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County of San Francisco

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

JACOB RIMLER and GIOVANNI JONES,  
on behalf of themselves and others similarly  
situated and in their capacities as Private  
Attorney General Representatives,

Plaintiffs,

vs.

POSTMATES INC.,

Defendant.

)  
) Case No. CGC-18-567868  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **PROPOSED INTERVENORS**  
) **AND OBJECTORS**  
) **EX PARTE APPLICATION**  
) **TO INTERVENE**  
)  
) **Date:** October 23, 2019  
) **Time:** 10:00 a.m.  
) **Dept.:** 304  
) **Judge:** Hon. Anne-Christine Massullo  
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1 **INTRODUCTION**

2 The settlement agreement proposed by Plaintiffs and Postmates is unfair, inadequate, and  
3 unreasonable. It provides the putative class members with a small fraction of the relief to which  
4 they are entitled under well-established law. It impedes putative class members’ ability to opt out  
5 of the class. It prevents putative class members from using their counsel of choice to pursue their  
6 claims against Postmates. And most significantly, through its use of the opt-out class action device,  
7 it materially breaches Postmates’ employment contracts with the Proposed Intervenors and  
8 Objectors (“Objectors”) and most putative class members.

9 Objectors Heather LeMaster, Juan Jimenez, Lewis Stokes, and Malarie Taylor are  
10 Postmates couriers. Before Objectors could work as couriers, Postmates required them to sign a  
11 Fleet Agreement. Each Fleet Agreement contains an arbitration clause that requires individual  
12 arbitration of any dispute, including any claim that Postmates misclassified a courier as an  
13 independent contractor instead of an employee. The arbitration clause further forbids either party  
14 from even participating in a class action, let alone adjudicating one to a conclusion.

15 Invoking the unambiguous terms of the Fleet Agreement, each Objector has filed an  
16 individual demand for arbitration to resolve his or her dispute with Postmates. Couriers subject to  
17 the most recent version of the Fleet Agreement each have to satisfy the American Arbitration  
18 Association (“AAA”)’s non-refundable \$300 filing fee, which is necessary to commence  
19 arbitration. But Postmates ignored three AAA deadlines to pay its own share of the filing fees,  
20 thereby frustrating Objectors’ contractual right to arbitrate. As is now made clear by Plaintiffs’  
21 motion, Postmates has been stalling—hoping it could resolve Objectors’ claims through a class  
22 settlement for an average of \$20 per courier, or around one-tenth of the non-refundable fee two  
23 Objectors and several thousand other couriers incurred merely to commence arbitration.

24 Postmates has vigorously enforced its arbitration clause time and again, successfully  
25 compelling putative class-action plaintiffs to arbitrate their misclassification claims. In each  
26 instance, Postmates rightly noted that both the Federal Arbitration Act and California contract law  
27 require arbitration clauses to be enforced according to their terms. It is ironic—albeit predictable—  
28 that Postmates now seeks to violate its contract and use a class action to buy peace from hundreds

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1 of thousands of absent class members for a bargain-basement price. But contracts are not one-party  
2 documents, and Postmates cannot unilaterally rewrite or ignore contractual provisions whenever it  
3 deems it economically expedient.

4 It is undisputed that Objectors have a contractual right to individually arbitrate their  
5 disputes—a right they have already exercised. It is equally undisputed that Postmates’s own  
6 contract forbids it even to participate in a class proceeding, no matter how lucrative such  
7 participation may be for Postmates’s bottom line. A party to a contract cannot be required to  
8 affirmatively act to preserve the benefit of a bargain he or she already struck. Yet that is precisely  
9 what the class settlement proposes: if Objectors do not affirmatively opt out of the class, the  
10 settlement purports to extinguish their contractual right to individually arbitrate misclassification  
11 claims—along with all of Postmates’s liability—and to excuse Postmates’s contractually forbidden  
12 participation in a class action. Objectors seek to intervene in this action and oppose Postmates’s  
13 effort to undo their contracts through silence rather than consent.

#### 14 STATEMENT OF FACTS

##### 15 **A. Postmates Has Repeatedly and Successfully Compelled to Individual** 16 **Arbitration the Same Claims It Attempts to Settle Here.**

17 When couriers sign up to work for Postmates, Postmates requires them to sign a “Fleet  
18 Agreement” that contains a “Mutual Arbitration Provision.” Objectors’ Decls. ¶¶ 5; Keller Decl.,  
19 Exs. A–B. The Mutual Arbitration Provision requires couriers and Postmates to arbitrate “any and  
20 all claims,” including claims arising from their “classification as an independent contractor,” and  
21 to waive the “right to have any dispute or claim brought, heard or arbitrated as a class and/or  
22 collective action.” Keller Decl., Exs. A–B, §§ 11, 10. The provision further forbids couriers and  
23 Postmates to “participate in any class and/or collective action.” *Id.* Finally, the Mutual Arbitration  
24 Provision contains a broad delegation clause that commits threshold questions to an arbitrator. The  
25 delegation clause provides that “[o]nly an arbitrator . . . shall have the exclusive authority to resolve  
26 any dispute relating to the interpretation, applicability, enforceability, or formation” of the Mutual  
27 Arbitration Provision. *Id.* The sole exception to this delegation clause is for disputes in which a  
28 party “claim[s] that all or part of this Class Action Waiver and/or Representative Action Waiver is

1 unenforceable unconscionable, void, or voidable.” *Id.* But “all other disputes regarding  
2 interpretation, applicability, enforceability, or formation of th[e] Mutual Arbitration Provision shall  
3 be determined exclusively by an arbitrator.” *Id.*

4 When individuals have attempted to bring claims on behalf of a class of Postmates couriers,  
5 Postmates has chastised them for “[d]isregarding [their] obligations under the Mutual Arbitration  
6 Provisions” and has argued that all couriers subject to the Mutual Arbitration must arbitrate their  
7 claims rather than participate in any class action. *See, e.g., Lee v. Postmates, Inc.* (N.D. Cal. July  
8 20, 2018) 3:18-cv-3421-JCS, Postmates’s Pet. Compel Arb., at 4, 8, ECF No. 14 (“[T]he Court  
9 should find that, by accepting the Fleet Agreement and failing to opt out of the Mutual Arbitration  
10 Provision, Plaintiff . . . must arbitrate her claims on an individual basis.”). Further, Postmates has  
11 asserted that any dispute about the obligation of couriers and Postmates to individually arbitrate  
12 their claims must itself be resolved in individual arbitration. *See, e.g., id.* at § III.A.2.a (“The  
13 Mutual Arbitration Provision indisputably delegates gateway arbitrability questions to the  
14 arbitrator.”). Finally, Postmates has argued that the Federal Arbitration Act preempts any rule of  
15 California law that would impede the enforcement of individual arbitration. *See* Postmates’s Pet.  
16 Compel Arb. (Aug. 17, 2018), § III.A.3 (“FAA preempts state rules—including [the California  
17 Supreme Court’s holding in] *Iskanian*—that disfavor arbitration agreements, and precludes  
18 Plaintiffs from relying on *Iskanian* to avoid arbitration.”). Postmates has prevailed on those  
19 arguments—and as a result, has prevented couriers from obtaining certification of a class action.  
20 *See, e.g., Lee*, Order Re Mot. Compel Arb., ECF No. 31.

