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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 JACOB RIMLER and GIOVANNI JONES,
on behalf of themselves and others similarly
13 situated and in their capacities as Private
Attorney General Representatives,

14 Plaintiffs,

15 v.

16 POSTMATES, INC.,

17
18 Defendant.

Case No. CGC-18-567868

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Department 304
Hon. Anne-Christine Massullo

Hearing Date: October 17, 2019
Hearing Time: 9:15 am

Complaint Filed: July 5, 2018
TRIAL DATE: NONE SET

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

10/08/2019
Clerk of the Court
BY: ERNALYN BURA
Deputy Clerk

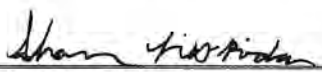
1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on October 17, 2019, at 9:15 a.m., or on such other date or
3 time as this matter may be called, in Department 304 of San Francisco Superior Court, located at
4 400 McAllister Street, San Francisco, CA 94102, Plaintiffs Jacob Rimler, Giovanni Jones, Dora
5 Lee, Kellyn Timmerman, and Joshua Albert, on behalf of themselves and all other similarly
6 situated class members and in their capacities as Private Attorney General representatives, will
7 and hereby do move for an order preliminarily approving the Class Action Settlement described
8 herein and ordering that notice be issued to the Settlement Class.¹ The motion is based on this
9 Notice of Motion, the Memorandum of Points and Authorities in support thereof, the Declaration
10 of Shannon Liss-Riordan and exhibits thereto, and such other filings and arguments that may be
11 submitted for the Court's consideration, as well as all documents and records on file in this
12 matter.

13 Plaintiffs' Motion is made pursuant to Cal. Code Civ. P. § 382 and Civil Code § 1781(f),
14 on the grounds that the proposed settlement is fair, reasonable, and adequate and is in the best
15 interests of the Settlement Class.

16
17
18 Dated: October 8, 2019

LICHTEN & LISS-RIORDAN, P.C.

19
20 By: 
Shannon Liss-Riordan

21 Attorneys for Plaintiffs
22
23

24
25 ¹ When Plaintiffs originally filed this motion on September 24, 2019, the signature line on
26 the Notice of Motion was inadvertently left blank, and the motion was rejected by the clerk's
27 office on October 7, 2019. Plaintiffs now file this corrected motion executed with counsel's
28 signature. Plaintiffs have also removed Dora Lee, Kellyn Timmerman, and Joshua Albert from
the case caption, as they were informed by the clerk's office that they could not add additional
parties to the caption until the Court grants leave to file the Second Amended Complaint adding
these plaintiffs as parties to this case. No substantive changes to the motion have been made.

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1 **I. INTRODUCTION**

2 Plaintiffs have alleged that Defendant Postmates Inc. (“Postmates”) misclassified
3 couriers in California as independent contractors and violated California state and local law,
4 including the California Labor Code, as a result, including by failing to reimburse couriers for
5 their necessary business expenses. Plaintiffs bring class action claims as well as claims on
6 behalf of the state of California and other similarly situated aggrieved employees pursuant to the
7 Private Attorneys General Act (“PAGA”), Cal. Lab. Code § 2699, et. seq.

8 This PAGA case was filed in early July 2018 and asserts that Postmates misclassifies
9 couriers as independent contractors instead of employees. Plaintiffs filed their PAGA letter the
10 same day that the California Supreme Court issued the decision in Dynamex Operations W. v.
11 Superior Court (2018) 4 Cal. 5th 903, 416 P.3d 1, reh'g denied (June 20, 2018), and then
12 immediately filed in court once the statutory period had run. Postmates filed a motion to compel
13 arbitration, arguing that the United States Supreme Court’s decision in Epic Systems Corp. v.
14 Lewis (2018) 138 S.Ct. 1612 overruled the California Supreme Court’s holding in Iskanian v.
15 CLT Trans Los Angeles, Inc. (2014) 59 Cal. 4th 348 that representative action waivers of
16 PAGA claims are unenforceable, and that plaintiffs’ individual claims must be compelled to
17 arbitration. Judge Mary Wiss denied Postmates’ motion to compel arbitration (see January 2,
18 2019, Order), and Postmates filed an appeal to the California Court of Appeal (Cal. Ct. of
19 Appeal, No. A156450).

20
21 Meanwhile, other plaintiffs represented by the same counsel filed a putative class action
22 complaint in San Francisco Superior Court, which similarly alleged that Postmates misclassifies
23 couriers and violated California state and local law, including the Labor Code, as a result (see
24 Lee v. Postmates, Case No. CGC-18-566394 (San Fran. Sup. Ct.)), and which was removed to
25 the United States District Court for the Northern District of California (No. 3:18-cv-3421-JCS
26 (N.D. Cal.)). In the Lee case, Postmates moved to compel arbitration of the claims of two of the
27 three named plaintiffs, Dora Lee and Kellyn Timmerman. Plaintiffs argued that they were
28 exempt from arbitration pursuant to the transportation workers’ exemption from the Federal

1 Arbitration Act, 9 U.S.C. § 1 et seq., but the Court held otherwise and granted Postmates’
2 motions compelling arbitration. Plaintiffs Lee and Timmerman filed an appeal to the Ninth
3 Circuit, which remains pending. (See Lee v. Postmates, No. 19-15024 (Ninth Cir.)) The claims
4 of the third named plaintiff, Joshua Albert, who had opted out of Postmates’ arbitration
5 agreement, were severed into a separate, individual (non-class) PAGA case in the Northern
6 District. (See Albert v. Postmates, No. 3:18-cv-7592-JCS (N.D. Cal.))

7 The parties participated in a full-day mediation with a professional and experienced
8 private mediator, which led to a global, class-wide settlement agreement to resolve both the
9 PAGA and class claims for individuals who used the Postmates platform as couriers in
10 California between June 3, 2017² and October 17, 2019. Plaintiffs Rimler and Jones (along with
11 Lee, Timmerman, and Albert, who are being added to this case in the concurrently filed Second
12 Amended Complaint (“SAC”)) seek approval of this global, class and representative action
13 settlement and request that the Court allow notices to be distributed to the class. Under the
14 terms of this proposed settlement, Postmates will pay a non-reversionary total of \$11,500,000,
15 and couriers will release claims against Postmates related to the claims in the SAC, including
16 the alleged misclassification as independent contractors.³ For the reasons set forth below, the
17 settlement is more than fair, reasonable, and adequate, and the Court should grant preliminary
18 approval and allow notice to issue to the Settlement Class in the form attached as Exhibit A to
19 the Settlement Agreement, which is itself Exhibit 1 to the Declaration of Shannon Liss-Riordan
20 filed concurrently with this motion.
21

22 **II. FACTUAL BACKGROUND**

23 Defendant Postmates is a San Francisco-based company, which contracts with couriers

24 ² That is the end date of the class period for a prior settlement that Plaintiffs’ counsel
25 reached with Postmates for claims in Singer v. Postmates, Inc., Case No. 15-1284 (N.D. Cal.).

