

17 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

18 54. Plaintiff incorporates the allegations contained in paragraphs 1 through 53 at this
19 point as though set forth in full.

20 55. During his employment with Defendant, Plaintiff and the putative class members
21 regularly worked in excess of 5 hours without being afforded timely, uninterrupted duty-free thirty
22 (30) minute meal period for every five (5) hours of work and ten (10) hours worked, in which they
23 were relieved of all duties as required by Labor Code sections 226.7, 512, 1198 and IWC Wage
24 Order 9.

25 56. As a direct and proximate result of Defendant’s violation of Labor Code section
26 226.7 and IWC Wage Order 9, Plaintiff and the putative class members have suffered irreparable
27 harm and monetary damages. Plaintiff seeks damages and all other relief allowable including
28 premium pay at the regular rate of pay for each workday of at least 5 hours or 10 hours during

1 which Plaintiff and the putative class members were not provided legally adequate meal periods,
2 attorney's fees, and prejudgment interest.

3 57. It is the Defendant's uniform policy and procedure to require Drivers to be on call
4 and monitoring the HungryPanda App, and any other methods of communication with Defendant,
5 at all times during their shift depriving them of any off duty meal periods and/or rest breaks.

6 58. As a result of the unlawful acts of Defendant, Plaintiff and the putative class have
7 been deprived of wages and/or other compensation in amounts to be determined at trial, and are
8 entitled to recover such amounts from Defendant, plus interest thereon, attorneys' fees, and costs of
9 suit.

10 59. Plaintiff and the putative class members also are entitled to one (1) hour of pay at
11 their regular rate of pay for each day that they were not provided a legally adequate meal period.

12 **SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

13 **FAILURE TO PROVIDE REST PERIODS**

14 60. Plaintiff incorporates the allegations contained in paragraphs 1 through 59 at this
15 point as though set forth in full.

16 61. During his employment with Defendant, Representative Plaintiff and the putative
17 class members regularly worked in excess of 3.5 hours without being afforded a net total ten (10)
18 minute rest period for every four (4) hours of work or major fraction thereof, in which they were
19 relieved of all duties and allowed to leave the premises as required by Labor Code sections 226.7,
20 1198 and IWC Wage Order 9-2001.

21 62. It is the Defendant's uniform policy and procedure to require Drivers to be on call
22 and monitoring the HungryPanda App, and any other methods of communication with Defendant,
23 at all times during their shift depriving them of any off duty meal periods and/or rest breaks.

24 63. As a direct and proximate result of Defendant's violation of Labor Code section
25 226.7 and IWC Wage Order 9-2001, Representative Plaintiff and the putative class members have
26 suffered irreparable harm and monetary damages. Representative Plaintiff seeks damages and all
27 other relief allowable including premium pay paid at their regular rate of pay for each work shift of
28 at least 3.5 hours during which Representative Plaintiff and the putative class members were not

1 provided a paid net total ten (10) minute uninterrupted duty-free rest period where they could leave
2 the premises, attorney's fees, and prejudgment interest, pursuant to Labor Code sections 200, *et*
3 *seq.*

4 64. Representative Plaintiff and the putative class members also are entitled to one (1)
5 hour of pay paid at their regular rate of pay for each day that they were not provided a legally
6 adequate rest period.

7 **EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

8 **UNLAWFUL DEDUCTION OF WAGES, WAGE THEFT AND UNLAWFULLY PASSING ALONG THE**
9 **COSTS OF DOING BUSINESS TO EMPLOYEES**

10 65. Plaintiff incorporates the allegations contained in paragraphs 1 through 64 at this
11 point as though set forth in full.

12 66. The California Labor Code prohibits the unlawful deduction or withholding of
13 wages to cover business losses, business costs, and damage that the employer should bear as the
14 cost of doing business. The Labor Code also prohibits the deduction of wages on account of an
15 employee's coming late to work in excess of the proportionate wage which would have been
16 earned during the time actually lost.

17 67. For the four (4) year period preceding the filing of this Complaint, Plaintiff and the
18 putative class have been subject to unlawful deductions and withholding of wages to cover for
19 business losses and damage that the employer should bear as the cost of doing business, all without
20 proper payment from Defendant. Plaintiff and the putative class have also been subject to unlawful
21 deductions and withholding of wages when they arrived late to a shift, did not arrive for a shift, left
22 a shift early, for nearly any violation to HungryPanda's rules, and for whenever for any reason a
23 customer refused to pay for a delivery.

24 68. Defendant has a policy of regularly and consistently making such deductions and
25 withholdings, in violation of California law.