21 Postmates even attempted to compel arbitration in this action. *See generally* Postmates’s  
22 Pet. Compel Arb. This Court denied Postmates’s motion to compel because Mr. Rimler only  
23 brought claims under the Private Attorney Generals Act (“PAGA”) as a putative representative of  
24 the state. *See* Order Denying Def. Pet. Compel Arb. (Jan. 2, 2019).

25 In short, Postmates has established the impropriety of this proposed class action. Apart  
26 from PAGA claims—which Objectors do not bring—couriers and Postmates must resolve all  
27 misclassification disputes exclusively through individual arbitration; the Fleet Agreement and the  
28

1 Federal Arbitration Act bar both parties from participating in or pursuing a class action. *See supra*  
2 at 3.

3 **B. Thousands of Postmates Couriers Have Pursued Individual Arbitration.**

4 Objectors are current and former couriers who worked for Postmates during the proposed  
5 settlement class period. Objectors’ Decls. ¶¶ 2, 4, 6, 8. Because Postmates classified Objectors as  
6 independent contractors, Postmates failed to ensure that Objectors were paid a minimum wage,  
7 failed to provide paid rest breaks or sick leave, and failed to reimburse vehicle expenses. Ex. 1.,  
8 Objectors’ Proposed Compl. in Intervention (Oct. 18, 2019) ¶¶ 62–63, 65. Postmates did not pay  
9 Objectors premium pay when they worked more than 40 hours in a week, eight hours in a day, or  
10 seven consecutive days in a workweek. *Id.* ¶ 64. Postmates failed to provide Objectors with  
11 accurate wage statements and has refused to allow Objectors access to their full pay records, in  
12 violation of California law. *Id.* ¶ 61; Keller Decl. ¶ 17. These violations give Objectors a right to  
13 back pay, liquidated damages, and civil penalties under federal and state law, and further trigger  
14 significant additional penalties under municipal minimum-wage ordinances. Ex. 1 ¶¶ 60–66.

15 Objectors’ damages are significant. Based on the experience of Objectors’ counsel  
16 litigating similar wage-and-hour claims, the average courier who prevails in an individual action  
17 against Postmates likely could recover thousands of dollars in damages under state law and tens of  
18 thousands of dollars in civil penalties under local municipal wage ordinances. Keller Decl. ¶ 19.

19 Objectors’ claims are highly likely to succeed. *Id.* ¶ 20. Under *Dynamex Operations W. v.*  
20 *Superior Court*, Postmates can avoid liability only if it proves that Postmates couriers do not operate  
21 in the usual course of Postmates’s business. (2018) 4 Cal. 5th 903, 961, *reh’g denied* (June 20,  
22 2018).<sup>1</sup> Postmates has long defined itself as a delivery company. *See* Keller Decl., Ex. C  
23 (“Postmates: Everyone’s Favorite Delivery Service.”) Objectors and other couriers perform

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24 <sup>1</sup> Settlement Plaintiffs’ counsel has suggested that the supposed uncertainty as to whether *Dynamex*  
25 applies retroactively weighs in favor of approving the proposed settlement. Mot. Prelim. Approval  
26 (Oct. 8, 2019), at 10. Since Plaintiffs’ counsel filed its motion, a California appellate court, relying  
27 on the longstanding principle that judicial interpretations of statutes are always retroactive, has held  
28 that *Dynamex* applies retroactively. *Gonzales v. San Gabriel Transit., Inc.* (Cal. App. Oct. 8, 2019)  
No. B282377, 2019 WL 4942213. And even if the rule in *Dynamex* commenced on the date of that  
decision, any courier who drove for Postmates after April 30, 2018 would be entitled to far greater  
damages than the proposed settlement offers.



1 deliveries for Postmates. Objectors’ Decls. ¶¶ 4. Without its couriers, Postmates would not exist,  
2 and therefore Postmates cannot make credible arguments that its couriers operate outside the usual  
3 course of Postmates’s business. Keller Decl. ¶ 20.

4 Because they have a high likelihood of winning substantial damages in individual actions,  
5 Objectors do not believe the current settlement consideration is adequate because it ranges on  
6 average between \$20 and \$40 per courier depending on class member participation rates and after  
7 deducting Plaintiffs’ counsel’s fees. Objectors’ Decls. ¶¶ 12. Although Objectors do not oppose  
8 resolution of PAGA claims against Postmates in a representative action (which would require  
9 substantially more compensation than allocated to PAGA claims in the current settlement),  
10 Objectors want to proceed with their already-pending cases in individual arbitration. *Id.* ¶¶ 12, 14.

11 **C. After Compelling Arbitration, Postmates Refused to Arbitrate With**  
12 **Objectors and Thousands of Other Couriers.**

13 On April 22, 2019, Objectors’ counsel filed individual demands for arbitration against  
14 Postmates with AAA on behalf of Objectors and 4,921 other Postmates couriers who are also  
15 represented by Objectors’ counsel. Keller Decl. ¶ 7. On May 13, 2019, Objectors’ counsel filed  
16 demands for arbitration on behalf of an additional 349 couriers in California. *Id.* AAA reviewed  
17 the demands and concluded that each one complied with AAA’s filing requirements. *Id.* ¶¶ 13-16.

18 After the couriers fully satisfied their filing-fee obligations (by either paying a \$300 filing  
19 fee or submitting a hardship-based fee waiver), AAA imposed a deadline of May 31, 2019 for  
20 Postmates to pay its share of filing fees.<sup>2</sup> *Id.* ¶ 9. After much back and forth between the parties  
21 and AAA, and after AAA extended Postmates’s deadline multiple times, Postmates steadfastly  
22 refused to submit the payment necessary to proceed with Objectors’ arbitrations. *Id.* ¶¶ 11–15. On  
23 June 21, 2019, AAA emailed the parties’ counsel (1) confirming that the couriers’ demands  
24 complied in all respects with AAA’s rules and requirements, (2) rejecting Postmates’s arguments  
25

26  
27 <sup>2</sup> Postmates’s previous Fleet Agreement provided that Postmates would satisfy the full AAA filing  
28 fees. Keller Decl., Ex. A, 2018 Fleet Agreement § 11B.vi. Only those subject to the 2019 Fleet  
Agreement are required to pay the \$300 fee. *Id.*, Ex. B, 2019 Fleet Agreement § 10B.vi.