26 ³ The Singer settlement, which covered a six-year period and was approved by the federal
27 court in April 2018, was for a nationwide class in the amount of \$8.75 million. The portion of
28 that settlement allocated to California couriers was \$6 million. This settlement, which covers
just over a two-year period and California couriers only, is for almost twice as much as the
California portion of the prior Singer settlement.

1 across the state of California who deliver food and other merchandise to customers at their
2 homes and businesses. See SAC. at ¶ 12. Customers request a delivery through the Postmates
3 Application, and couriers pick up the items and deliver them to their destination. See SAC at ¶
4 13. Postmates processes the customers’ payments and pays the couriers, after deducting its own
5 percentage fee from every delivery. Id. at ¶ 20. Postmates tracks the estimated mileage from
6 pick-up to drop-off, the amount paid to the driver, and time spent from pick-up to drop-off.

7 Plaintiffs have alleged in this case, and in other cases that Plaintiffs’ counsel has filed
8 against Postmates, that Postmates couriers have been misclassified as independent contractors
9 rather than employees and that Postmates has violated California state and local law by failing
10 to reimburse these individuals for their necessary business expenses and failing to pay minimum
11 wage and overtime (among other violations). See SAC. Plaintiffs in this case brought claims on
12 behalf of the State of California and other similarly situated employees.⁴ In companion cases in
13 federal court, three other plaintiffs brought class and PAGA claims based on the same theory of
14 misclassification and violations of the Labor Code and other California state and local law.
15 Postmates has denied all of Plaintiffs’ allegations and denies that it has violated California law.

16
17 On July 19, 2019, counsel mediated this case, along with the Lee and Albert cases. The
18 parties engaged an experienced mediator, Francis J. “Tripper” Ortman. After exchanging
19 substantial data and engaging in extensive discussion, the parties agreed to a global settlement
20 of the claims in all three cases.

21 **III. THE PROPOSED SETTLEMENT AGREEMENT**

22 **A. Monetary Relief**

23 The Settlement Agreement provides that Postmates will pay \$11,500,000 to fully resolve
24 all the claims in the Actions. See Ex. 1 at ¶ 4.1. This amount is non-reversionary and thus will

25
26 ⁴ Plaintiffs’ counsel filed a PAGA letter with Postmates and the Labor & Workforce
27 Development Agency (LWDA) on behalf of Plaintiff Rimler on April 30, 2018. Plaintiffs later
28 added a second plaintiff, Giovanni Jones, in their First Amended Complaint and filed a PAGA
letter on his behalf. On September 24, 2019, Plaintiffs’ counsel filed amended PAGA letters on
behalf of Plaintiffs regarding additional Labor Code allegations alleged in the SAC.

1 be paid out in full to the benefit of settlement class members, less the following categories of
2 expenses to be paid out of the Total Settlement Amount: claims administration (currently
3 estimated at \$500,000); attorneys' fees and costs (which Plaintiffs' counsel will request at final
4 approval in the amount of 1/3 of the Total Settlement Amount); service award (in the amount of
5 \$5,000 each for the five named plaintiffs); and PAGA payment to the LWDA (the settlement
6 allocates \$250,000 to the PAGA claims, so 75% of this amount would be paid to the LWDA).

7 **B. The Proposed Plan of Distribution of Settlement Fund**

8 Upon preliminary approval by the Court, the third-party Settlement Administrator
9 selected by the parties will email settlement class members the proposed notice and claim form
10 to the last known email addresses, and if the email is not successfully delivered, will mail the
11 proposed notice and claim form to the last known mailing addresses of all settlement class
12 members, as defined by the Settlement Agreement. See Ex. 1 (Settlement Agreement) at ¶¶ 6.1-
13 6.5. The notice informs settlement class members about the allegations in this case and the
14 terms of the settlement. See Ex. B to Ex. 1. It informs class members how they can submit a
15 claim to participate in the settlement. (Claims can be submitted online or by mail.) The notice
16 will inform the settlement class members of their right to individually exclude themselves from
17 the settlement or to object to the settlement if they choose, and it will identify the date and time
18 of the final approval hearing.

19 Individual settlement payments will be distributed to settlement class members in
20 proportion to the total estimated number of miles driven by each courier from the location
21 where a delivery offer is accepted to the location a delivery is dropped off during the relevant
22 time period. No class member who submits a claim will receive less than \$10. See Ex. 1 at
23 ¶¶5.4, 5.7. Any class members who either opted out of arbitration, initiated arbitration, or
24 demonstrated in writing an interest in initiating an arbitration demand prior to the date of the
25 mediation will have their miles doubled for purposes of this distribution formula (to account for,
26 from plaintiffs' perspective, these drivers' greater likelihood of having their claims pursued, in
27 light of Postmates' arbitration clauses). Following final approval, checks would be mailed to all
28

1 settlement class members who submit a claim form, with a portion held back to account for any
2 late submitted claims or to resolve any disputes that may arise with respect to the settlement
3 distribution. Id. at ¶¶2.9, 5.6. Any remaining funds from uncashed checks or the held-back
4 portion of the settlement would be re-distributed to all settlement class members who submitted
5 claims, in proportion to their initial distributions (unless their residual distribution would be less
6 than \$50). Id. at ¶ 5.8. Any remaining unclaimed funds after the final distribution would be
7 distributed to a *cy pres* beneficiary, Legal Aid at Work. Id. Thus, the total proceeds of the
8 settlement (less service awards for the Plaintiffs, settlement administration costs, the PAGA
9 payment, and attorneys' fees and costs) will be paid out to settlement class members. No
10 portion of the settlement funds will revert to Postmates.

11 **IV. LEGAL STANDARD**

12 It is well established that courts favor settlements of lawsuits over continued litigation.
13 See Williams v. First Nat'l Bank (1910) 216 U.S. 582, 595; Class Plaintiffs v. City of Seattle
14 (9th Cir. 1992) 955 F.2d 1268, 1276 (noting the “strong judicial policy that favors settlements,
15 particularly where complex class action litigation is concerned.”); Bell v. American Title Ins.
16 Co. (1991) 226 Cal.App.3d 1589, 1607; Newberg on Class Actions, §11:41 (“The compromise
17 of complex litigation is encouraged by the courts and favored by public policy”). The
18 advantages of settlements are particularly apparent in the compromise of class actions, which
19 are “often complex, drawn out proceedings demanding a large share of finite judicial
20 resources,” Mayfield v. Barr (D.C. Cir. 1993) 985 F.2d 1090, 1092, and “where one proceeding
21 can resolve many thousands...of claims that might otherwise threaten to swamp the judiciary.”
22 2 McLaughlin on Class Action § 6:3.

