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18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20 ANGELICA DE LOS SANTOS;
21 LUCIA SALAZAR; DASHA BAYS;
22 individually, and on behalf of other
members of the general public
23 similarly situated,

24 Plaintiffs,

25 vs.

26 PANDA EXPRESS, INC., a
California corporation; PANDA
RESTAURANT GROUP, INC., a
California corporation and DOES 1
through 10, inclusive,

27 Defendants.

Case No. **CV 10 1370**

CLASS ACTION COMPLAINT

(1) Violation of the Civil Rights Act of 1866,
42 U.S.C. § 1981, *et. seq.*

(2) Violation of the California Fair
Employment and Housing Act, Government
Code § 12940, *et. seq.* – Disparate Impact

(3) Violation of the California Fair
Employment and Housing Act, Government
Code § 12940, *et. seq.* – Disparate Treatment

DEMAND FOR JURY TRIAL

FILED
2010 MAR 31 P 3:47
RICHARD W. WILKINS
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

(5) [Handwritten Signature]

E-filing

BZ

1 Plaintiffs Angelica De Los Santos, Lucia Salazar and Dasha Bays, individually
2 and behalf of all others similarly situated, allege as follows:

3 **INTRODUCTION**

4 1. Panda Restaurant Group, Inc. and Panda Express, Inc. (hereinafter
5 collectively referred to as "Panda Restaurant Group") employ more than 18,000
6 associates and oversee its successful restaurants, including Panda Express, throughout 37
7 states and Puerto Rico. The company claims that it "has put its people at the forefront of
8 its success, supplying countless tools for professional advancement as well as personal
9 growth. The company's significant expansion plans mean unparalleled opportunities for
10 those with a passion for Panda." However, such opportunities for "professional
11 advancement" and "growth" are limited to Panda Express Asian employees *only*.
12 Although non-Asians comprise a significant number of Panda Express employees, their
13 numbers shrink considerably at the management level. The managerial positions are the
14 higher compensated positions at Panda Express restaurants, and the fact that non-Asians
15 are rarely hired or promoted to these positions cannot be explained or justified by any
16 reasonable business purpose for these jobs. The substantial underrepresentation of non-
17 Asians in the more lucrative restaurant managerial positions Panda Express has to offer is
18 the result of practices that discriminate against non-Asians.

19 2. This class action is brought by one current and two former non-Asian
20 Panda Express employees, Angelica De Los Santos, Lucia Salazar, and Dasha Bays
21 (hereinafter collectively referred to as "Plaintiffs"), on behalf of themselves and all
22 similarly situated current and former Panda Express restaurants employees and
23 applicants, who have been subject to Panda Express' practices of discrimination on the
24 basis of race and/or national origin. Plaintiffs, on behalf of themselves and the class they
25 seek to represent, charge that Panda Express discriminates against its non-Asian
26 employees by failing to promote equally or better qualified non-Asians (as compared to
27 Asian employees) to Panda Express managerial positions. This class action seeks to end
28 Panda Restaurant Group's discriminatory practices at its Panda Express restaurants and to

1 provide monetary relief, including punitive damages, to those who have been affected by
2 these practices.

3 **JURISDICTION AND VENUE**

4 3. Plaintiffs' claims arise under 42 U.S.C. § 1981. Additionally, Plaintiff
5 Angelica De Los Santos' claims further arise under the California Fair Employment and
6 Housing Act ("FEHA"), Government Code § 12940, *et seq.* This Court has jurisdiction
7 over this action pursuant to 28 U.S.C. § 1331 and 1343. The Court has supplemental
8 jurisdiction pursuant to 28 U.S.C. § 1367 over claims under FEHA, Government Code
9 § 12940, *et seq.*

10 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391. Members of
11 the Plaintiffs Class reside in California and throughout the United States. Defendant
12 Panda Restaurant Group is a California corporation, with it's headquarters located at
13 1683 Walnut Grove Avenue, City of Rosemead, State of California, and had restaurants
14 throughout California and this District where Plaintiff De Los Santos continues to be
15 employed. Indeed, over 35% of Panda Express restaurants, which are owned and
16 operated by Panda Restaurant Group, are located in California. Many of the acts alleged
17 in this Complaint, which gave rise to the claims asserted herein, occurred in California
18 and in the Northern District of the State of California.