1 to the contrary, and (3) stating that AAA “is closing [couriers’] cases” due to Postmates’s lack of  
2 payment. *Id.* ¶ 16.

3           Objectors and other California couriers with whom Postmates has refused to arbitrate filed  
4 a motion to compel arbitration against Postmates in federal court. *Jamal Adams, et al. v. Postmates*  
5 *Inc.* (N.D. Cal. June 3, 2019) 4:19-cv-03042-SBA, Pet. Compel Arb., ECF No. 1; *id.*, Mot. Compel  
6 Arb., ECF No. 4. Postmates opposed the motion to compel (and filed its own “cross-motion to  
7 compel”). *Id.* (June 17, 2019) Opp’n Mot. Compel Arb., ECF No. 112; *id.* (July 18, 2019) Reply  
8 Supp. Cross Mot. Compel Arb., ECF No. 238. Its opposition argued that, even though the couriers  
9 had filed individual demands for arbitration on AAA’s standard individual demand form, the fact  
10 of so many individual arbitrations somehow produced a “class arbitration.” *Id.* Throughout its  
11 briefing, Postmates repeatedly pointed to the Fleet Agreement’s “unambiguous” prohibition of  
12 class actions. *See, e.g., id.* Opp’n Mot. Compel Arb at 2, 4, 10, 13, ECF No. 112. The motion to  
13 compel in *Adams* is fully briefed. Keller Decl. ¶ 14.

14           In addition to Objectors and the other 5,253 *Adams* Petitioners, approximately 11,500 other  
15 couriers who would be putative class members in this case have signed individual agreements  
16 retaining Objectors’ counsel to represent them in individual arbitration against Postmates. *Id.* ¶ 21.<sup>3</sup>  
17 Keller Lenkner has alerted Postmates of its representation of almost all those couriers. *Id.* ¶ 17.

18           **D. Postmates and the Settlement Plaintiffs Pursue Prohibited Class Proceedings.**

19           Even though Postmates has spent years successfully compelling misclassification claims to  
20 individual arbitration—including the very claims Postmates is attempting to settle here, *see* Mot.  
21 Prelim. Approval at 1–2—Postmates now wants to reverse course and enter into a class-wide  
22 settlement on behalf of all California couriers. *See* Liss-Riordan Decl., Ex. 1, Class Action  
23 Settlement Agreement and Release (“Settlement Agreement”) § 2.36 (defining “Settlement Class”  
24 as “any and all individuals classified by Postmates as independent contract couriers who entered  
25 into an agreement to use or used the Postmates platform as an independent contractor courier in  
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27 <sup>3</sup> On September 24, 2019, Keller Lenkner filed additional demands for arbitration against  
28 Postmates on behalf of 1,250 couriers. Keller Decl. ¶ 18. The extended deadline for Postmates to  
pay the filing fees for those demands is November 4, 2019. *Id.*

1 California during the Settlement Period”). According to the Plaintiffs in this action (the “Settlement  
2 Plaintiffs”), Postmates and Settlement Plaintiffs’ counsel reached a settlement agreement in  
3 principle on July 19, 2019, Liss-Riordan Decl. ¶ 7, several months after Objectors had already  
4 commenced individual arbitrations, *see supra* at 5.

5 The proposed settlement class is defined to include Objectors. Settlement Agreement  
6 § 2.36. The motion for preliminary approval asks this court to certify a settlement class that would  
7 allow Lichten & Liss-Riordan, PC (“LLR”) to communicate settlement offers to the entire class,  
8 Mot. Prelim. Approval at 15, which includes 13,974 individuals Postmates knows are already  
9 represented by counsel, Keller Decl. ¶ 17.

10 The settlement attempts to restrict class members’ ability to opt out of the settlement in two  
11 ways. First, the settlement purports to prohibit Objectors’ counsel from signing an opt-out form on  
12 Objectors’ behalf. Settlement Agreement § 7.1 (valid opt outs must, among other things, include  
13 “the signature of the Settlement Class Member or the Legally Authorized Representative (who is  
14 not the Settlement Class Member’s counsel) of the Settlement Class Member” (emphasis added)).  
15 Second, even if Objectors personally sign an opt out form, the settlement purports to prohibit their  
16 counsel from assisting them even in submitting it. *Id.* (“All requests for exclusion must be  
17 submitted by the requesting Settlement Class Member (or their Legally Representative who is not  
18 the Settlement Class Member’s counsel), even if the Settlement Class Member is represented by  
19 counsel.” (emphasis added)). Postmates and Settlement Plaintiffs’ counsel did not include either  
20 of these restrictions in the last settlement to which they agreed. *See Singer v. Postmates, Inc.* (N.D.  
21 Cal. July 12, 2017) 4:15-cv-01284-JSW, Revised Class Action Settlement Agreement And Release  
22 (“*Singer* Settlement Agreement”) § 7.1, ECF No. 80-1 (valid opt outs must, among other things,  
23 include “the signature of the Settlement Class Member or Legally Authorized Representative of the  
24 Settlement Class Member” and “may be submitted by a Settlement Class Member’s Legally  
25 Authorized Representative.”).<sup>4</sup>

26 \_\_\_\_\_  
27 <sup>4</sup> The *Singer* settlement defines “Legally Authorized Representative” as “an  
28 administrator/administratrix, personal representative, or executor/executrix of a deceased  
Settlement Class Member’s or Putative Settlement Collective Member’s estate; a guardian,

1 Further, while the settlement imposes significant obstacles to effectuating a valid opt out, it  
2 releases claims for anyone who cannot overcome those obstacles, Settlement Agreement § 7.4 (Any  
3 class member who fails to opt out will have their claims “released as provided for herein, even if  
4 they never received actual notice of the Action or this proposed Settlement.”). And although the  
5 proposed settlement complaint does not allege claims under local ordinances, Liss-Riordan Decl.,  
6 Ex. C, 2nd Am. Compl., at 1–2, and the motion for preliminary approval does not analyze the value  
7 of those claims, *id.* ¶¶ 22–44, the settlement would nonetheless release those claims, Settlement  
8 Agreement § 2.16. Finally, the proposed settlement class contains a “blow up” provision, stating  
9 that Postmates can back out if more than 250 individuals exercise their right to opt out. *Id.* § 7.2.  
10 The economic interests of the Settlement Plaintiffs, LLR, and those who affirmatively opt into the  
11 class will be threatened if Objectors and the thousands of individuals represented by Objectors’  
12 counsel opt out of the settlement. *Id.*

### 13 ARGUMENT

14 Objectors and Postmates entered into valid agreements to individually arbitrate all the  
15 individual claims that the proposed settlement would release. Objectors are actively seeking to  
16 enforce their arbitration agreements with Postmates through their counsel of choice. But Postmates  
17 and LLR seek to disregard those agreements and force Objectors to be represented by the firm  
18 Postmates would prefer: LLR. If granted, the pending motion would appoint as class counsel a law  
19 firm with an inherent conflict of interest. It would impose a fundamentally unfair settlement on  
20 Objectors and thousands of other couriers in Objectors’ position. And it would allow Postmates to  
21 blatantly disregard its contractual obligations. Objectors seek to intervene to protect their right to  
22 be represented by their chosen and unconflicted counsel, to pursue individual arbitration as  
23 promised by Postmates’s contract, and to pursue fair value for their legal claims.