26 69. Pursuant to Labor Code § 221-223, 225.5, 450-452, 400-410, 1194, 1199 and 2928,
27 Plaintiff and the putative class are entitled to recover from Defendant the full amount of the
28 unlawful deductions and withholding, civil penalties, liquidated damages, plus interest, reasonable

1 attorney's fees and costs of suit.

2 **NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

3 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

4 70. Plaintiff incorporates the allegations contained in paragraphs 1 through 69 at this
5 point as though set forth in full.

6 71. California Labor Code § 2802, requires Defendant to "indemnify his or her
7 employees for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
9 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
10 be unlawful." Cal Lab Code § 2802.

11 72. For the four (4) year period preceding the filing of this Complaint, Plaintiff and the
12 putative class have been required by Defendant to bear all costs including but not limited to the
13 costs of vehicle insurance, unemployment insurance, workers compensation coverage, for their
14 own background checks, gas and wear and tear on the vehicles they used to make deliveries for
15 Defendant, upkeep of Defendant's marketing and delivery materials, the costs of using the Drivers'
16 mobile phones as well as an accompanying voice, SMS, and data plan in order to use the
17 HungryPanda App and communicate with HungryPanda dispatchers, the costs of taxes, tickets,
18 parking, tolls, and for the Drivers to otherwise indemnify Defendant against any and all losses
19 whatsoever.

20 73. Defendant has a policy of regularly and consistently refusing to reimburse Plaintiff
21 and the putative class for such expenses, in violation of California law.

22 74. Pursuant to Labor Code § 2802, Plaintiff and the putative class are entitled to
23 recover from Defendant the full amount of the expenses they incurred in the performance of their
24 job duties, plus interest, reasonable attorney's fees and costs of suit.

25 **TENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

26 **FAILURE TO PAY WAGES AT TERMINATION**

27 75. Plaintiff incorporates the allegations contained in paragraphs 1 through 74 at this
28 point as though set forth in full.

1 76. California Labor Code section 201 requires an employer who discharges an
2 employee to pay all compensation due and owing to that employee immediately upon discharge.

3 77. California Labor Code section 203 provides that if an employer willfully fails to pay
4 compensation promptly upon separation from employment, as required by either Sections 201 or
5 202, then the employer is liable for waiting time penalties in the form of continued compensation
6 for up to 30 workdays.

7 78. Defendant willfully failed and refused to timely pay all wages to Representative
8 Plaintiff and putative class members whose employment terminated. As a result, Defendant is
9 liable to Plaintiff and the putative class members for waiting time penalties, together with costs,
10 under Labor Code section 203.

11 79. As a result of Defendant's unlawful conduct, Plaintiff and putative class members
12 have suffered damages in an amount, subject to proof, to the extent they were not paid all wages
13 due each pay period. The precise amount of unpaid wages and waiting time penalties are not
14 presently known to Plaintiff but can be determined directly from Defendant's records or indirectly
15 based on information from Defendant's records.

16 **ELEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

17 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE**
18 **STATEMENT PROVISIONS AND KEEP ACCURATE TIME RECORDS**

19 80. Plaintiff incorporates the allegations contained in paragraphs 1 through 79 at this
20 point as though set forth in full.

21 81. Section 226(a) of the California Labor Code requires Defendant to provide itemized
22 wage statements at the time of payment of wages which include but are not limited to the
23 following: the correct gross wages earned; the correct total straight and overtime hours worked by
24 the employee; the correct net wages earned; the inclusive dates of the period for which the
25 employee is paid; and all applicable hourly rates in effect during the pay period and the
26 corresponding correct total number of hours worked at each hourly rate by the employee.

27 82. Pursuant to Labor Code section 226(e), Plaintiff and the putative class are entitled to
28 penalties of (a) Fifty Dollars (\$50.00) per employee for the initial pay period in which a violation

1 occurs; (b) One Hundred Dollars (\$100.00) per employee for each violation in a subsequent pay
2 period, per claimant; and (c) an award of costs and reasonable attorneys' fees. Pursuant to Labor
3 Code section 226(g). Plaintiff and the putative class are entitled to injunctive relief to ensure
4 Defendant's compliance with Labor Code section 226.

5 83. Labor Code section 1174(d) requires that employers like Defendant also keep
6 records showing the hours worked daily and wages paid to every employee. Defendant failed to
7 comply with this provision as it did not keep a record of Plaintiff or the putative class members'
8 time that they spent under the control of the Defendant.