19 **PARTIES**

20 5. Plaintiff Angelica De Los Santos is Latina of Mexican Ancestry and resides
21 in the County of Sonoma, State of California. Ms. De Los Santos has been employed by
22 Panda Restaurant Group from approximately October 2006 to the present at a Panda
23 Express restaurant in City of Santa Rosa, State of California within the Northern District
24 of California.

25 6. Plaintiff Lucia Salazar is Latina and resides in City of Crestwood, State of
26 Illinois. Ms. Salazar was employed by Panda Restaurant Group from approximately
27 September 2007 until approximately April 2009 at a Panda Express restaurant in the City
28 of Crestwood, State of Illinois.

1 7. Plaintiff Dasha Bays is African-American and resides in the City of
2 Chicago, State of Illinois. Ms. Bays was employed by Panda Restaurant Group at Panda
3 Express restaurants from approximately July 2007 until approximately June 2008 at the
4 City of Orlando Park, State of Illinois location and from approximately December 2008
5 until approximately March 2009 in the at the City of Crestwood, State of Illinois location.

6 8. Defendant Panda Restaurant Group, Inc. and Panda Express, Inc. are
7 California corporations. Panda Restaurant Group prides itself as the “nation’s leader in
8 high quality Asian foodservice and one of the largest family-owned businesses in the
9 nation, operating several successful restaurant concepts including Panda Express, Panda
10 Inn and Hibachi-San.” The company’s self proclaimed mission is to “deliver exceptional
11 Asian dining experiences by building an organization where people are inspired to better
12 their lives.” Panda Restaurant Group operates more than 1,200 Panda Express restaurant
13 locations throughout 37 states and Puerto Rico, and employs more than 18,000 associates
14 company-wide. Panda Restaurant Group had annual revenues of more than \$1 billion in
15 2007 and 2008 and has achieved 11 consecutive years of same restaurant sales growth,
16 averaging 5% over that time. Additionally, Panda Restaurant Group’s net sales have
17 grown by a compounded annual rate of 20% over the last 5 years.

18 9. The true names and capacities, whether corporate, associate, individual or
19 otherwise, of defendants Does 1 through 10, inclusive, are unknown to Plaintiffs who sue
20 said defendants by such fictitious names. Plaintiffs are informed and believe, and based
21 on that information and belief allege, that each of the defendants herein designated as a
22 Doe is legally responsible for the events and happenings referred to in this Complaint,
23 and unlawfully caused the damages to Plaintiffs and the class members alleged in this
24 Complaint. Plaintiffs will seek leave of court to amend this Complaint to show the true
25 names and capacities when the same has been ascertained.

26 10. At all times herein relevant, Panda Restaurant Group and Does 1 through
27 10, and each of them, were the agents, partners, joint venturers, representatives, servants,
28 employees, successors-in-interest, co-conspirators and assigns, each of the other, and at

1 all times relevant hereto were acting within the course and scope of their authority as
2 such agents, partners, joint venturers, representatives, servants, employees, successors,
3 co-conspirators and assigns, and that all acts or omissions alleged herein were duly
4 committed with the ratification, knowledge, permission, encouragement, authorization
5 and consent of each defendant designated herein.

6 11. Defendants Panda Restaurant Group and Does 1 through 100 will
7 hereinafter be collectively referred to as "Defendants."

8 **PANDA RESTAURANT GROUP'S**
9 **GENERAL PRACTICE AND POLICY OF DISCRIMINATION**

10 12. The denials and abridgments of employment opportunities suffered by
11 Plaintiffs are part of the general policy or practice of discrimination on the basis of race
12 and/or national origin in employment that has existed at Panda Express throughout the
13 relevant time period. These are not isolated examples of employment practices or
14 individual decisions. On the contrary, these incidents are representative of Panda
15 Restaurant Group's systematic discrimination against non-Asians and in favor of Asian
16 employees.

17 13. Throughout its 1220 Panda Express restaurants in the United States, Panda
18 Restaurant Group engages in an intentional policy or practice of discrimination based on
19 race and/or national origin with regard to: (1) hiring of qualified non-Asian applicants
20 into managerial positions; and (2) equal pay and promotions for non-Asian employees.

21 14. Additionally, Panda Restaurant Group's standard employment policies and
22 practices have a disparate impact on qualified non-Asian applicants with respect to hiring
23 into managerial positions; and on non-Asian employees with respect to promotions, equal
24 pay, , without any corresponding business necessity for such policies and practices.