24 Motions to intervene under California Code of Civil Procedure 387 are construed liberally.  
25 *See Simpson Redwood Co. v. State of Calif.* (1987) 196 Cal. App. 3d 1192, 1201. Intervention may

26 \_\_\_\_\_  
27 conservator, or next friend of an incapacitated Settlement Class Member or Putative Settlement  
28 Collective Member; or any other legally appointed Person responsible for handling the business  
affairs of a Settlement Class Member or Putative Settlement Collective Member.” *Id.*, § 2.16.

1 be granted either as a matter of right or permissively. *See* Code Civ. Pro. § 387(d). Under either  
2 standard, this Court should allow Objectors to intervene in this action to protect their contractual  
3 rights to expeditiously and individually arbitrate their misclassification claims, using their counsel  
4 of choice, before those rights are extinguished by the proposed class settlement.

5 **A. Objectors May Intervene as a Matter of Right.**

6 To intervene as a matter of right, Objectors must demonstrate that: (1) they have “an interest  
7 relating to the property or transaction that is the subject of the action”; (2) they are “so situated that  
8 the disposition of the action may impair or impede [their] ability to protect that interest”; and (3)  
9 their interest is not “adequately represented by one or more of the existing parties.” *Id.* Objectors  
10 satisfy each of those elements.

11 **1. Objectors Have a Particularly Compelling Interest in This Action.**

12 It is well-established that putative class members “have an interest in preserving their claims  
13 encompassed by” a proposed class action settlement. *Edwards v. Heartland Payment Sys., Inc.*  
14 (2018) 29 Cal. App. 5th 725, 733. And where an existing party does not adequately represent  
15 certain class members’ interests, it necessarily follows that the action could impair or impede those  
16 interests. Accordingly, parties who are members of a putative class need only show that they are  
17 “class members whose interests are not adequately represented by the existing parties.” *Hernandez*  
18 *v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 267.

19 As Postmates couriers who have made deliveries in California, Objectors fall within the  
20 proposed class definition and settlement release; they are putative class members. Settlement  
21 Agreement § 2.36. They accordingly have “have an interest in preserving their claims encompassed  
22 by” the proposed class settlement. *Edwards*, 29 Cal. App. 5th at 733. Although class membership  
23 alone is sufficient to establish an interest in a class settlement, Objectors have a particularly strong  
24 interest here, because the class settlement not only threatens to extinguish their underlying claims,  
25 but also threatens to (a) impair their contractual right to pursue individual arbitration; (b) excuse  
26 Postmates’s breach of contract for participating in a class proceeding; and (c) interfere with their  
27 right to be represented by counsel of their choosing.

28

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1           The proposed settlement purports to release the claims of putative class members based on  
2 their inaction. That is, the proposed settlement requires a putative class member affirmatively to  
3 request exclusion from the class to avoid releasing his or her misclassification claims. Settlement  
4 Agreement § 7.1; *see also* Liss-Riordan Decl., Ex. A, Proposed Notice (“All Class Members who  
5 do not timely and formally opt out of the settlement by requesting exclusion . . . shall be bound by  
6 this release for all claims.”). But Objectors, like thousands of other putative class members, have  
7 signed Fleet Agreements that expressly prohibit Postmates from attempting to force couriers to  
8 participate in a class proceeding. *See supra* at 2–4. Those contractual rights cannot be undermined  
9 through inaction or passivity.

10           Although parties of course can agree to modify a contract, such changes must meet the same  
11 requirements to enter a binding agreement in the first place, including mutual, affirmative consent.  
12 *Wold v. League of Cross of Archdioceses of San Francisco* (1931) 114 Cal. App. 474, 481 (holding  
13 that the “silence or inaction” of a party to a contract cannot “bind him to a modification of the terms  
14 of a written” agreement). And the Fleet Agreement expressly states that it “shall not be modified,  
15 altered, changed, or amended in any respect, unless in writing and executed by both parties.” Keller  
16 Decl., Exs. A–B §§ 13A, 12A. Postmates cannot unilaterally modify the mandatory arbitration  
17 clause and class action waiver in its agreements with absent class members by reaching a side deal  
18 with Settlement Plaintiffs. *Martinez v. Master Prot. Corp.* (2004) 118 Cal. App. 4th 107, 116  
19 (holding an attempted modification to an arbitration agreement was “ineffective” because the  
20 “arbitration agreement is a fully integrated contract”). Postmates may not participate in a class  
21 action without Objectors’ affirmative consent to modify the Fleet Agreement; and Postmates  
22 similarly cannot extinguish couriers’ contractual right to individual arbitration through their  
23 silence, especially where the settlement contemplates that some couriers will not receive actual  
24 notice of this proceeding.

25           In addition to impeding Objectors’ right to arbitrate, the settlement also attempts to limit  
26 Objectors’ ability to rely on their counsel to protect that right. The proposed settlement does this  
27 by (a) refusing to recognize opt-out forms that are signed by counsel on behalf of putative class  
28 members, and (b) refusing to recognize opt-out forms that are merely submitted by their counsel.

1 Settlement Agreement § 7.1. Postmates and LLR have obviously colluded to include these onerous  
2 terms with full knowledge that thousands of couriers have sought individual arbitration pursuant to  
3 the Fleet Agreement. *Cf. Singer Settlement Agreement § 7.1.* Neither requirement is sensible or  
4 permissible—particularly here, where Postmates is aware that putative class members have signed  
5 individual engagement agreements that authorize counsel of their choosing to represent their  
6 interests for the very claims that are the subject of the proposed settlement. Objectors’ Decls. ¶¶ 12–  
7 14.