9 84. Plaintiff contends that he and the putative class members have been injured by
10 Defendant's failure to provide wage statements and otherwise include all of the requisite
11 information on any statements contended to be itemized wage statements in that such failure, *inter*
12 *alia*, masks possible and actual underpayments and deductions to Defendant's employees; and
13 make it difficult, for Defendant's employees to verify that they have in fact been paid the proper
14 amounts owing for all hours worked. Said conduct was done knowingly and intentionally since
15 Defendant is aware of California law, and with the design to harm Plaintiff and the putative class
16 members.

17 **THIRTEENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

18 **VIOLATION OF THE UNFAIR COMPETITION LAW**

19 **(ON BEHALF OF PLAINTIFF, THE CLASS AND THE GENERAL PUBLIC)**

20 85. Plaintiff incorporates the allegations contained in paragraphs 1 through 84 at this
21 point as though set forth in full.

22 86. Defendant's failure to lawfully compensate Plaintiff and members of the putative
23 class under the California Labor Code and IWC Wage Order 9-2001, as alleged herein, constitute
24 unlawful activity prohibited by Business and Professions Code sections 16600 and 17200.

25 87. The actions of Defendant in uniformly maintaining illegal employment contracts
26 which act as a restraint in trade, containing a so called "non-compete" clause prohibiting Plaintiff
27 and the putative class from engaging in work similar to that provide to Defendant, is unlawful
28 under Business and Professions Code sections 16600. The majority of sections in Defendant's

1 employment contract are similarly unlawful, including all clauses which require the forfeiture of
2 wages.

3 88. The actions of Defendant in failing to pay Plaintiff and the putative class in a lawful
4 manner constitute false, unfair, fraudulent and deceptive business practices, within the meaning of
5 Business and Professions Code sections 17200, *et seq.*

6 89. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
7 practices in order to prevent further damage, for which there is no adequate remedy at law, and to
8 avoid a multiplicity of lawsuits. Plaintiff brings this cause as a Class Action and as a member of
9 the general public as a representative of all others similarly situated who were subject to
10 Defendant's unlawful acts and practices.

11 90. Plaintiff and the putative class have lost money and/or property as a result of
12 Defendant's unfair business acts and practices and Defendant is unjustly enriched to the extent of
13 its failure to pay earned wages to Plaintiff and members of the putative class.

14 91. The unlawful acts and conduct alleged herein is continuing and there is no
15 indication that Defendant will stop such activity in the future. Plaintiff alleges that if Defendant is
16 not enjoined from the conduct set forth in this Complaint, they will continue to withhold payment
17 of earned wages and other compensation due Plaintiff and the putative class.

18 92. As a direct and proximate result of the unfair business acts and practices of
19 Defendant, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to
20 equitable and injunctive relief, including full restitution, disgorgement, and/or specific performance
21 of payment of all wages that have been unlawfully withheld from Plaintiff and the putative class,
22 and issuance of an order pursuant to Business and Professions Code section 17200, *et seq.*,
23 enjoining Defendant from engaging in the unlawful acts and practices described herein.

24 93. Plaintiff further requests that the Court issue a preliminary and permanent injunction
25 prohibiting Defendant from continuing the illegal practices described hereinabove.

26 ///

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28 ///

1 **FOURTEENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
2 **PRIVATE ATTORNEY GENERALS ACT REPRESENTATIVE CLAIM**
3 **FOR VIOLATIONS OF LABOR CODE § 2698 ET. SEQ.**
4 **(BY REPRESENTATIVE PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST DEFENDANTS AND**
5 **DOES 1 THROUGH 10 INCLUSIVE)**

6 94. Plaintiff incorporates the allegations contained in paragraphs 1 through 93 at this
7 point as though set forth in full.

8 95. As set forth in detail in the paragraphs above and in Plaintiff’s complaint to the
9 California Labor and Workforce Development Agency (“LWDA”), attached hereto as **Exhibit “A”**
10 and incorporated for all purposes to these allegations, for the one (1) year period preceding the
11 filing of the PAGA notice letter with the LWDA on August 27, 2021, Defendant had a uniform
12 policy and practice of not paying minimum wage or overtime to its Drivers because it has
13 intentionally misclassified them as independent contractors. However, because the Drivers have no
14 control over their time of work, location of work, rates, manner of work, and delegation of work
15 the Drivers cannot be considered independent contractors under state law. Additionally, Defendant
16 failed to reimburse Plaintiff and the aggrieved employees for incurred and necessary business
17 expenses, failed to pay straight and minimum wages for hours worked by the aggrieved employees,
18 failed to provide the aggrieved employees with lawful itemized wage statements, failed to remit all
19 wages owed to Plaintiff and the aggrieved employees at the time of termination, and failed to
20 provide Plaintiff and the aggrieved employees with lawful, statutory, meal and rest periods all in
21 violation of the California Wage Orders, the Cal. Code of Regulations (CCR) §§11040, 11090,
22 and California Labor Code §§ 201, 202, 203, 204, 206, 206.5, 209, 221-224, 226(a), 226.7, 432.5,
23 432.7, 450, 510, 512, 515, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2802.