25 15. Panda Restaurant Group has pursued policies or practices on a continuing
26 basis that have denied or restricted promotion opportunities and equal pay to qualified
27 non-Asian applicants and employees.

28

1 16. Panda Express restaurants follow the same policies and practices,
2 participate in the same discrimination, and are run by the same Panda Restaurant Group
3 management.

4 17. In its Panda Express restaurants throughout the United States, Panda
5 Restaurant Group employs standardized policies and procedures related to staffing and
6 promotion. The hierarchy of service job positions in Panda Express restaurants is the
7 same everywhere, and can be divided into three groups: (1) lower level service positions
8 (i.e., cashiers and counter helpers) at the bottom; (2) chefs in the middle; and
9 (3) managerial positions (i.e., lead cashiers, lead counters, head chefs, assistant managers,
10 and managers) at the top.

11 18. Panda Restaurant Group systematically refuses to hire qualified non-Asian
12 applicants into managerial positions in favor of Asian applicants.

13 19. When Panda Restaurant Group does hire non-Asians, it places them into the
14 lower level service positions.

15 20. Panda Restaurant Group provides fewer opportunities for promotions and
16 training to its non-Asian employees than to its Asian employees.

17 21. Non-Asian Panda Express employees in the lower level service positions,
18 such as cashiers and counter helpers, receive fewer assigned hours per week than Asian
19 Panda Express employees in the same positions.

20 22. Panda Restaurant Group implements its discriminatory employment
21 policies and practices in part through an overly subjective promotions and compensations
22 review process. On information and belief, Plaintiffs are informed that Panda Restaurant
23 Group fails to publish explicit guideline and qualifications for managers attempting to
24 promote employees, and instead allows Panda Express restaurant Managers to rely on
25 subjective, arbitrary, standardless criteria in making employment decisions which focus
26 on whether employees reflect Panda Express Managers' perceptions of which Panda
27 Express employees should be promoted to managerial positions.

28 ///

1 23. Panda Restaurant Group's corporate culture of race stereotypes encourages
2 Panda Express senior management to rely upon racial and/or national origin stereotypes
3 in making employment decisions.

4 24. Panda Express restaurant employees are told that promotions are based on a
5 point system called "GM Points." Panda Express restaurant employees are told that GM
6 Points are accumulated based on length of employment and job performance. Employees
7 who reach a certain point scale are promoted and given "Manager Codes." On
8 information and belief, Plaintiffs are informed that most Asian employees have the
9 Manager Codes, regardless of their length of employment or job performance. However,
10 non-Asian employees are not provided with the Manager Codes unless they are actual
11 managers. Consequently, promotion into managerial positions at Panda Express
12 restaurants is based on entirely subjective discretion based on race and/or national origin,
13 which are often infected with conscious or unconscious prejudices and racial-based
14 stereotypes.

15 25. Panda Restaurant Group has pursued policies and practices on a continuing
16 basis which has had the effect of denying equal job opportunities to qualified non-Asian
17 individuals. These policies and practices include, but are not limited to, the following:

- 18 i. Reliance on subjective, race-based and/or arbitrary criteria utilized by a
19 nearly all Asian managerial workforce in making hiring and/or promotion
20 decisions;
- 21 ii. Failure to follow a uniform job posting procedure to guarantee that all
22 employees have proper notice of openings;
- 23 iii. Discouraging non-Asians from seeking or applying for managerial
24 positions;
- 25 iv. Failing and/or refusing to consider non-Asians for promotion on the same
26 basis as Asians within the company are considered;
- 27 v. Failing and/or refusing to promote or compensate non-Asians on the same
28 basis as Asians are promoted and compensated;

- 1 vi. Failing to provide non-Asians with accurate and timely notice of
- 2 promotional opportunities;
- 3 vii. Providing non-Asian employees interested in promotion, inconsistent and
- 4 inaccurate statements about the requirements and qualifications necessary
- 5 for promotion;
- 6 viii. Denying non-Asian employees the training and assignments that would
- 7 enhance their promotability;
- 8 ix. Maintaining and fostering a reputation for discriminatory conduct which
- 9 deters non-Asian employees from pursuing promotional opportunities;
- 10 x. Establishing and maintaining arbitrary and subjective requirements which
- 11 have the effect of excluding qualified non-Asians from promotion and
- 12 which have not been shown to have any significant relationship to job
- 13 performance or to be necessary to the safe and efficient conduct of Panda
- 14 Restaurant Group's business.
- 15 xi. Failing and/or refusing to take adequate steps to eliminate the effects of its
- 16 past discriminatory practices; and
- 17 xii. Retaliating against non-Asian employees who complain of unequal
- 18 treatment.