24 At preliminary approval, a court must “make a preliminary determination on the
25 fairness, reasonableness, and adequacy of the settlement terms” See Cal. Rules of Court,
26 rule 3.769(c) (g); see also Manual for Complex Litigation (Fourth) § 21.63. The Court should
27 grant preliminary approval if the proposed settlement has no obvious deficiencies and falls
28 within the range of possible approval. See Chavez v. Netflix, Inc. (Cal. Sup. Oct. 27, 2005)

1 2005 WL 3048041. A presumption of fairness attaches to the proposed settlement where: (1) the
2 parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were
3 sufficient to allow counsel and the court to act intelligently; and (3) counsel is experienced in
4 the litigation. Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1802. Courts also weigh the
5 risk, expense, and complexity of continued litigation. Wershba v. Apple Computer, Inc. (2001)
6 91 Cal.App.4th 224, 245. As set forth below, an examination of these factors here demonstrates
7 that the proposed settlement is fair, reasonable, and adequate and should be approved

8 **V. ARGUMENT**

9 **A. THE PROPOSED SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS**

10 **1. The Settlement Was Negotiated At Arm’s Length**

11 For the parties “to have brokered a fair settlement, they must have been armed with
12 sufficient information about the case to have been able to reasonably assess its strengths and
13 value.” Acosta v. Trans Union, LLC (C.D. Cal. 2007) 243 F.R.D. 377, 396; see also Dunk, 48
14 Cal.App.4th at 1802 (“[A] presumption of fairness exists where: (1) the settlement is reached
15 through arm’s-length bargaining; [and] (2) investigation and discovery are sufficient to allow
16 counsel and the court to act intelligently...”). Thus, adequate discovery and the use of an
17 experienced mediator support a finding that settlement negotiations were both informed and
18 non-collusive. See Villegas v. J.P. Morgan Chase & Co. (N.D. Cal. Nov. 21, 2012) 2012 WL
19 5878390, *6. Here, the settlement was clearly the product of arms-length bargaining, as
20 Plaintiffs’ counsel and Defendant’s counsel participated in a full-day mediation session with
21 experienced wage-and-hour mediator, Francis J. “Tripper” Ortman. See Satchell v. Fed. Express
22 Corp. (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, *4; see also Marquez Amaro v. Gerawan
23 Farming, Inc. (E.D. Cal. Aug. 8, 2019) 2019 WL 3772804, at *4. This factor indicates the
24 settlement should be presumed fair.
25

26 **2. The Settlement Was Negotiated After Sufficient Investigation**

27 There was also a sufficient investigation and exchange of information before and during
28 the litigation and subsequent mediation session to allow counsel to act intelligently in agreeing

1 to this settlement. Plaintiffs’ counsel previously litigated a class action lawsuit against
2 Postmates in federal court. Singer v. Postmates, Case No. 15-1284 (N.D. Cal.). The parties
3 settled the case on behalf of a class of all Postmates couriers across the country, including in the
4 states of California, Massachusetts, New York, and Washington, D.C. Singer v. Postmates, Inc.,
5 (N.D. Cal. Sept. 1, 2017) 2017 WL 4842334. Thus, through the Singer litigation, Plaintiffs’
6 counsel was already intimately familiar with Postmates’ business model and the facts and legal
7 theories supporting Plaintiffs’ claims. Moreover, in this case and the parallel Lee case,
8 Plaintiffs briefed several Motions to Compel arbitration by Postmates (which, in the Rimler case,
9 led to the decision that Plaintiffs Rimler and Jones were not bound to arbitrate; the decision has
10 been appealed by Postmates). In the Albert case, the parties were engaged in significant
11 discovery before the case was stayed pending mediation. See Liss-Riordan Decl. at ¶ 6. Thus,
12 Plaintiffs’ counsel believe they are well aware of the legal arguments couriers will need to make
13 to prevail on class certification and summary judgment on their claims, and the strengths and
14 weaknesses of those arguments. Finally, Plaintiffs’ counsel received substantial data in advance
15 of the mediation, which allowed them to make calculations of the potential damages, accounting
16 for various theories and the risks associated with these theories. Thus, this factor also weighs in
17 favor of a presumption of fairness.

19 **3. The Settlement Was Negotiated By Experienced Counsel**

20 Plaintiffs’ counsel is extremely experienced in litigating this type of case. Over the last
21 several years, Plaintiffs’ counsel have developed special experience litigating against numerous
22 “gig economy” companies that have classified workers as independent contractors. Plaintiffs’
23 counsel was the first to obtain class certification in one of these cases (see O’Connor v. Uber
24 Technologies, Inc. (N.D. Cal., Sept. 1, 2015) 2015 WL 5138097, (N.D. Cal. 2015) 311 F.R.D.
25 547 (certifying class of 240,000 Uber drivers on misclassification claim and expense
26 reimbursement and gratuities claims), rev’d, (9th Cir. 2018) 904 F.3d 1087 (enforcing Uber’s
27 arbitration agreements and decertifying class). Counsel also brought the first such case to trial
28 (see Lawson v. Grubhub, Inc. (N.D. Cal. 2018) 302 F.Supp.3d 1071, appeal pending, Ninth Cir.

1 Appeal No. 18-15386). Counsel has also repeatedly defeated summary judgment motions in
2 cases against other “gig economy” companies on the misclassification issue. See, e.g., Cotter v.
3 Lyft, Inc. (N.D. Cal. 2015) 60 F.Supp.3d 1067; O'Connor v. Uber Techs., Inc. (N.D. Cal. 2015)
4 82 F.Supp.3d 1133; Lawson v. Grubhub, Inc. (N.D. Cal., July 10, 2017, No. 15-CV-05128-JSC)
5 2017 WL 2951608, at *1. Counsel is currently litigating many of these cases in state and
6 federal court and has successfully settled a number of them as well. See, e.g., Cotter v. Lyft, Inc.
7 (N.D. Cal. 2016) 193 F.Supp.3d 1030; Singer v. Postmates, Inc. (N.D. Cal., Sept. 1, 2017) 2017
8 WL 4842334, at *4; Marciano v. DoorDash Inc. (July 12, 2018) CGC-15-548101.