24 96. California Labor Code section 2698 *et. seq.* provides employees with a private right
25 of action to remedy an employer’s failure to comply with Labor Code sections designated in Labor
26 Code section 2699.5. Labor Code sections 201, 202, 203, 204, 206, 206.5, 209, 221-224, 226(a),
27 226.7, 432.5, 432.7, 450, 510, 512, 515, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2802, all
28 of which Defendant has violated as alleged above and as stated in detail in **Exhibit “A”** which is

1 incorporated by reference. These sections are provided for under Labor Code section 2699.5.
2 Penalties for violations under Labor Code section 2699(f)(2) are one hundred dollars (\$100.00) for
3 each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200.00)
4 per subsequent violation for each aggrieved employee per pay period.

5 97. Plaintiff has exhausted the administrative prerequisites to file a claim under Labor
6 Code section 2698 *et seq.* by first sending notice to the California Labor Workforce and
7 Development Agency ("LWDA") online filing system on August 27, 2021, along with a certified
8 copy to Defendant. (Attached hereto as **Exhibit "A."**) It has been over 65 days since the
9 exhaustion and Plaintiff has not received confirmation from the LWDA that it will not investigate
10 the complaint within the time limits set forth in Labor Code section 2699.3(a)(2).

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff individually and on behalf of all employees similarly situated
13 prays for judgment against Defendant as follows:

14 1. For compensatory damages and/or penalties available under Labor Code, including
15 for unpaid wages, unlawful wage statements, unprovided meal periods and rest breaks, wage
16 deductions and withheld wages;

17 2. For all statutory penalties available under Labor Code section 2698 *et seq.* and costs
18 of suit incurred herein and reasonable attorneys' fees pursuant to PAGA;

19 3. For restitution of all monies due to Plaintiff and the putative Class for the unlawful
20 business acts and practices of Defendant;

21 4. For all statutory penalties available under Labor Code, including for unpaid wages,
22 unlawful wage statements, and unprovided meal periods;

23 5. For all liquidated damages available under the Labor Code, including for unpaid
24 minimum wages and withheld wages;

25 6. For interest accrued to date;

26 7. For costs of suit incurred herein and reasonable attorneys' fees pursuant to the
27 referenced statutes;

28 ///

1 8. For prejudgment interest pursuant to law, including California Civil Code section
2 3287 and/or 3288;

3 9. For injunctive relief; and

4 10. For such other and further relief as the Court may deem just and proper.

5 Dated: November 24, 2021

BECERRA LAW FIRM
JOSEPH R. BECERRA

7 By:  for
8 Joseph R. Becerra

9 Attorneys for Plaintiff Ronghui Lee, on
10 behalf of himself and all others similarly
situated

11 Dated: November 24, 2021

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

13 By: 
14 Torey Joseph Favarote

15 Attorneys for Plaintiff Ronghui Lee, on
16 behalf of himself and all others similarly
situated

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: November 24, 2021

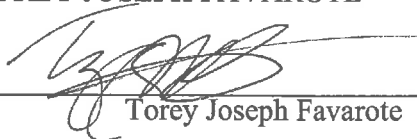
BECERRA LAW FIRM
JOSEPH R. BECERRA

By:  for
Joseph R. Becerra

Attorneys for Plaintiff Ronghui Lee, on
behalf of himself and all others similarly
situated

Dated: November 24, 2021

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

By:  Torey Joseph Favarote

Attorneys for Plaintiff Ronghui Lee, on
behalf of himself and all others similarly
situated

EXHIBIT A



BECERRA
L A W F I R M
EMPLOYMENT LAW ADVOCATES

DIRECT DIAL: (213) 542-8501
DIRECT FACSIMILE: (213) 542-5556
JBECERRA@JRBECERRALAW.COM

August 27, 2021

SENT VIA CERTIFIED MAIL

HungryPanda US Inc.
c/o Registered Agents Inc. (C3365816)
Agent for Service of process
130W, 42nd St., Suite 405
New York NY, 10036

**SENT VIA ELECTRONIC
SUBMISSION**

Julie A. Su
Acting Secretary
California Labor & Workforce Development
Agency
800 Capital Mall, MIC-55
Sacramento, CA 95814