19 **CLAIM OF NAMED PLAINTIFF ANGELICA DE LOS SANTOS**

20 26. Plaintiff Angelica De Los Santos is Hispanic. From October 2006 to the
21 present, Ms. De Los Santos has worked as a cashier/counter helper at a Panda Express
22 restaurant located in the City of Santa Rosa, State of California.

23 27. As it does with most non-Asians, Panda Restaurant Group assigned Ms. De
24 Los Santos to a lower level service position upon hiring her.

25 28. During her employment at Panda Express, Ms. De Los Santos has
26 repeatedly expressed her interest in a promotion to a shift lead position, such as lead
27 cashier or lead counter, but has been denied promotional opportunities offered to
28 similarly situated or less qualified Asian employees.

1 29. For example, in July 2009, Ms. De Los Santos complained to her Manager
2 (who is of Asian-descent) about not being promoted despite the fact that she had been
3 working at Panda Express for about three years. Ms. De Los Santos was told that she
4 needed to raise her GM Points in order to get a promotion. Instead, an Asian individual
5 who had only been working for a couple of months and had significantly less experience
6 than Ms. De Los Santos was promoted to an open shift lead position.

7 30. In or around January 2010, Ms. De Los Santos requested to be promoted.
8 Ms. De Los Santos was told that she needed to go through training before she could be
9 promoted. However, Ms. De Los Santos has not been given the opportunity to go
10 through any training, despite her numerous requests. Instead, an Asian individual was
11 promoted to the open chef position.

12 31. On March 25, 2010, Ms. De Los Santos filed a charge of discrimination
13 with the California Department of Fair Employment and Housing (“DFEH”) and received
14 an immediate Notice of Right-to-Sue. Attached to this Complaint as Exhibit A, and
15 incorporated herein by reference, is a true and correct copy of that immediate Notice of
16 Right-to-Sue.

17 32. Panda Restaurant Group has discriminated against Ms. De Los Santos on
18 account of her race and/or national origin as follows:

- 19 i. By failing and refusing to consider her for promotional opportunities on the
20 same basis as Asians are considered;
- 21 ii. By relying on subjective, arbitrary, and racial-based decision-making by a
22 nearly all-Asian managerial force to deny her promotional opportunities;
23 and
- 24 iii. By promoting similarly situated and less qualified Asian employees more
25 rapidly than her.

26 33. Ms. De Los Santos is informed and believes that Panda Restaurant Group
27 has discriminated against her in the same manner that it discriminates against the Class
28

1 and the California Subclass generally. Her primary intention with regard to this case is to
2 end Panda Restaurant Group's unlawful pattern and practice of discrimination.

3 **CLAIM OF NAMED PLAINTIFF LUCIA SALAZAR**

4 34. Plaintiff Lucia Salazar is Hispanic. From approximately September 2007
5 until approximately April 2009, Ms. Salazar was employed by Panda Restaurant Group at
6 the Panda Express in the City of Crestwood, State of Illinois as a cashier/counter helper.

7 35. As it does with most non-Asians, Panda Restaurant Group assigned Ms.
8 Salazar to a lower level service position upon hiring her.

9 36. During the year and a half Ms. Salazar was employed by Panda Restaurant
10 Group, she was never promoted, despite repeated promises from her Manager (who was
11 of Asian-descent), that she would be promoted to lead cashier.

12 37. During her employment at Panda Express, Ms. Salazar repeatedly
13 expressed her interest to her supervisor in a shift lead position, such as lead cashier or lead
14 counter, but was denied promotional opportunities offered to less qualified Asian
15 employees.

16 38. For example, during Ms. Salazar's employment, the lead counter (an Asian
17 individual) at the Panda Express where she worked was promoted to a managerial
18 position. Ms. Salazar was told that she would be promoted to the newly available lead
19 counter position. However, she was never promoted. Instead, an Asian co-worker, who
20 had been hired after Ms. Salazar and had less experience than Ms. Salazar, was promoted
21 to the lead counter position.