9
10 Moreover, at the end of April 2018, the California Supreme Court decided Dynamex
11 Operations W. v. Superior Court (2018) 4 Cal. 5th 903, 956, n.23, reh'g denied (June 20, 2018),
12 and announced a new test for employee-status in California, which tracks the Massachusetts
13 “ABC” test. Plaintiffs’ counsel is based in Massachusetts and has been litigating cases under
14 this very incarnation of the “ABC” test for 15 years, originating and developing much of the
15 caselaw under the Massachusetts test. Thus, Plaintiffs’ counsel is uniquely situated to appreciate
16 the strengths and potential weaknesses of this case after Dynamex. Plaintiffs’ counsel has not
17 hesitated to take cases, including class actions, to trial, and has agreed to a settlement only when
18 she believed doing so was in the best interests of the class.⁵ Attorney Liss-Riordan drew on her
19 substantial experience in negotiating this settlement.⁶

20
21 ⁵ For example, Ms. Liss-Riordan has won a number of ground-breaking wage cases across
22 a variety of industries at trial: see, e.g., Norrell v. Spring Valley Country Club, Inc. (Mass.
23 Super. 2017), C. A. No. 1482-cv-00283 (verdict for plaintiff class for violation of
24 Massachusetts Tips Law); Calcagno v. High Country Investor, Inc., d/b/a Hilltop Steak House
25 (Mass. Super. 2006) Essex Civ. A. No. 03-0707 (employer violated Tips Law by not paying out
26 full proceeds of service charges to waitstaff employees); Benoit et al. v. The Federalist, Inc.
27 (Mass. Super. 2007) Suffolk Civ. A. No. 04-3516 (same); Travers v. Flight Services & Systems,
28 Inc. (D. Mass. 2014) C.A. No. 11-cv-10175 (jury awarded skycaps approximately \$1 million on
retaliation claim, though verdict was later reduced by the court); Bradley et al. v. City of Lynn
et al. (D. Mass. 2006) 443 F.Supp.2d 145 (verdict for plaintiff class where federal court held
following bench trial that Commonwealth’s entry level firefighter hiring examination has
disparate impact on minorities); DiFiore v. American Airlines, Inc., (D. Mass. 2008) Civ. A. No.
07-10070 (skycaps should have received bag charge for curbside check-in because passengers
reasonably believed it was a tip), reversed on preemption grounds, 646 F.3d 81 (1st Cir. 2011).

⁶ Plaintiffs’ counsel has been extremely active representing “gig economy” workers in
misclassification cases in California, both before and after Dynamex, and being from
(*cont’d*)

1 Thus, this settlement is entitled to a presumption of fairness because “(1) the settlement
2 [wa]s reached through arm’s-length bargaining; (2) investigation and discovery [we]re
3 sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in
4 similar litigation.” Dunk, 48 Cal. App. 4th at 1802.

5 **B. OTHER FACTORS ALSO WEIGH IN FAVOR OF GRANTING PRELIMINARY APPROVAL**

6 **1. The Risks of Continued Litigation Weigh in Favor of The Settlement**

7 Another “relevant factor” that courts consider in contemplating a potential settlement is
8 “the risk of continued litigation balanced against the certainty and immediacy of recovery from
9 the Settlement.” Vasquez v. Coast Valley Roofing, Inc. (E.D. Cal. 2010) 266 F.R.D. 482, 489.
10 Courts “consider the vagaries of litigation and compare the significance of immediate recovery
11 by way of the compromise to the mere possibility of relief in the future, after protracted and
12 expensive litigation.” Id. (citing Oppenlander v. Standard Oil Co. (D. Colo.1974) 64 F.R.D.
13 597, 624. Here, there are at least two risks of going forward with litigation.

14 First, there was a risk that the favorable ruling Plaintiffs Rimler and Jones received from
15 Judge Wiss in this case regarding the arbitrability of their PAGA claims would be overturned on
16 appeal, thereby preventing their PAGA claims from being pursued in court. Second, while
17 Plaintiffs were very confident regarding the merits of this case in light of the Dynamex decision,
18 at the time this settlement was negotiated and reached in July 2019, there remained many

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21 Massachusetts, she has 15 years of experience litigating misclassification cases under the
22 “ABC” test that was adopted in Dynamex. In California, she has obtained the first ruling
23 applying Dynamex, in which the Orange County Superior Court (Judge Cluster) granted
24 summary judgment to plaintiff strippers on their claim that they have been misclassified under
25 the “ABC” test. See Johnson v. VCG-IS, LLC (San Diego Super. Ct. Sept. 5, 2018) Case No.
26 30-2015-00802813. Moreover, Plaintiffs’ counsel has received much attention for her work in
27 this area. She was appointed class counsel in the first (and only to date) certified class action on
28 behalf of “gig economy” workers in California challenging their classification. See O'Connor v.
Uber Techs., Inc., (N.D. Cal., Sept. 1, 2015), 2015 WL 5138097 rev'd, 904 F.3d 1087 (9th Cir.
2018). She took the first “gig economy” misclassification case to trial in California. See Lawson
v. GrubHub, Inc., (N.D. Cal. 2018) 302 F.Supp.3d 1071, appeal pending, Ninth Cir. Appeal No.
18-15386. She has handled many other similar cases and is well known for her aggressive and
successful litigation on behalf of low wage workers, particularly those claiming
misclassification. See Kapp, Diana, “Uber’s Worst Nightmare”, San Francisco Magazine (May
18, 2016) (Exhibit 2 to Liss-Riordan Decl.).

1 unanswered questions regarding issues pertaining to the decision, including questions of what
2 claims it would apply to (as the decision specifically declined to address whether it applies to
3 expense reimbursement claims, which is one of the primary claims Plaintiffs alleged against
4 Postmates),⁷ and whether it would apply retroactively.⁸ While Plaintiffs believed their claims to
5 be strong, they were well aware that it was possible that a court could conclude that Dynamex
6 did not apply retroactively or did not apply to certain of their claims. In light of these risks,
7 Plaintiffs' counsel believes the settlement is an excellent result and is fair and adequate.

8 **2. The Settlement Provides Significant Benefits to the Class**

9 The monetary amount of the settlement relative to the total possible potential damages in
10 this case is likewise fair and reasonable. In preparation for the mediation, Plaintiffs' counsel
11 estimated Plaintiffs' maximum theoretical recovery based primarily on the full amount of
12 expense reimbursement, minimum wage, and overtime damages for all couriers in the State of
13 California. Plaintiffs have subsequently extrapolated to determine the likely total damages
14 through October 17, 2019 (which is the latest that the release of claims can run through under
15 the agreement). See Liss-Riordan Decl. at ¶¶ 17-42. Plaintiffs viewed the most valuable claim in
16 this case as the expense reimbursement claim, given challenges that gig economy workers have
17 faced in pressing minimum wage, overtime, and other claims (particularly in determining what
18 constitutes compensable time). For instance, couriers are not compensated for their time
19 traveling to a pickup location, and Plaintiffs expect Postmates would argue that time couriers
20 spend traveling to a pickup location is not compensable. Moreover, there would have been
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23 ⁷ See, e.g., Garcia v. Border Transportation Grp., LLC (Cal. Ct. App. 2018) 28 Cal. App. 5th 558 (suggesting that certain Labor Code claims are not covered by the "ABC" test announced in Dynamex); Karl v. Zimmer Biomet Holdings Inc. (N.D. Cal. Nov. 6, 2018) 2018 WL 5809428 *3 (same); but see Johnson v. VCG-IS, LLC (San Diego Super. Ct. July 18, 2018) Case No. 30-2015-00802813, *4-5 (finding that expense reimbursement claim under § 2802 and other Labor Code claims were covered by Dynamex).