Re: HungryPanda US Inc.
California Labor Code section 2698, et seq. violations

Dear Ms. Su:

I am writing on behalf of aggrieved employee Ronghui Lee ("Lee"). This notice is being made to the Labor & Workforce Development Agency pursuant to the requirement of Labor Code section 2698 *et al.* that Lee, and other aggrieved employees, who performed delivery and driving services ("Drivers") and dispatch and customer service functions ("Dispatchers") (hereinafter Drivers and Dispatchers are collectively referred to as "Aggrieved Employees") for HungryPanda US Inc. (hereinafter "HungryPanda") were misclassified as independent contractors by Hungry Panda in California for at least the last year. Lee has performed as both a Driver and Dispatcher for HungryPanda.

HungryPanda operates an on-demand courier service that provides food and store delivery in various California cities (and other parts of the country) via an on-demand dispatch system, both computerized and staffed by Dispatchers. HungryPanda offers its customers the ability to request a Driver via a variety of web and smartphone-based applications. Drivers, like Lee, receive a fee for each delivery that they make. HungryPanda classifies the Aggrieved Employees as independent contractors, yet they do not have any discretion to reject orders assigned to them, they are all required to show up for specifically delineated “shifts,” assigned to specific geographic regions during these shifts, use specific branded tools and materials provided by HungryPanda (and only by HungryPanda), required to wear a HungryPanda uniform and place HungryPanda decals on their personal vehicle, required to follow scripts covering all aspects of customer interaction set by HungryPanda, personally provide all services without the ability to assign or delegate duties to anyone else, and are required to abide by strict rules set unilaterally by HungryPanda for which they can be disciplined, docked wages, have their wages clawed back, or terminated if they do not abide by them. These rules, and others imposed by HungryPanda for the Aggrieved Employees, set forth extremely strict guidelines for how work is to be performed, how the Drivers are to interact with customers, how the Drivers will be compensated, when the Drivers will be compensated, what tools and materials the Drivers are to use, and how the Drivers are to behave at all times. Additionally, the Drivers have no control over the pricing of goods or setting of delivery fees or schedule. HungryPanda’s actions show a complete control over the entirety of the services provided by the drivers, and its uniform policies and practices allow HungryPanda to unilaterally change the compensation scheme at any time including retroactively, make any deductions to wages at its sole discretion, and even control who the Drivers may speak to about their work and what they may speak about.

Lee and the other Aggrieved Employees do not meet the requirements to be independent contractors under Labor Code section 2750.3, nor do they meet the requirements to be independent contractors under Proposition 22, as HungryPanda controls the hours of work, provides no discretion to refuse deliveries, and restricts the Aggrieved Employees from pursuing other work. Due to the overwhelming amount of control exercised over every aspect of performing their duties, Lee and the other Aggrieved Employees could also not in any way reasonably be considered independent contractors under AB 5, or Dynamex Operations W. v. Superior Court (2018) 4 Cal.5th 903. Lee believes that he and the other Aggrieved Employees have been misclassified as independent contractors while under the law they are actually employees entitled to all of the benefits of the Labor Code as identified herein.

Lee, and each of the Aggrieved Employees described herein, suffered from the following Labor Code violations by their current or former employer HungryPanda. Pre-litigation and without the benefit of full discovery Lee reserves the right to amend this letter if it is shown that HungryPanda's unlawful policies are revealed to be even more extensive than what is known at this time.

Lee is an employee of HungryPanda. His employment with HungryPanda began in or around April 2020. Since April of 2020, Lee has worked as both a Driver and Dispatcher for Hungry Panda. Lee and other Aggrieved Employees' employment with HungryPanda was governed by the California Wage Orders, the Cal. Code of Regulations (CCR) §§11040, 11090, and California Labor Code §§ 201- 204, 206, 206.5, 207, 209, 221-224, 226(a), 226.7, 351, 432.5, 432.7, 450, 510, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802. As laid out below, Lee believes that HungryPanda has violated the above Labor Code provisions, as well as the California Code

of Regulations and the IWC Wage Orders. Lee incorporates the above Labor Code and CCR sections and Wage Orders to all of the paragraphs below.