8 **2. Plaintiffs and Their Counsel Are Inadequate To Protect the Interests**  
9 **of Objectors and Other Similarly Situated Couriers.**

10 Plaintiffs and their counsel are inadequate to protect the interests of Objectors and the  
11 thousands of other couriers pursuing individual arbitrations. Settlement Plaintiffs and their counsel  
12 have been unable to pursue class actions against Postmates due to Postmates’s arbitration clause,  
13 but they have shown no willingness to bring individual arbitrations against Postmates. *See*  
14 *generally* Mot. Prelim. Approval; Liss-Riordan Decl. Instead, they have attempted to settle their  
15 claims—and the claims of an entire class of hundreds of thousands of couriers—based on the  
16 assumption that couriers will be unable to obtain direct representation and pursue individual actions  
17 in substantial numbers. Mot. Prelim. Approval at 15 (noting that the standard for determining  
18 whether a class action is a superior means of resolving Plaintiffs’ claims entails an inquiry of  
19 “whether workers are unlikely to come forward to pursue their own individual claims in absence  
20 of a class action” but then stating with no support that “[h]ere, there are approximately 380,000  
21 class members, and granting class certification is superior to litigating the individual cases that  
22 would remain without certification.”) That premise is false, as illustrated by the conduct of  
23 Objectors and the over ten thousand other couriers who have separately retained counsel to pursue  
24 individual arbitrations against Postmates. *See supra* at 6. And that false premise has caused  
25 Settlement Plaintiffs and LLR to propose a settlement that conflicts with the interests of Objectors  
26 in three improper ways.

27 **First**, Settlement Plaintiffs and their counsel have shown that they will support a settlement  
28 that releases the claims of absent class members for a paltry sum. As described above, depending

1 on class member participation rates, the settlement consideration would average \$40 per courier  
2 with 50% participation.<sup>5</sup> See Mot. Prelim. Approval at 11, 13 (noting that the total class size is  
3 approximately 380,000 couriers and the total consideration is \$11.5 million); Settlement Agreement  
4 § 2.38 (counsel’s requested fee amount is \$3,833,33.33). Although the total settlement  
5 consideration of \$11.5 million is too low even for a class settlement of 380,000 couriers, it is far  
6 too low to compensate couriers with pending individual actions for their claims. Indeed, many  
7 couriers with individual actions have satisfied the filing fee obligation to AAA of \$300. Keller  
8 Decl. ¶ 8, 18. The proposed settlement offers of those couriers is an order of magnitude less than  
9 even their initial, non-refundable filing fee.

10 **Second**, Settlement Plaintiffs and their counsel have proposed a settlement that, by its very  
11 design, attempts to destroy Objectors’ contractual right to avoid class proceedings and pursue  
12 individual arbitration. That alone is a basis for intervention. *Tech. & Intellectual Prop. Strategies*  
13 *Grp. PC v. Insperity, Inc.* is instructive. That case involved contract- and fraud-related claims by  
14 one corporation against its purported counterparty to a staffing agreement. (N.D. Cal.  
15 Nov. 29, 2012) No. 12–CV–03163–LHK, 2012 WL 6001098, at \*1. A third corporation sought to  
16 intervene and compel arbitration, claiming intervention was appropriate because it was the proper  
17 counterparty to the agreement giving rise to the dispute, and that the dispute was covered by an  
18 arbitration agreement. *Id.* at \*4. The court agreed. It held that the intervenor’s interest in  
19 “assert[ing] its right to enforcement of [its] arbitration provision” was an interest supporting  
20 intervention. *Id.* at \*7. Further, that right would be impaired if the case was decided without the  
21 intervenor having had the ability to seek to enforce the arbitration provision. *See id.* at \*8. Finally,  
22 the defendant could not adequately protect the intervenor’s interest in arbitration because the  
23 defendant arguably was not a party to the arbitration agreement, so could not seek to enforce it.

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27 <sup>5</sup> LLR in *Singer* suggested that a 50% participation rate is expected in this type of case. Liss-  
28 Riordan Decl. ¶ 7, n.4, ECF No. 73–1



1 *See id.* The court thus held that the intervenor could intervene as of right to protect its right to  
2 arbitrate the underlying claims. *See id.*<sup>6</sup>

3 That same reasoning holds true here. Objectors seek to individually arbitrate their  
4 misclassification claims against Postmates. The parties seek approval of the very settlement  
5 agreement that purports to extinguish Objectors’ arbitration rights. That there is an opt out  
6 provision does not save the proposed settlement because it purports to make mere silence an  
7 effective waiver of Objectors’ and other couriers’ contractual rights. For example, if the class  
8 settlement notice went to a “spam folder” or a courier changed his or her email or mailing address  
9 and never received actual notice, under the proposed settlement’s terms that courier’s claims would  
10 be released and he or she would lose the contractually guaranteed right to pursue individual  
11 arbitration. *See* Settlement Agreement § 7.4 (Any class member who fails to opt out will have their  
12 claims “released as provided for herein, even if they never received actual notice of the Action or  
13 this proposed Settlement.”). That is impermissible under California contract law. *See supra* at 10.

14 **Third**, Settlement Plaintiffs and their counsel have attempted to interfere with Objectors’  
15 right to be represented by their counsel of choice. Along with thousands of other putative class  
16 members, Objectors retained Keller Lenkner to pursue their misclassification claims via individual  
17 arbitrations rather than as part of any class proceeding. Keller Decl. ¶ 1. But Settlement Plaintiffs  
18 and their counsel have made a calculated attempt to interfere with Objectors’ counsel of choice and  
19 their desired litigation strategy by seeking to prevent Keller Lenkner from assisting Objectors in  
20 executing or submitting an opt-out form. *See* Settlement Agreement § 7.1. In fact, the agreement  
21 allows many types of legal representatives to help Objectors opt out of the settlement except the  
22 one type of legal representative Objectors engaged for the specific purpose of helping them pursue  
23 their employment misclassification claims against Postmates on an individual basis. *Id.*

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26 <sup>6</sup> This Court may look to federal caselaw when evaluating a motion to intervene. *Edwards*, 29 Cal.  
27 App. 5th at 821 (“In assessing [intervention] requirements, we may take guidance from federal  
28 law.”); *Hodge v. Kirkpatrick Dev., Inc.* (2005) 130 Cal. App. 4th 540, 555 (noting that intervention  
as of right under section 387 is “virtually identical” to intervention as of right under Federal Rule  
of Civil Procedure 24(a)).

1 Settlement Plaintiffs have not been appointed class representatives by any court. *See* Dkts.  
2 for *Lee* and *Rimler*. They have no legitimate interest in dictating how other couriers rely on or  
3 obtain assistance from attorneys whom those couriers have specifically engaged. Likewise, LLR  
4 has not been appointed by any court to represent any pending class of Postmates couriers. *Id.* And  
5 worse, nowhere in Settlement Plaintiffs’ motion does LLR even ask this court to appoint it as  
6 counsel of the settlement class. *See* Mot. Prelim. Approval. LLR has no legitimate interest in  
7 restricting or interfering with the ability of Objectors to obtain assistance from their counsel.