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26 ⁸ The Ninth Circuit ruled that Dynamex would apply retroactively in May 2019, but it subsequently withdrew its opinion and certified the question to the California Supreme Court. See Vazquez v. Jan-Pro Franchising International, Inc. (9th Cir. 2019) 923 F.3d 575, reh'g granted, opinion withdrawn (9th Cir., July 22, 2019, No. 17-16096) 2019 WL 3271969.

1 challenges in achieving class certification for these claims because many couriers do not have
2 overtime or minimum wage claims. For example, FLSA claims brought on behalf of Uber
3 drivers have not been successful. See Razak v. Uber Techs., Inc., 2018 WL 1744467, *1 (E.D.
4 Pa. Apr. 11, 2018), appeal pending Third Cir. No. 18-1944. See also Yucesoy v. Uber Techs.,
5 Inc., 2016 WL 493189, *6 (N.D. Cal. Feb. 9, 2016). Thus, Plaintiffs consider the mileage
6 expense damages the best measure of the value of couriers' claims.⁹

7 Based on the data that Postmates provided, Plaintiffs calculated the maximum
8 theoretical recovery for the vehicle expense reimbursement claim for the Settlement Class to be
9 approximately \$88 million when calculated by multiplying the total estimated miles by the
10 average of the IRS fixed rate during the applicable timeframe (which ranged from 54 to 58 cents
11 per mile). Postmates would argue, however, that the IRS variable rate for mileage should apply,
12 which ranged from 17 to 20 cents per mile during the applicable period. Thus, if the lower rate
13 were used, this damages figure would be \$29 million. In light of these potential recoveries, the
14 \$11,500,000 total settlement amount is fair, particularly considering the ongoing uncertainties
15 Plaintiffs faced and the certain significant delay that would result through ongoing litigation.¹⁰

16 “[I]t is well-settled law that a cash settlement amounting to only a fraction of the
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19 ⁹ Courts have consistently endorsed this approach in similar cases involving “gig
20 economy” delivery workers. See, e.g., Cotter v. Lyft, Inc. (N.D. Cal. 2016) 176 F. Supp. 3d 930,
21 939 (approving settlement where “plaintiffs’ counsel assigned a minimal value ... to the other
22 claims for damages contained in the lawsuit” apart from expense reimbursement); O’Connor v.
Uber Techs., Inc. (N.D. Cal. Mar. 29, 2019) 2019 WL 1437101, at *11; Singer v. Postmates Inc.
(N.D. Cal. April 25, 2018) 4:15-cv-01284-JSW, Dkt. 98; Marciano v. DoorDash Inc. (Cal. Sup.
Ct. July 12, 2018) CGC-15-548102 (Kahn, J.) (same).

23 ¹⁰ Plaintiffs reached this settlement with Postmates in July 2019, when there was
24 uncertainty as to whether Assembly Bill 5 (“A.B. 5”) would pass and whether the Governor
25 would sign the bill. There was also uncertainty as to whether the “gig economy” would obtain a
26 carve-out from the bill, for which it was lobbying heavily. Although A.B. 5 has now passed and
27 has been signed by the Governor, there still remains uncertainty regarding its retroactivity and
28 as to what will occur going forward, given the announcement by several “gig economy”
companies that they will spend significant sums next year in support of a ballot measure to
exempt these companies from A.B. 5. Given these ongoing uncertainties and the certain delay
of continued litigation, balanced against the benefit of obtaining relief for class members now,
Plaintiffs determined that the settlement (an amount almost twice as much as the settlement for
the California portion of the prior class settlement against Postmates in the Singer case) was a
fair resolution of Postmates couriers’ claims for the period June 2017 to October 2019.

1 potential recovery does not per se render the settlement inadequate or unfair.” Villegas, 2012
2 WL 5878390, *6. Here, Plaintiffs achieved far more than a mere fraction of the potential
3 recovery, even in the face of substantial risk that Postmates’ arbitration clause would be
4 enforced on appeal and would prevent class-wide treatment of their claims. See also Barbosa v.
5 Cargill Meat Sols. Corp. (E.D. Cal. 2013) 297 F.R.D. 431, 446. Given the potential challenges
6 faced by Plaintiffs, the settlement amount of should be approved as more than fair and adequate.

7 The parties have allocated \$250,000 to PAGA penalties.¹¹ Courts have routinely
8 approved lesser allocations for such penalties in settlements that provide sufficient class
9 recovery. See, e.g., del Toro Lopez v. Uber Techs., Inc., (N.D. Cal. Nov. 14, 2018) 2018 WL
10 5982506, *8 (approving \$50,000 PAGA payment from \$10 million fund); Ahmed v. Beverly
11 Health & Rehab. Servs., Inc., 2018 WL 746393, *10 (E.D. Cal. Feb. 7, 2018) (approving \$4,500
12 PAGA payment from \$450,000 fund); Martin v. Legacy Supply Chain Servs. II, Inc., 2018 WL
13 828131, *2 (S.D. Cal. Feb. 12, 2018) (approving \$10,000 PAGA payment from \$625,000 fund).

14 In exchange for these monetary concessions, couriers who fall within the class’s
15 definition will release all misclassification, wage and hour, and other claims related to the SAC
16 that have been and could have been brought against Postmates from June 3, 2017, to October 17,
17 2019, see Ex. 1 at ¶ 2.41. The scope of claims being released is eminently reasonable and the
18 consideration received is excellent in light of the risks and uncertainties of going forward.

20 C. CLASS CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE¹²

21 ¹¹ Plaintiffs calculated the maximum theoretical recovery for their PAGA claim at \$274
22 million for their claim of expense reimbursement. However, calculation of an exact exposure for
23 the PAGA claim is of limited utility and is inherently speculative because of the Court’s
24 discretion to reduce a PAGA penalty on grounds that it is “unjust” or “oppressive.” Cal. Lab.
25 Code § 2699(e)(2). See Fleming v. Covidien Inc. (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047,
26 at *3-4; Makabi v. Gedalia (Cal. Ct. App. Mar. 2, 2016) 2016 WL 815937, at *2 & n.3.
27 Although Plaintiffs believe Postmates misclassified couriers, this remains a disputed issue, and
28 Plaintiffs recognized that these penalties, if recovered, could be severely discounted. As
Plaintiffs obtained such a substantial class settlement, the proposed amount allocated to PAGA
penalties is warranted and fair and is in line with substantial California case law. See Harris v.
Radioshack Corp. (N.D. Cal. Aug. 9, 2010) 2010 3155645, *3-4; Viceral v. Mistras Group, Inc.
(N.D. Cal., Oct. 11, 2016) 2016 WL 5907869, *9.