Drivers and Dispatchers working for HungryPanda, including Lee, regularly work more than 8 hours in a day and/or 40 hours in a work week, working specific "shifts" HungryPanda assigns to them, either through their cellular telephone application ("the HungryPanda App") or via live Dispatchers who will call or message the Drivers. These shifts are assigned to specific geographic areas which the Drivers are not permitted to stray from. During these shifts the Drivers are tracked via the HungryPanda App mobile application and Drivers are expected to diligently monitor their smartphones and the HungryPanda smartphone application during their shifts. Under HungryPanda's uniform pay policies and practices Drivers and Dispatchers are misclassified by HungryPanda as independent contractors, and therefore, not eligible for overtime pay for hours over 8 in a day, 40 in a week, or for work performed on the 7th consecutive day of work in the workweek. Lee and other highly ranked Drivers can earn bonuses and other non-hourly compensation which is not factored into their regular rate of pay. HungryPanda did not keep accurate time records of the hours Lee and the other Aggrieved Employees worked, in violation of Labor Code sections, 510, 512, 515(d), 558, 1174(d), 1194, 1198, IWC Wage Orders, and California Code of Regulations, section 11090(3).

Additionally, HungryPanda has a policy of not reimbursing any of the business expenses incurred by the Drivers and Dispatchers, including but not limited to parking, tolls, all mileage, parking tickets, all required cellular phone/data usage surcharges, and personal computers used for HungryPanda's business, all of which are required business expenses incurred in the performance of their jobs, in violation of Labor Code §2802.

Lee and the other Aggrieved Employees were required to work specific shifts, to report for work 10 minutes before the beginning of those shifts, and then were often not put to work for at least half of their scheduled shift due to lack of orders from customers and/or because too many other Drivers were assigned to that same shift/area. It is HungryPanda's policy to not pay Lee and the other Aggrieved Employees reporting time pay, or minimum wage, for when they were instructed to report for work and then not put to work for at least half of their scheduled shift. Lee and the other Aggrieved Employees also were at times called to wait on standby without any pay (not even minimum wage), in the hopes that orders would be assigned to them from the HungryPanda smartphone application or its dispatchers. Lee and the Aggrieved Employees were required to constantly monitor their personal cellphones and the HungryPanda mobile application during these times and were required to immediately respond to any assignment or be subject to discipline, deductions to wages, or termination, but were not paid for this time as HungryPanda did not consider this time to be compensable. When a delivery was cancelled, Lee and the Aggrieved Employees were required to drive to another location to hand the delivery off to someone else or to proceed with the next delivery without being paid for any of the time spent on the cancelled delivery. Using the HungryPanda smartphone application HungryPanda could have tracked and kept records of all of the Drivers' time, every delivery and every mile traveled but it did not do so. HungryPanda also required Lee and the other Aggrieved Employees to make trips to its offices, all without any pay. Furthermore, as many of HungryPanda's restaurant customers only dealt with cash, Lee and the other Aggrieved Employees were required to make special trips without pay to get cash from their own bank accounts, this time was not compensated either. Under these practices Lee and the other Aggrieved Employees were not compensated for all time spent under HungryPanda's control, denied reporting time pay, minimum wages/liquidated damages,

and reimbursement for their expenses, in violation of the Labor Code and applicable Wage Orders cited herein.

Lee and the other Aggrieved Employees were sometimes compensated with a delivery fee, a small fee for some of the mileage traveled, and discretionary tips from customers. Almost any infraction of HungryPanda's rules would result in HungryPanda refusing to pay this small delivery fee, sometimes for days or even a week or more. Often, their compensation did not meet the minimum wage for the hours they were waiting on controlled standby and making actual deliveries for HungryPanda. This situation was aggravated by HungryPanda's policy of deducting delivery fees, or other arbitrary penalty amounts from the Aggrieved Employees' wages if they were late for a shift or if they left a shift early. If for any reason a customer did not pay for a meal or delivery, all costs associated with it were deducted from Lee and the other Aggrieved Employee's wages. In addition, because Lee and the other Aggrieved Employees had to bear the cost of vehicle insurance, unemployment insurance, workers' compensation coverage, gas and wear and tear on the vehicles they used to make deliveries for HungryPanda and the costs of their mobile telephone as well as an accompanying voice, SMS, and data plan in order to use HungryPanda's smartphone application (and to download the HungryPanda mobile application with all the accompanying costs of additional data being utilized and obtaining and paying for a data plan that would facilitate excessive use of the HungryPanda mobile application), HungryPanda illegally passed on these costs of doing business to the Aggrieved Employees.