8 Nevertheless, Settlement Plaintiffs and LLR have attempted to do just that. This reflects  
9 the inherent conflict between Settlement Plaintiffs and their counsel on the one hand, and couriers  
10 who wish to pursue individual arbitrations on the other. Postmates has committed to settling with  
11 the Settlement Plaintiffs only if fewer than 250 plaintiffs opt out of the settlement. Settlement  
12 Agreement § 7.2. The economic interest of Settlement Plaintiffs and their counsel would be directly  
13 undermined if Objectors and other couriers’ counsel could facilitate their desire to opt out of the  
14 class. Settlement Plaintiffs and their counsel thus have interests that run directly counter to  
15 Objectors’ interests, leading to a proposed set of opt-out terms that is transparently designed to  
16 interfere with thousands of couriers’ attorney-client relationships. Objectors must be permitted to  
17 intervene to protect that deeply important constitutional right.<sup>7</sup> *Hernandez*, 4 Cal. 5th at 267.

18 It is a longstanding principle that clients have the right to be represented by counsel of their  
19 own choosing. *Howard v. Babcock* (1993) 6 Cal. 4th 409, 425 (pointing out the Court’s “legitimate  
20 concerns of assuring client choice of counsel”); *Smith, Smith & Kring v. Superior Court (Oliver)*  
21 (1997) 60 Cal. App. 4th 573, 580 (same). Objectors and thousands of other couriers chose to be  
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24 <sup>7</sup> Plaintiffs’ counsel also did not provide proper notice, as it did not file its Motion for Preliminary  
25 Approval or the underlying documents until October 8, 2019; yet, LLR noticed its motion to be  
26 heard a mere six court days later, on October 17, 2019. *See* Code Civ. Pro. § 1005(b) (requiring all  
27 motions be noticed at least sixteen court days after filing the underlying papers). The hearing was  
28 subsequently moved to October 23, 2019, but that date still provides inadequate notice for the  
motion, which cannot be heard under Cal. Code Civ. Pro. § 1005 until October 31, 2019. The  
failure of Plaintiffs’ counsel to properly notice its motion for preliminary class approval is a further  
red flag because it demonstrates that the interests of Settlement Plaintiffs and their counsel are to  
rush through a deficient settlement.

1 represented by Keller Lenkner, not LLR. Postmates is aware of that representation, *see supra* p. 6,  
2 and neither LLR nor Postmates has any legitimate basis to override that choice.

3 **B. Objectors Also Satisfy the Standard for Permissive Intervention.**

4 Even were the Court to conclude that Objectors cannot intervene as of right, it should  
5 exercise its discretion to permit intervention. Such intervention is appropriate when the proposed  
6 intervenor demonstrates that: “(1) the proper procedures have been followed; (2) the nonparty has  
7 a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the  
8 litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently  
9 in the action.” *Edwards*, 29 Cal. App. 5th at 736 (internal quotation marks omitted). These  
10 elements are all satisfied here.

11 First, Objectors have followed all the procedures imposed under the intervention rules by  
12 timely<sup>8</sup> filing an ex parte application for intervention along with their proposed complaint in  
13 intervention. Second, as outlined above, Objectors have a direct and immediate interest in the  
14 litigation: they are putative class members, and the settlement attempts to extinguish their  
15 misclassification claims and associated right to arbitrate those claims. Third, Objectors’  
16 intervention does not enlarge the issues in the litigation, as it revolves around the same factual  
17 allegations, claims, and agreements already at issue. *People ex rel. Rominger v. Cty. of Trinity*  
18 (1983) 147 Cal. App. 3d 655, 664-65 (finding that complaint in intervention did not “enlarge the  
19 issues” where it did not raise any “new legal or factual issues”). Fourth, the need for intervention  
20 far outweighs any potential opposition by the parties. *Id.* at 665 (finding Objectors’ interest  
21 outweighed “parties’ interest in litigating this case on their own”). Objectors must intervene to  
22 ensure that the proposed settlement does not impede (or eventually eliminate) their right to timely  
23 arbitrate their misclassification claims.

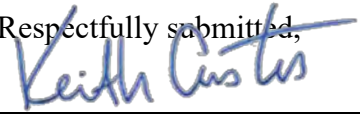
24 **CONCLUSION**

25 For all the foregoing reasons, this Court should grant Objectors’ application to intervene.

26 \_\_\_\_\_  
27 <sup>8</sup> The timeliness of Objectors’ application cannot be questioned, as it comes less than two weeks  
28 after the proposed settlement that attempts to interfere with Objectors’ arbitration rights was  
noticed. *Cf. Hernandez*, 4 Cal. 5th at 267 (noting that an application for intervention can be deemed  
timely even if sought after “judgment”).

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Dated: October 18, 2019

Respectfully submitted,  


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*Attorneys for Proposed Intervenors and  
Objectors*

#



1 I, Ashley Keller, declare based on personal knowledge as follows:

2 1. I am a partner at Keller Lenkner LLC, counsel for Proposed Intervenors and  
3 Objectors (“Objectors”) Heather LeMaster, Juan Jimenez, Lewis Stokes, and Malarie Taylor in this  
4 matter.

5 2. I have personal knowledge of the facts stated herein, and if called upon as a witness,  
6 I could and would testify competently thereto.

7 3. On March 6, 2019, Keller Lenkner informed Postmates that it represented more than  
8 3,000 couriers in California and Illinois who intended to initiate individual arbitrations against  
9 Postmates. That communication included a list of 3,000 of our clients and their identifying  
10 information.

11 4. On March 28, 2019, I sent an updated list of client names and identifying  
12 information to Postmates’s outside counsel.

13 5. At that time, Objectors were covered by Postmates’s 2018 Fleet Agreement, which  
14 required that Postmates pay all arbitration filing fees. Attached as Exhibit A is a true and correct  
15 copy of Postmates’ 2018 Fleet Agreement, effective May 11, 2018.

16 6. On April 5, 2019, Keller Lenkner clients began informing us that Postmates was  
17 requiring them to agree to a new Fleet Agreement before allowing them to sign into the Postmates  
18 app to make deliveries. The new agreement purported to require couriers to split the administrative  
19 costs of arbitration equally with Postmates. Attached as Exhibit B is a true and correct copy of  
20 Postmates’s 2019 Fleet Agreement, effective April 3, 2019.

21 7. After some back and forth with Postmates about potentially resolving Keller  
22 Lenkner’s clients’ claims outside of litigation, Keller Lenkner submitted 5,693 individual  
23 arbitration demands to the American Arbitration Association (“AAA”) on behalf of Objectors and  
24 other Postmates couriers:

25 1. April 22, 2019—4,925 individual demands; and

26 2. May 13, 2019—768 individual demands.<sup>9</sup>

27 <sup>9</sup> Of the May 13, 2019 demands, 419 were made by drivers who did not work in California and  
28 would not be class members in this case.

1           8.       At the time of filing, those couriers who Keller Lenkner understood to be subject to  
2 the 2019 Fleet Agreement satisfied their \$300 filing-fee requirement. That included Objectors  
3 Jimenez and Stokes.