¹² Postmates reserves all of its objections to class certification for litigation purposes and
does not consent to certification of the proposed class for any purpose other than to effectuate
(cont’d)

1 The Class in this action should be certified for settlement purposes because it meets all
2 requirements for class certification under applicable law. “Code of Civil Procedure section 382
3 allows class actions when the question is one of a common or general interest, of many persons,
4 or when the parties are numerous, and it is impracticable to bring them all before the court.”
5 Bufile v. Dollar Financial Group (2008) 162 Cal.App.4th 1193, 1204. Section 382 has been
6 construed to require an ascertainable class and a well-defined community of interest. Vasquez v.
7 Superior Court (1971) 4 Cal.3d 800, 809. To demonstrate that the latter “community of interest”
8 requirement, plaintiff must show: “(1) predominant questions of law or fact; (2) class
9 representatives with claims or defenses typical of the class; and (3) class representatives who
10 can adequately represent the class.” Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435. A
11 plaintiff must also demonstrate that a class action is superior to other forms of litigation. Reese
12 v. Wal-Mart Stores, Inc. (1999) 73 Cal.App.4th 1225, 1234. Here, all of these factors are met.

13 **1. The Settlement Class Is Numerous And Ascertainable**

14 To determine whether a proposed settlement class is ascertainable for purposes of Cal.
15 Code Civ. Proc. §382, courts consider “1) the class definition; 2) the size of the class; and 3) the
16 means available for identifying class members.” Reyes v. Board of Supervisors (1987) 196
17 Cal.App.3d 1263, 1271. Here, the proposed class is ascertainable because it is comprised of all
18 couriers who used the Postmates platform as independent contractor couriers in California since
19 June 3, 2017. Postmates keeps records of the identities of these individuals, their contact
20 information, and the estimated mileage they drove while performing deliveries. Thus, it will be
21 able to readily provide this information for purposes of issuing notice and calculating the
22 settlement distribution. The total class is approximately 380,000. The numerosity requirement is
23 easily satisfied. See Villalpando v. Exel Direct, Inc. (N.D. Ca. 2014) 303 F.R.D. 588, 605-06.¹³

24
25
26 the settlement. Postmates also reserves all of its objections to plaintiffs’ position that the ABC
27 test in *Dynamex* and/or AB5 applies to any or all of the plaintiffs’ claims.

28 ¹³ Plaintiffs cite authority interpreting federal Rule 23, which closely tracks the factors of §
382. See B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347.

1 **2. Common Questions of Law or Fact Predominate**

2 Plaintiffs contend that settlement class members’ classification as independent
3 contractors is clearly suited to common determination. In Dynamex, the California Supreme
4 Court expressly adopted the Massachusetts “ABC” test, which requires the alleged employer to
5 establish three factors to prove independent contractor status:

6 (A) the worker is free from the control and direction of the hiring entity in
7 connection with the performance of the work, both under the contract for the
8 performance of the work and in fact; *and* (B) that the worker performs work
9 that is outside the usual course of the hiring entity’s business; *and* (C) that
the worker is customarily engaged in an independently established trade,
occupation, or business of the same nature as the work performed.

10 4 Cal. 5th at 956-57. Plaintiffs allege Postmates couriers perform the same service—making
11 deliveries to Postmates’ customers—and that delivery is Postmates’ usual course of business.
12 Thus, Plaintiffs expect they would be likely to establish that Postmates couriers are employees
13 under Prong B, and a class can be certified on this basis alone. Costello v. BeavEx, Inc. (7th Cir.
14 2016) 810 F.3d 1045, 1060. Plaintiffs also contend that the nature of proof needed to establish
15 the usual course of Postmates’ business or the work class members perform will not vary.¹⁴

16 Postmates disputes Plaintiffs’ allegations, disagrees with Plaintiffs’ contention that
17 Dynamex applies to all their claims, and believes that S.G. Borello & Sons, Inc. v. Dept. of
18 Industrial Rel. (1989) 48 Cal.3d 341 applies, but consents to certification of the settlement class
19 solely to effectuate the settlement. It otherwise reserves its right to oppose class certification for
20 litigation purposes, to dispute Plaintiffs’ allegations, and to contest Dynamex’s application.

21 **3. Plaintiffs’ Claims Are Typical of the Class**

22 “Typicality is present when the named class representatives’ interest in the action is
23

24 _____
25 ¹⁴ Because the “ABC” test requires the employer to establish all three prongs, Plaintiffs’
26 position is that it is unnecessary to discuss Prongs A or C, Dynamex, 4 Cal. 5th at 963, but
27 Plaintiffs assert that the necessary evidence would be common under Prongs A and C as well.
28 For example, Prong A asks whether the employer has the right to control the worker’s
performance, which Plaintiffs assert would go to Postmates’ *contractual* right to control
drivers, which would be common to all class members. Postmates’ position is that it is agreeing
to the certification of a settlement class for settlement purposes only, and that it would
vigorously contest any efforts to certify a class outside the settlement context.

1 significantly similar to that of the other class members.” City of San Diego v. Haas (2012) 207
2 Cal.App.4th 472, 501. Here, each named Plaintiff performed services in California while
3 classified as an independent contractor during the proposed settlement class period. Plaintiffs’
4 claims therefore are typical of the proposed class.

5 **4. Plaintiffs Are Adequate Class Representatives**

6 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
7 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of
8 the class.” McGhee v. Bank of America (1976) 60 Cal.App.3d 442, 450. Here, there is no
9 potential conflict between the named Plaintiffs and other class members as they are challenging
10 practices that Plaintiffs contend are applied uniformly to all couriers. Similarly, Plaintiffs’
11 interests do not differ from the class, as they seek to obtain damages for all class members.
12 Plaintiffs’ counsel have extensive expertise and experience in “gig economy” cases.

13 **5. A Class Action Is Superior To Other Means of Resolving Plaintiffs’ Claims**

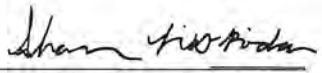
14 “A class action also must be the superior means of resolving the litigation, for both the
15 parties and the court.” Aguiar v. Cintas Corp. No. 2 (Cal. Ct. App. 2006) 144 Cal.App.4th at
16 132. In determining whether a class action would be superior, courts consider factors such as
17 judicial efficiency and the need to avoid many “separate, duplicative proceedings”, see Sav-On
18 Drug Stores, Inc. v. Superior Court, (2004) 34 Cal.4th at 340, and whether workers are unlikely
19 to come forward to pursue their own individual claims in the absence of a class action, either
20 because of the relatively small individual recoveries or the “desperate financial condition” of
21 putative class members. See Reyes, 196 Cal.App.3d at 1279–1280. Here, there are
22 approximately 380,000 class members, and granting class certification is superior to litigating
23 the individual cases that would remain without certification.

24 **VI. CONCLUSION**

25 As set forth above, the proposed Settlement is fair, reasonable, and adequate, and
26 provides meaningful relief to the settlement class. The Court should grant preliminary approval,
27 allow the notice to be issued to the class, and schedule a date for a final approval hearing.
28

1 Dated: October 8, 2019

LICHTEN & LISS-RIORDAN, P.C.