22 39. Panda Restaurant Group has discriminated against Ms. Salazar on account
23 of her race and/or national origin as follows:

- 24 i. By failing and refusing to consider her for promotional opportunities on the
25 same basis as Asians are considered;
- 26 ii. By relying on subjective, arbitrary, and racial-based decision-making by a
27 nearly all-Asian managerial force to deny her promotional opportunities;
28 and

1 ///

2 iii. By promoting similarly situated and less qualified Asian employees more
3 rapidly than her.

4 40. Ms. Salazar is informed and believes that Panda Restaurant Group has
5 discriminated against her in the same manner that it discriminates against the Class and
6 the California Subclass generally. Her primary intention with regard to this case is to end
7 Panda Restaurant Group's unlawful pattern and practice of discrimination.

8 **CLAIM OF NAMED PLAINTIFF DASHA BAYS**

9 41. Plaintiff Dasha Bays is African-American. From approximately July 2007
10 until approximately June 2008 and from approximately December 2008 until
11 approximately March 2009 Ms. Bays was employed by Panda Restaurant Group, first at
12 the at the Panda Express in the City of Orlando Park, State of Illinois, then at the Panda
13 Express in City of Crestwood, State of Illinois. She was employed as a cashier at both
14 locations.

15 42. As it does with most non-Asians, Panda Restaurant Group assigned Ms.
16 Bays to a lower level service position upon hiring her.

17 43. Upon hire, Ms. Bays was told by management that she would receive a
18 promotion every six months, from cashier to a shift lead position, to assistant manager
19 and eventually to manager. Ms. Bays consistently told her Manager that she wanted to be
20 promoted to a Shift Lead position. However, during the entire course of her employment,
21 Ms. Bays was never promoted.

22 44. Ms. Bays requested to work shifts of longer than 4 hours each day she
23 worked. However, her Manager would never schedule her for shifts longer than 4 hours.
24 Instead, only Asian employees were scheduled to work double shifts.

25 45. During her employment at the Panda Express in Crestwood, Illinois, Ms.
26 Bay's Manager, who was Asian, made the following comments to her:

27 i. "White and Black people don't come out on summer days because it is too
28 hot for them."

- 1 i. Whether Defendants have engaged in policies and practices of disparate
- 2 treatment of non-Asian individuals;
- 3 ii. Whether Defendants have engaged in policies and practices that have a
- 4 disparate impact on non-Asian individuals;
- 5 iii. Whether any disparate impact is justified by business necessity;
- 6 iv. Whether injunctive relief and other equitable remedies (including back pay
- 7 and front pay) and compensatory damages are warranted; and
- 8 v. Whether punitive damages are warranted.

9 52. The claims alleged by Plaintiffs are typical of the Class.

10 53. Plaintiffs will adequately and fairly represent the interests of the Class.

11 54. Class certification is proper pursuant to Federal Rules of Civil Procedure
12 23(b)(2) because Defendants have acted and/or refused to act on grounds generally
13 applicable to the Class, making appropriate declaratory and injunctive relief with respect
14 to Plaintiffs and the Class as a whole. The Class members are entitled to injunctive relief
15 to end Defendants' discriminatory policies and practices.

16 55. Class certification is also proper pursuant to Federal Rules of Civil
17 Procedure 23(b)(3) because common questions of fact and law predominate over any
18 questions affecting only individual class members, and because a class action is superior
19 to other available methods for the fair and efficient adjudication of this litigation. The
20 class members have been damaged and are entitled to recovery as a result of Defendants'
21 discriminatory policies and practices.

22 56. Plaintiff Angelica De Los Santos also brings this action pursuant to Federal
23 Rules of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of a California FEHA
24 Subclass (the "California Subclass") of all current and former non-Asian employees who
25 were denied promotion to a managerial position and all non-Asian applicants who were
26 denied a managerial position at Panda Express restaurants in the State of California
27 during the applicable statute(s) of limitations period(s), in violation of Government Code
28 § 12940, *et. seq.*, known as FEHA.

1 57. Plaintiff Angelica De Los Santos is a member of the California Subclass
2 she seeks to represent.

3 58. The members of the California Subclass are sufficiently numerous that
4 joinder of all members is impracticable. Plaintiff Angelica De Los Santos is informed
5 and believes that the California Subclass exceeds three hundred and fifty (350) of
6 Defendants non-Asian current and former employees.