4           9.       On May 10, 2019, AAA sent an email to Postmates’s counsel setting May 31, 2019,  
5 as the deadline for Postmates to pay the filing fees—\$1,900 per claimant—necessary to commence  
6 the 4,925 arbitration demands served on April 22, 2019.

7           10.      On May 16, 2019, AAA sent an email to Postmates’s counsel setting June 6, 2019,  
8 as the deadline for Postmates to pay the filing fees—\$2,200 per claimant—necessary to commence  
9 the 768 arbitration demands served on May 13, 2019.

10          11.      On May 31, 2019, Postmates sent an *ex parte* letter to AAA lodging three objections  
11 to the form and substance of the filed demands, and to AAA’s determination of the fees owed by  
12 each party. To my knowledge, Postmates had never previously raised those objections with AAA  
13 or the couriers.

14          12.      Based on those objections, Postmates refused to pay the invoiced filing fees.

15          13.      In the ensuing weeks, Postmates, Keller Lenkner, and AAA exchanged several  
16 letters and phone calls debating the merits of Postmates’s objections and the validity of the couriers’  
17 filed arbitration demands. On multiple occasions, AAA confirmed that the couriers had properly  
18 filed arbitration demands and that Postmates was required to pay the necessary filing fees.

19          14.      While the parties were engaging in discussions with AAA, on June 3, 2019, the  
20 couriers, including Objectors, filed a motion to compel arbitration in the U.S. District Court for the  
21 Northern District of California. That case is captioned *Jamal Adams, et al. v. Postmates, Inc.*, Case  
22 No. 4:19-cv-03042-SBA. Briefing is complete, and the parties are waiting for the Court’s ruling.

23          15.      While that case was pending, AAA imposed a final deadline for paying the filing  
24 fees of June 13, 2019. Postmates has not yet paid those fees.

25          16.      On June 21, 2019, AAA emailed the parties’ counsel (1) confirming that the  
26 couriers’ demands complied in all respects with AAA’s requirements; and (2) stating that AAA “is  
27 closing [the couriers’] cases” due to Postmates’s lack of payment.

28          17.      On a rolling basis, Keller Lenkner has sent work record requests to Postmates under

1 California Labor Code § 226(c) for its clients. To date, Keller Lenkner has requested work records  
2 on behalf of 13,974 California couriers. Postmates has not provided a single record.

3 18. On September 24, 2019, Keller Lenkner filed an additional 1,250 individual  
4 arbitration demands.<sup>10</sup> At the time of filing, those couriers Keller Lenkner understood to be subject  
5 to the 2019 Fleet Agreement satisfied their \$300 filing-fee requirement. AAA invoiced Postmates  
6 for its share of the filing fees, which are due November 4, 2019.

7 19. Keller Lenkner has significant experience litigating wage-and-hour claims like  
8 Objectors' claims. Based on that experience, the average courier who prevails in an individual  
9 action against Postmates likely could recover thousands of dollars in damages under state law and  
10 tens of thousands of dollars in civil penalties under local municipal-wage ordinances.

11 20. Objectors' claims and the claims of Keller Lenkner's other clients who were  
12 Postmates couriers in California are likely to succeed. Under *Dynamex Operations W. v. Superior*  
13 *Court*, Postmates can avoid liability only if it proves that Postmates couriers do not operate in the  
14 usual course of Postmates's business. (2018) 4 Cal. 5th 903, 961, *reh'g denied* (June 20, 2018).  
15 Postmates has long defined itself as a delivery company. Attached as Exhibit C are true and correct  
16 copies of archived homepages of the Postmates website on June 3, 2013 and January 28, 2015,  
17 *available at* <https://web.archive.org/web/20130603212751/https://www.postmates.com/>  
18 and <https://web.archive.org/web/20150128011443/https://postmates.com/> (last accessed on May  
19 30, 2019). Because Postmates is a delivery company and couriers make Postmates's deliveries,  
20 Postmates couriers have strong arguments that Postmates would not exist without its couriers, and  
21 therefore couriers operate within the usual course of Postmates's business.

22 21. As of today, approximately 16,750 California couriers, including Objectors, have  
23 signed written engagement agreements to have Keller Lenkner represent them in their  
24 misclassification claims against Postmates in individual arbitration.

25 22. On October 18, 2019 at approximately 3:30 p.m. CST, I gave notice by email to  
26 counsel of record that on October 23, 2019, at 10:00 a.m., Objectors would apply to this Department

27 <sup>10</sup> Of the September 24, 2019 demands, 500 were made by drivers who did not work in California  
28 and would not be class members in this case.



1 for an ex parte application for leave to intervene in this case. I asked if counsel would appear to  
2 oppose the application and to let us know by 5:30 p.m. CST. Counsel never responded.

3 I affirm that the foregoing is true under penalty of perjury under the laws of  
4 California.

5 Signed on October 18, 2019 in Chicago, Illinois.

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Ashley Keller

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1 I, Malarie Taylor, declare as follows:

2 1. I am over the age of 18. I have personal knowledge of the facts stated herein, and  
3 if called upon as a witness I could and would testify competently thereto.

4 2. I live and work in Fontana, California.

5 3. I am seeking to intervene as a plaintiff in the above-captioned case.

6 4. I started working for Postmates as a courier on or around December 1, 2016.

7 5. When I signed up to be a Postmates courier I was required to sign a contract that  
8 Postmates provided me, called the Fleet Agreement. I signed the Fleet Agreement and did not  
9 opt out of its arbitration clause.

10 6. I stopped working for Postmates on or around July 1, 2019.

11 7. I spent an average of 20 hours per week completing deliveries for Postmates.

12 8. I mostly completed deliveries for Postmates in and around Fontana, California.

13 9. On January 17, 2019, I signed an engagement agreement authorizing Keller  
14 Lenkner LLC to bring misclassification and related claims on my behalf against Postmates.

15 10. My attorneys filed my demand for arbitration against Postmates on April 22, 2019.

16 11. On October 15, 2019, my attorneys informed me of the proposed settlement in  
17 *Rimler v. Postmates Inc.*, Case No. CGC-18-567868, in the Superior Court of California, San  
18 Francisco County. They explained the settlement's terms and provided me with the proposed  
19 settlement agreement and the proposed settlement notice.

20 12. Based on my review of the settlement terms and my attorneys' recommendation,  
21 I do not want to participate in the proposed settlement in *Rimler*. I believe my claims against  
22 Postmates are worth far more than I would receive in that settlement, and I am more likely to  
23 receive what I am owed if I continue to pursue an individual arbitration.

24 13. I am not familiar with the law firm of Lichten & Liss-Riordan, PC, and I do not  
25 want that firm to represent or contact me.