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3 By: 
4 Shannon Liss-Riordan

5 Attorney for Plaintiffs
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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
10/08/2019
Clerk of the Court
BY: ERNALYN BURA
Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 JACOB RIMLER and GIOVANNI JONES, on
behalf of themselves and others similarly
13 situated and in their capacities as Private
Attorney General Representatives,

14 Plaintiffs,

15 v.

16 POSTMATES, INC.,

17 Defendant.

Case No. CGC-18-567868

DECLARATION OF SHANNON LISS-RIORDAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Department 304
Hon. Anne-Christine Massullo

Hearing Date: October 17, 2019
Hearing Time: 9:15 am

Complaint Filed: July 5, 2018
TRIAL DATE: NONE SET

1 I, Shannon Liss-Riordan, declare as follows:

2 1. I am a partner at the law firm of Lichten & Liss-Riordan, P.C. and am lead
3 attorney for the settlement class in the above-captioned matters. I submit this declaration in
4 support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. I have
5 personal knowledge of the information set forth herein.

6 2. In this case, Plaintiffs have alleged that Postmates is a delivery service that
7 engages couriers in California to deliver prepared food, groceries, and other items to customers.
8 Plaintiffs have alleged in this case that these couriers have been misclassified as independent
9 contractors rather than employees and that Postmates has violated California state law by failing
10 to reimburse these individuals for their necessary business expenses and failing to pay minimum
11 wage and overtime (among other violations). Postmates has steadfastly denied Plaintiffs'
12 allegations regarding misclassification and denies that it has violated federal and California state
13 law.
14

15 3. I have been extremely active representing "gig economy" workers in
16 misclassification cases in California, both before and after Dynamex Operations W. v. Superior
17 Court, (2018) 4 Cal. 5th 903, 956 n. 23, 416 P.3d 1, 34, reh'g denied (June 20, 2018) (which
18 adopted an "ABC" test borrowed from Massachusetts law to determine employee status), and
19 being from Massachusetts, I have 15 years' experience litigating misclassification cases under
20 the "ABC" test that the Supreme Court has now adopted in Dynamex. In California, I obtained
21 the first ruling applying Dynamex, in which the Orange County Superior Court (Judge Claster)
22 granted summary judgment to plaintiffs on their claim that they have been misclassified under
23 the "ABC" test. See Johnson v. VCG-IS, LLC (Super. Ct. Cal. Sept. 5, 2018) Case No. 30-
24 2015-00802813.
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1 4. I began this case by filing PAGA letters with Postmates and the Labor &
2 Workforce Development Agency (LWDA) on behalf of Jacob Rimler on April 30, 2018.¹ I also
3 filed a new putative class action case at the same time, Lee v. Postmates, Case No. 18-cv-3421
4 (N.D. Cal.) (for which the same claims have now been added into this case, for settlement
5 purposes).²

6 5. I subsequently amended the Lee complaint to add two additional plaintiffs,
7 Kellyn Timmerman and Joshua Albert. Postmates moved to compel arbitration of Lee and
8 Timmerman’s claims (Albert had opted out of Postmates’s arbitration agreement), and the Court
9 granted the motion and dismissed their claims to allow them to appeal. Plaintiffs have filed an
10 appeal to the Ninth Circuit, in which they intend to argue that Postmates couriers are exempt
11 from arbitration pursuant to the transportation workers’ exemption of the Federal Arbitration
12 Act. They intend to argue that Postmates couriers in California provide local delivery of many
13 items that are manufactured out-of-state, from packaged items that are delivered alongside
14 restaurant meals to groceries, alcohol, and even household items from stores like Target.

15 6. Because Albert was not bound by an arbitration agreement, the District Court
16 severed Albert’s claims into a separate case, Albert v. Postmates, Case No. 18-cv-7592 (N.D.
17 Cal.). The parties were engaged in discovery on Albert’s status as an aggrieved employee
18 earlier this year but agreed to stay discovery pending mediation.

19 7. In spring 2019, counsel agreed to mediation to attempt to seek a resolution of the
20 matters they were litigating related to Postmates. The parties engaged a professional and
21 experienced wage-and-hour mediator, Francis J. ‘Tripper’ Ortman. We mediated on July 19,
22 2019. Eventually, after exchanging extensive data and concluding exhaustive and in-depth
23

24
25 ¹ I subsequently filed a second PAGA letter for Giovanni Jones on May 7, 2018. I filed
26 the case in court on July 5, 2018, after the statutory period had run.

27 ² The Lee class case was filed in this court on May 8, 2018, and then removed by
28 Postmates to the Northern District of California on June 8, 2018.

1 discussions, we agreed to globally settle on a class basis the claims of all Postmates couriers
2 who had used the Postmates application to offer delivery services to customers in California
3 between June 3, 2017, and October 17, 2019. I utilized data from the mediation (which went
4 through July 2019) to extrapolate and determine the likely total damages through October 17,
5 2019.

6 **The Proposed Settlement**

7
8 8. Under the terms of the proposed settlement, the parties have agreed to settle the
9 claims of any and all individuals classified by Postmates as independent contractor couriers who
10 entered into an agreement to use or used the Postmates platform as an independent contractor
11 courier to offer delivery services to customers in California between June 3, 2017, and October
12 17, 2019, for a non-reversionary payment of \$11,500,000, in exchange for a release of certain
13 claims through October 17, 2019.

14 9. Individual settlement payments will be distributed to settlement class members in
15 proportion to the total estimated number of miles driven by each courier from the location
16 where a delivery offer is accepted to the location a delivery is dropped off during the relevant
17 time period. Any class members who either opted out of arbitration, initiated arbitration, or
18 demonstrated in writing an interest in initiating an arbitration demand will have their estimated
19 miles doubled for purposes of this distribution formula (to account for these drivers' greater
20 likelihood of having their claims pursued, in light of Postmates' arbitration clauses).

21 10. The settlement will use a claim process for settlement class members. I believe
22 that this is an appropriate method to distribute funds from this settlement. Indeed, our firm
23 typically uses a claim process for settlement distributions. It will be extremely simple for
24 settlement class members to submit claims, either through an online portal or through a paper
25 claim form. In order to submit a claim, settlement class members will only need to provide
26 their name and their mailing address to which they want their settlement check mailed. My
27 experience working with class members in cases such as this one, particularly "gig economy"
28 workers, is that they move very frequently. Based on my experience, the claims process is

1 much better for ensuring that class members receive their payment because this process ensures
2 that an up-to-date mailing address is used for settlement checks. Because the settlement process
3 involves a lot of follow-up to find class members, this process will likely allow more payments
4 to reach class members than if checks were to be simply mailed, without requiring a claim form.
5 In my experience, sending checks without a claim form has resulted in extremely messy
6 distribution processes because the checks often do not reach their intended recipients, they are
7 often cashed by current residents of class members' former addresses, and it is difficult to track
8 down and rectify the issue of checks being delivered to old addresses and cashed by non-class
9 members. Further, this process has also resulted in 1099 tax forms sent to the IRS for class
10 members who never actually received their checks. In one settlement I negotiated a number of
11 years ago in which I agreed to allow checks to be sent without a claim form, I and the
12 administrator spent years dealing with the issue of upset class members contacting us about
13 notifications they had received from the IRS for unreported payments that they had never
14 received.
15

16 11. Under the terms of the proposed Settlement, my firm will seek attorneys' fees
17 and costs totaling one-third (33%) of the Settlement Fund or \$3,833,333.