Lee and the Aggrieved Employees were entitled under California law to at least a thirty-minute uninterrupted work-free meal period within 5 hours of the start of work for every shift lasting at least five (5) hours, and a second uninterrupted work-free meal period of thirty minutes

for any shift longer than ten (10) hours. By misclassifying Lee and the Aggrieved Employees as independent contractors, HungryPanda failed to provide lawful meal periods and premium payments to Lee and the Aggrieved Employees. HungryPanda controlled the schedules of Lee and the Aggrieved Employees, and many times did not allow them to stop or rest at all during a shift, without penalty, deductions from wages, or discipline. Lee and the other Aggrieved Employees were required to always monitor their smartphones and the HungryPanda smartphone application while working a shift and were subject to discipline or termination if they did not respond to every request quickly. Due to this, HungryPanda never provided Lee and the other Aggrieved Employees off duty meal periods. In the extremely unlikely event that HungryPanda did provide anything which could be considered a meal period premium, that premium was not paid at the regular rate of pay including all bonuses earned. By their failure to provide minimum statutory meal periods and failing to provide compensation for meal periods not provided, HungryPanda willfully violated the provisions of Labor Code sections 226.7, 512, and 1198 and IWC Wage Orders and California Code of Regulations, section 11090(11).

Lee and the other Aggrieved Employees were entitled under California law to at least a paid ten-minute work-free rest break for each workday worked in excess of 3.5 hours. During these work-free rest breaks the employer must relinquish all control over the employee. Lee and the other Aggrieved Employees were always required to monitor their smartphones for incoming orders while working a shift and could be disciplined or terminated if they did not respond quickly enough. Like with their meal periods, HungryPanda did not allow Lee and the other Aggrieved Employees to take rest breaks. Due to these policies Lee and the Aggrieved Employees were never provided off-duty paid rest breaks and instead were expected to be on-duty through their entire

shift. As such HungryPanda failed to provide lawful and paid rest breaks to Lee and the Aggrieved Employees as they were only paid for deliveries. In the extremely unlikely event that HungryPanda did provide anything which could be considered a rest break premium, that premium was not paid at the regular rate of pay including all bonuses earned. By HungryPanda's failure to provide minimum statutory rest breaks and failing to provide compensation for rest breaks not provided, HungryPanda willfully violated the provisions of Labor Code sections 226.7, 1198, and the applicable Wage Orders.

Additionally, California Labor Code § 2802 requires that employers reimburse the business expenses reasonably incurred by employees in the course of their employment. HungryPanda failed to reimburse Lee and the other Aggrieved Employees for numerous expenses, made excessive and numerous unlawful deductions to wages, and unlawfully passed on the costs of doing business to their employees in the following ways:

- HungryPanda required and directed Lee and the other Aggrieved Employees to buy fuel and maintain a vehicle used to make deliveries for HungryPanda.
- HungryPanda required Lee and the other Aggrieved Employees to use their personal computers and personal smartphones in the service of HungryPanda and pay for both a data plan and phone plan (voice + SMS) in order to receive deliveries and call customers, most of which was done through HungryPanda's smartphone application which used data.
- HungryPanda required Lee and the Aggrieved Employees to pay a deposit for branded delivery boxes, stickers and decals for their vehicles, uniforms/apparel,

and other promotional materials, and pay for upkeep for all of these things. If any of these materials were damaged HungryPanda unlawfully kept the deposit and still required the return of the aforementioned branded materials.

- HungryPanda also required Lee and the other Aggrieved Employees, upon hiring, pay a money deposit as a requirement to working for HungryPanda. Through numerous policies, including any breach of the employment agreement at HungryPanda's discretion, all or some of this deposit could be forfeited.
- HungryPanda's written employment policies and employment agreements provide that HungryPanda may in its sole discretion withhold any money payable to the Drivers and/or deduct that money from the Driver's deposit.
- HungryPanda required Lee and the other Aggrieved Employees to pay for background checks associated with their employment, pay for workers compensation, pay for unemployment insurance, vehicle insurance, pay for rejected or unpaid deliveries, indemnify HungryPanda for any and all losses, liabilities, damages, costs and expenses of any kind, and pay any and all taxes associated with their employment and compensation.
- HungryPanda made unlawful deductions from wages for nearly any infraction of HungryPanda's rules. These deductions included penalties for being late or missing a shift, for not being in a percentage of top performers, or for taking too long to make a delivery. Many times, HungryPanda's rules called for Drivers to forfeit all delivery fees earned for days or weeks, and anytime a meal or delivery was

cancelled for almost any reason HungryPanda would force the full loss onto the Drivers.

As a result of the above practices, HungryPanda has violated numerous provisions of the California Labor Code including but not limited to Labor Code sections 221- 224, 1198, 2802, and the IWC Wage Orders. Under California law all of the above actions constitute wage theft.