7 59. There are questions of law and fact common to the California Subclass and
8 these questions predominate over individual questions. These questions include, but are
9 not limited to, the following:

- 10 i. Whether Defendants have engaged in policies and practices of disparate
11 treatment of non-Asian individuals;
- 12 ii. Whether Defendants have engaged in policies and practices that have a
13 disparate impact on non-Asian individuals;
- 14 iii. Whether any disparate impact is justified by business necessity;
- 15 iv. Whether the disparate impact constitutes a violation of FEHA, Government
16 Code § 12940, *et. seq.*;
- 17 v. Whether injunctive relief and other equitable remedies (including back pay
18 and front pay) and compensatory damages are warranted for the California
19 Subclass; and
- 20 vi. Whether punitive damages are warranted.

21 60. The claims alleged by Plaintiff Angelica De Los Santos are typical of the
22 California Subclass.

23 61. Plaintiff Angelica De Los Santos will adequately and fairly represent the
24 interests of the California Subclass.

25 62. Class certification is proper pursuant to Federal Rules of Civil Procedure
26 23(b)(2) because Defendants have acted and/or refused to act on grounds generally
27 applicable to the California Subclass, making appropriate declaratory and injunctive
28 relief with respect to Plaintiffs and the California Subclass as a whole. The California

1 Subclass members are entitled to injunctive relief to end Defendants' discriminatory
2 policies and practices.

3 63. Class certification is also proper pursuant to Federal Rules of Civil
4 Procedure 23(b)(3) because common questions of fact and law predominate over any
5 questions affecting only individual California Subclass members, and because a class
6 action is superior to other available methods for the fair and efficient adjudication of this
7 litigation. The California Subclass members have been damaged and are entitled to
8 recovery as a result of Defendants' discriminatory policies and practices.

9 64. Plaintiffs reserve the right to establish subclasses as appropriate, and to
10 amend the definitions of the Class and the California Subclass based on discovery or
11 legal development.

12 **FIRST CAUSE OF ACTION**

13 **(Racial Discrimination)**

14 **(42 U.S.C. § 1981)**

15 **(On behalf of all Plaintiffs and the Class against Panda Express, Inc.,**

16 **Panda Restaurant Group, Inc. and Does 1 through 10)**

17 65. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
18 through 64, and each and every part thereof with the same force and effect as though
19 fully set forth herein.

20 66. This claim is brought on behalf of Plaintiffs and the Class.

21 67. Panda Restaurant Group has maintained an intentionally discriminatory
22 system with respect to hiring, job assignments, and promotions.

23 68. Panda Restaurant Group's discriminatory policies or practices described
24 above have denied managerial positions to qualified non-Asian employees in favor of
25 Asian employees, resulting in the loss of past and future wages and other job benefits.
26 These discriminatory policies or practices have also denied non-Asian employees job
27 assignments, weekly hours allocation, and promotions, resulting in the loss of past and
28 future wages and other job benefits.

1 76. Plaintiff Angelica De Los Santos and the other California Subclass
2 members were employees of Defendants.

3 77. Defendants had an employment policy and practice of hiring and/or
4 promoting Asians that had a disproportionate adverse effect on non-Asians seeking
5 employment and/or promotion.

6 78. Plaintiff and the other California Subclass members are of non-Asian
7 descent.

8 79. As a result, Plaintiff and the other California Subclass members were
9 harmed.

10 80. The refusal to hire and/or promote was a substantial factor in causing
11 Plaintiff and the other California Subclass member's harm.

12 81. Defendants' discriminatory practices have resulted in a loss of past and
13 future wages and other job benefits.

14 **THIRD CAUSE OF ACTION**

15 **(Racial Discrimination – Disparate Treatment)**

16 **(California Fair Employment And Housing Act, Government Code § 12940, et. seq.)**

17 **(On behalf of Plaintiff Angelica De Los Santos and the California Subclass against**
18 **Panda Express, Inc., Panda Restaurant Group, Inc. and Does 1 through 10)**

19 82. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
20 through 81, and each and every part thereof with the same force and effect as though
21 fully set forth herein.

22 83. This claim is brought on behalf of Plaintiff Angelica De Los Santos and the
23 California Subclass she represents of similarly situated non-Asian employees in Panda
24 Express restaurants in California.

25 84. The foregoing conduct violates the California FEHA, Government Code §
26 12940, et. seq.

27 85. Government Code § 12940(a) provides that is an unlawful employment
28 practice “[f]or an employer, because of the race, religious creed, color, national origin,

1 ancestry, physical disability, mental disability, medical condition, marital status, sex, age,
2 or sexual orientation of any person, to refuse to hire or employ the person or to refuse to
3 select the person for a training program leading to employment, or to bar or to discharge
4 the person from employment or from a training program leading to employment, or to
5 discriminate against the person in compensation or in terms, conditions, or privileges of
6 employment.”