26 14. Because I have individually retained Keller Lenkner to represent me, I want all  
27 communications affecting my legal claims against Postmates to be sent to Keller Lenkner and  
28

1 authorize Keller Lenkner to take all steps necessary to prevent the *Rimler* settlement from  
2 undermining my right to pursue individual arbitration.

3 I affirm that the foregoing is true under penalty of perjury under the laws of the United  
4 States.

5 Signed on 10/16/2019 in Fontana, California.

6 DocuSigned by:  
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8 17A83D2E349442C...

9 Malarie Taylor

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21 *Attorneys for Proposed Intervenors and*  
22 *Objectors Heather LeMaster, Juan Jimenez,*  
23 *Lewis Stokes, and Malarie Taylor*

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **FOR THE COUNTY OF SAN FRANCISCO**

26 JACOB RIMLER and GIOVANNI JONES,  
27 on behalf of themselves and others similarly  
28 situated and in their capacities as Private  
Attorney General Representatives

*Plaintiffs,*

vs.

POSTMATES INC.,

*Defendant.*

)  
) Case No. CGC-18-567868  
) **DECLARATION OF LEWIS STOKES IN**  
) **SUPPORT OF PROPOSED**  
) **INTERVENORS AND OBJECTORS' EX**  
) **PARTE APPLICATION FOR**  
) **LEAVE TO INTERVENE**  
)  
) **Date:** October 23, 2019  
) **Time:** 10:00 a.m.  
) **Dept.:** 304  
) **Judge:** Hon. Anne-Christine Massullo  
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ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**10/21/2019**  
**Clerk of the Court**  
BY: VANESSA WU  
Deputy Clerk

1 I, Lewis Stokes, declare as follows:

2 1. I am over the age of 18. I have personal knowledge of the facts stated herein, and  
3 if called upon as a witness I could and would testify competently thereto.

4 2. I live and work in Carson, California.

5 3. I am seeking to intervene as a plaintiff in the above-captioned case.

6 4. I started working for Postmates as a courier on or around April 1, 2013.

7 5. When I signed up to be a Postmates courier I was required to sign a contract that  
8 Postmates provided me, called the Fleet Agreement. I signed the Fleet Agreement and did not  
9 opt out of its arbitration clause.

10 6. I stopped working for Postmates on or around February 1, 2018.

11 7. I spent an average of 60 hours per week completing deliveries for Postmates.

12 8. I mostly completed deliveries for Postmates in the Los Angeles area.

13 9. On February 12, 2019, I signed an engagement agreement authorizing Keller  
14 Lenkner LLC to bring misclassification and related claims on my behalf against Postmates.

15 10. My attorneys filed my demand for arbitration against Postmates on April 22, 2019.

16 11. On October 15, 2019, my attorneys informed me of the proposed settlement in  
17 *Rimler v. Postmates Inc.*, Case No. CGC-18-567868, in the Superior Court of California, San  
18 Francisco County. They explained the settlement's terms and provided me with the proposed  
19 settlement agreement and the proposed settlement notice.

20 12. Based on my review of the settlement terms and my attorneys' recommendation,  
21 I do not want to participate in the proposed settlement in *Rimler*. I believe my claims against  
22 Postmates are worth far more than I would receive in that settlement, and I am more likely to  
23 receive what I am owed if I continue to pursue an individual arbitration.

24 13. I am not familiar with the law firm of Lichten & Liss-Riordan, PC, and I do not  
25 want that firm to represent or contact me.

26 14. Because I have individually retained Keller Lenkner to represent me, I want all  
27 communications affecting my legal claims against Postmates to be sent to Keller Lenkner and  
28

1 authorize Keller Lenkner to take all steps necessary to prevent the *Rimler* settlement from  
2 undermining my right to pursue individual arbitration.

3 I affirm that the foregoing is true under penalty of perjury under the laws of the United  
4 States.

5 Signed on 10/16/2019 in Los Angeles, California.

6 DocuSigned by:  
7 *lewis stokes*  
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Lewis Stokes

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9 Marquel Reddish (*pro hac vice forthcoming*)  
10 mpr@kellerlenkner.com  
11 KELLER LENKNER LLC  
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13 Chicago, Illinois 60606  
14 (312) 741-5220

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16 wdp@kellerlenkner.com  
17 KELLER LENKNER LLC  
18 1300 I Street, N.W., Suite 400E  
19 Washington, D.C. 20005  
20 (202) 749-8334

21 *Attorneys for Proposed Intervenors and*  
22 *Objectors Heather LeMaster, Juan Jimenez,*  
23 *Lewis Stokes, and Malarie Taylor*

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **FOR THE COUNTY OF SAN FRANCISCO**

26 JACOB RIMLER and GIOVANNI JONES,  
27 on behalf of themselves and others similarly  
28 situated and in their capacities as Private  
29 Attorney General Representatives

30 *Plaintiffs,*

31 vs.

32 POSTMATES INC.,

33 *Defendant.*

34 )  
35 ) Case No. CGC-18-567868  
36 ) **DECLARATION OF JUAN JIMENEZ IN**  
37 ) **SUPPORT OF PROPOSED**  
38 ) **INTERVENORS AND OBJECTORS' EX**  
39 ) **PARTE APPLICATION FOR**  
40 ) **LEAVE TO INTERVENE**  
41 )  
42 ) **Date:** October 23, 2019  
43 ) **Time:** 10:00 a.m.  
44 ) **Dept.:** 304  
45 ) **Judge:** Hon. Anne-Christine Massullo

46 **ELECTRONICALLY**  
47 **FILED**  
48 *Superior Court of California,*  
49 *County of San Francisco*

50 **10/21/2019**  
51 **Clerk of the Court**  
52 **BY: VANESSA WU**  
53 *Deputy Clerk*



1 I, Juan Jimenez, declare as follows:

2 1. I am over the age of 18. I have personal knowledge of the facts stated herein, and  
3 if called upon as a witness I could and would testify competently thereto.

4 2. I live and work in Los Angeles, California.

5 3. I am seeking to intervene as a plaintiff in the above-captioned case.

6 4. I started working for Postmates as a courier on or around June 1, 2016.

7 5. When I signed up to be a Postmates courier I was required to sign a contract that  
8 Postmates provided me, called the Fleet Agreement. I signed the Fleet Agreement and did not  
9 opt out of its arbitration clause.

10 6. I still work as a Postmates courier.

11 7. I spend an average of 35 hours per week completing deliveries for Postmates.

12 8. I mostly complete deliveries for Postmates in Los Angeles.

13 9. On February 17, 2019, I signed an engagement agreement authorizing Keller  
14 Lenkner LLC to bring misclassification and related claims on my behalf against Postmates.

15 10. My attorneys filed my demand for arbitration against Postmates on April 22, 2019.

16 11. On October 15, 2019, my attorneys informed me of the proposed settlement in  
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5 Signed on 10/17/2019 in Los Angeles, CA.

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8 Juan Jimenez

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