Furthermore, HungryPanda failed to timely pay all wages due. The California Labor Code requires that all wages be paid weekly or every two weeks. However, HungryPanda's uniform policy and practice was to withhold all wages during times of unprofitability, and although their policy states a weekly pay period, they would often not pay wages for weeks or even longer than a month. This uniform policy and practice constitutes a failure to pay minimum wage, pay for all time worked, and failure to pay wages timely in violation of Labor Code sections 204, 206, 206.5, 207, and 209.

Labor Code section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned, net wages earned, all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. As a pattern and practice, in violation of Labor Code section 226(a), HungryPanda did not furnish Aggrieved Employees with accurate itemized wage statements. There is no indication that HungryPanda ever provided *any* wage statements to Lee and the other Aggrieved Employees. This practice, which HungryPanda has admitted committing toward Aggrieved Employees, evidences that HungryPanda's violation of Labor Code 226(a), is both intentional and willful. Even if the

documents prepared by Lee and the other Aggrieved Employees could be considered wage statements, which they could not be under Labor Code 226(a) because wage statements must be furnished by the employer, these employee produced summaries do not accurately reflect the number of straight time hours worked, the number of overtime hours worked, the rate of pay for any hours worked, any meal or rest premiums owed, or the legal name and address of the employer. As such HungryPanda did not provide accurate wage statements to Lee and the Aggrieved Employees as required by California law.

HungryPanda also violates Labor Code 226(a) due to its above-described practice of making unlawful deductions to wages, passing along the cost of doing business to employees, and failing to reimburse business expenses. All of these Labor Code violations are part of HungryPanda's written employment agreements and result in an inaccurate amount of wages to be listed on any document that could be considered a wage statement. As noted above, because these practices are part of HungryPanda's written employment agreements, and because the wage deductions require action on behalf of HungryPanda, HungryPanda's actions are both willful and intentional.

Additionally, Labor Code § 1174(d) requires that employers also keep accurate records showing the hours worked daily and wages paid to every employee. HungryPanda failed to comply with this provision as it did not keep a record of Lee or the Aggrieved Employees' time that they spent under the control of HungryPanda.

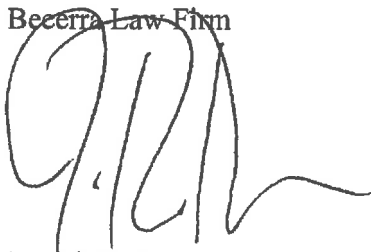
Because Lee and the Aggrieved Employees were misclassified, not paid proper minimum, straight, overtime or double time pursuant to California law, and not provided statutory meal

periods and rest breaks or compensation in lieu thereof, HungryPanda failed to remit all wages earned by some of the Aggrieved Employees at the time of termination. Furthermore, it is HungryPanda's written policy to not pay any wages due at termination unless the terminated employee first create and submit a delivery summary and submit it within 5 business days of termination, if the employee does not prepare and submit this summary they forfeit any and all wages still due.

HungryPanda has violated and continues to violate California law as described above. This letter sets forth the specific provisions of the California Labor Code and IWC Wage Orders that have been violated by HungryPanda and the facts and theories supporting those violations pursuant to California Labor Code section 2699.3.

Very truly yours,

Becerra Law Firm

A handwritten signature in black ink, appearing to read 'J. Becerra', with a long horizontal flourish extending to the right.

Joseph R. Becerra

PROOF OF SERVICE

I, Linda Montemayor, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 3646 Long Beach Blvd., Suite 203, Long Beach, CA 90807.

On July 10, 2024, I served a copy(ies) of the following document(s):

DECLARATION OF TOREY JOSEPH FAVAROTE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; APPOINTMENT OF SETTLEMENT ADMINISTRATOR; APPROVAL OF CLASS NOTICE PACKET; SETTING OF FINAL APPROVAL HEARING

on the parties to this action as follows:

Attorney	Party(ies) Served	Method of Service
Michael Holecek Jun Nam Alexa Yarnell Gibson, Dunn & Crutcher LLP 333 South Grand Ave. Los Angeles, CA 90071-3197 Tel: (213) 229-7018 mholecek@gibsondunn.com jnam@gibsondunn.com ayarnell@gibsondunn.com	Attorneys for Default Defendant/Non- Party HUNGRYPANDA US INC.	By Electronic Service

☒ [BY ELECTRONIC SERVICE] I hereby certify that the above-referenced document(s) were served electronically on the parties listed herein at their most recent known email address at mholecek@gibsondunn.com, jnam@gibsondunn.com and ayarnell@gibsondunn.com.

☐ [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by Ace Attorney Service, Inc. this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on July 10, 2024, at Long Beach, California.



Linda Montemayor