7 86. Defendant Panda Restaurant Group wrongfully discriminated against
8 Plaintiff and the other subclass members.

9 87. Defendant Panda Restaurant Group is an employer covered under FEHA.

10 88. Plaintiff and the other California Subclass members were employees of
11 Defendants.

12 89. Defendants refused to hire and/or promote Plaintiff and the other subclass
13 members.

14 90. Plaintiff and the other California Subclass member’s race was a motivating
15 reason for the refusal to hire and/or promote.

16 91. As a result, Plaintiff and the other California Subclass members were
17 harmed.

18 92. The refusal to hire and/or promote was a substantial factor in causing
19 Plaintiff and the other California Subclass members’ harm.

20 93. Defendants’ discriminatory practices have resulted in a loss of past and
21 future wages and other job benefits.

22 94. Defendants did the acts alleged herein with malice or reckless indifference
23 to the rights of Plaintiff and the protected class under FEHA, Government Code § 12940,
24 *et. seq.* As a result, Plaintiff and the California Subclass are entitled to punitive damages.

25 **ALLEGATIONS REGARDING RELIEF**

26 95. Plaintiffs, and the Class and California Subclass they seek to represent,
27 have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein,
28 and the injunctive relief sought in this action is the only means of securing complete and

1 adequate relief. Plaintiffs, and the Class and California Subclass they seek to represent,
2 are now suffering and will continue to suffer irreparable injury from Defendants'
3 discriminatory acts and omissions,

4 96. Panda Restaurant Group performed the acts herein alleged with malice or
5 reckless indifference. Plaintiffs and class members are thus entitled to recover punitive
6 damages in an amount according to proof.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs Angelica De Los Santos, Lucia Salazar and Dasha Bays,
9 individually, and on behalf of all other members of the general public similarly situated,
10 pray for relief and judgment against Panda Restaurant Group and Does 1 through 10, and
11 each of them, jointly and severally, as follows:

12 **Class Certification**

- 13 1. That this action be certified as a class action;
14 2. That Plaintiffs be appointed as the representative of the Class and the
15 California Subclass;
16 3. That counsel for Plaintiffs and the proposed class be appointed as class
17 counsel;

18 **As to the First through Third Causes of Action**

19 4. A declaratory judgment that the policies or practices complained of herein
20 are unlawful and violate 42 U.S.C. § 1981 and California Government Code § 12940, *et*.
21 *seq.*;

22 5. A preliminary and permanent injunction against Panda Restaurant Group
23 and its officers, agents, successors, employees, representatives, and any and all person
24 acting in concert with them, from engaging in each of the unlawful policies, practices,
25 customs, and usages set forth herein;

26 6. That Plaintiffs and class members be awarded all damages, including back
27 pay, front pay, general and special damages for lost compensation and job benefits
28 according to proof;

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7. That Plaintiffs and class members be awarded exemplary and punitive damages;

8. That Defendants' be ordered to give Plaintiffs and the other class members those jobs they would have held but for Defendants' discriminatory practices as well as an adjustment of wage rates, benefits, and seniority rights that they would have been entitled to but for Defendant's discriminatory practices;

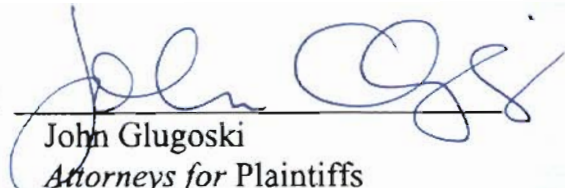
9. That Plaintiffs and the other class members be awarded pre-judgment and post-judgment interest, as well as their reasonable attorneys' fees, expert-witness fees, and other costs to the extent available by law; and

10. All such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: March 29, 2010

RIGHETTI LAW FIRM, P.C.

By: 
John Glugoski
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

1
2 Plaintiffs, Angelica De Los Santos, Lucia Salazar and Dasha Bays, individually,
3 and on behalf of all other members of the general public similarly situated, hereby
4 demand a jury trial as to all issues so triable.

5 Respectfully submitted,

6 Dated: March 29, 2010

RIGHETTI LAW FIRM, P.C.

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8
9 By:


John Glugoski
Attorneys for Plaintiffs

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