18 12. Plaintiffs are also requesting incentive payments of \$5,000 each for the named
19 plaintiffs in this case. Their contributions to this litigation will be detailed further in Plaintiffs'
20 forthcoming Motion for Attorneys' Fees, but I will summarize their work briefly here. Plaintiff
21 Albert responded to voluminous discovery requests in his case and was preparing to sit for a
22 deposition before the parties agreed to stay discovery pending mediation. Plaintiff Timmerman
23 has remained in close contact with my firm for years and has been particularly helpful in
24 providing documents and analysis regarding Postmates's pay practices. Plaintiffs Rimler, Jones,
25 and Lee have acted as a resource for their fellow drivers and have been willing to put their
26 names in the public eye as part of this high-profile litigation. For all these reasons, I believe
27 these requested incentive payments are fair and reasonable.
28

1 **Assessment of the Risks of Further Litigation**

2 13. In negotiating the settlement, I considered several key factors: (1) the effect of
3 the California Supreme Court’s decision in Dynamex Operations W. v. Superior Court, 4 Cal.
4 5th 903, 416 P.3d 1 (2018), reh’g denied (June 20, 2018), which adopted a more stringent
5 “ABC” test for misclassification, the scope of which is still uncertain; (2) the then-pendency of
6 the Assembly Bill 5 (“A.B. 5”) legislation, which proposed to adopt the “ABC” test statutorily
7 and which “gig economy” companies, including Postmates, were publicly opposing and
8 lobbying for a “carve out”; and (3) the risks and delays attendant to continued litigation,
9 including an eventual potential jury trial and nearly certain appeals.
10

11 14. First, with respect to the California Supreme Court’s recent decision in Dynamex,
12 I believe that this decision poses a serious risk to Postmates because it makes the standard for
13 employment misclassification stricter and very difficult for Postmates to justify classifying the
14 drivers as independent contractors. I have considerable experience litigating under the “ABC”
15 test for employment status in Massachusetts, which California adopted in the Dynamex decision.
16 Thus, I believe that this decision represents a boon to workers. However, at the time this
17 agreement was negotiated in July 2019, considerable uncertainty remained regarding the precise
18 scope of the Dynamex decision, including whether it should apply retroactively to claims
19 arising before April 2018 and whether it applies to the principal claim in this case, expense
20 reimbursement. Compare Johnson v. VCG-IS, LLC, et al., Case No. 30-2015-00802813,
21 Ruling on Motion in Limine (Orange County Super. Ct. July 18, 2018) (finding expense
22 reimbursement claims under § 2802 covered by the Dynamex decision), with Garcia v. Border
23 Transportation Group, LLC, 28 Cal. App. 5th 558 (2018) (assuming that § 2802 claims are not
24 covered by the “ABC” test even though there was no § 2802 claim at issue in that case); Karl v.
25 Zimmer Biomet Holdings Inc., 2018 WL 5809428 *3 (N.D. Cal. Nov. 6, 2018) (finding
26 plaintiff’s claim for expense reimbursement did not arise under the Wage Orders and therefore
27 Dynamex did not apply).
28

1 15. Second, with respect to A.B. 5, at the time the parties agreed to their settlement,
2 it was very much an open question as to whether the bill would pass the legislature and signed
3 by Governor Newsom. Gig economy companies were engaged in significant lobbying efforts
4 against the bill, while also seeking a “carve out” if the bill were to pass. While the bill has
5 subsequently passed and is scheduled to take effect in January 2020, the parties had no way of
6 predicting this outcome at the mediation session. At the time the settlement was negotiated,
7 there was significant risk that the legislature would not pass A.B. 5, or that it would be vetoed
8 by the Governor, or that gig economy companies would successfully obtain a “carve out”.

9
10 16. Finally, continuing the litigation in these cases would require significant trial and
11 appellate court briefing. Thus, I also took into account the value of a swift recovery at this time
12 for the settlement class in view of the fact that litigating this case to a judgment, and then appeal,
13 would almost certainly take several more years at least.

14 **Information Used to Assess the Fairness of the Settlement**

15 17. I believe this settlement is fair, reasonable, and adequate based on the factors
16 enumerated in Cal. Rules of Court, rule 3.769(c) and falls within the range of likely approval,
17 and the Court should grant the settlement preliminary approval.

18 18. The parties have exchanged extensive information necessary to make an
19 informed evaluation of the case, including detailed damages discovery.

20 19. Below I set forth Plaintiffs’ analysis, based upon my review of extensive
21 confidential data provided by Postmates of the potential value of each claim asserted in this case,
22 as well as some of Plaintiffs’ considerations regarding the likelihood of establishing liability on
23 these claims, were Plaintiffs to prevail on the threshold issue of whether Postmates misclassified
24 its couriers as independent contractors.

25 20. In valuing claims for this settlement I was guided by my experience in Singer v.
26 Postmates, where I settled claims on behalf of all Postmates couriers across the country
27 (including in California, Massachusetts, New York, and Washington, D.C.) for an earlier
28 timeframe. In that case, I found that the primary claim with the greatest value to the class was

1 the expense reimbursement claim. Judge White of the Northern District of California agreed
2 and approved a settlement of misclassification claims for Postmates couriers where Plaintiffs
3 relied primarily on the value of the expense reimbursement claims to determine the value of the
4 case and discounted the value of various other wage claims to zero. Singer v. Postmates Inc.
5 (N.D. Cal. April 25, 2018) 4:15-cv-01284- JSW, Dkt. 98. This is the same approach that I have
6 followed in a number of other gig economy settlements that have been approved by courts. See
7 O'Connor v. Uber Techs., Inc. (N.D. Cal. Mar. 29, 2019, No. 13-CV-03826-EMC) 2019 WL
8 1437101, at *11 (“The main claims being released that were not originally asserted in O'Connor
9 and Yucesoy are those relating to minimum wage and overtime, meal and rest breaks, and
10 Uber’s obligation to carry workers’ compensation for drivers....The Court is satisfied that
11 Plaintiffs’ counsel can reasonably attribute minimal value to these claims.”); see also Cotter v.
12 Lyft, Inc. (N.D. Cal. 2016) 176 F. Supp. 3d 930, 939 (approving settlement where plaintiffs’
13 counsel assigned a minimal value ... to the other claims for damages contained in the lawsuit”
14 apart from expense reimbursement); Marciano v. DoorDash Inc. (Cal. Sup. Ct. July 12, 2018)
15 CGC-15-548102 (Kahn, J.) (same).

17 21. The Singer settlement, which covered a six-year period and was approved by the
18 federal court in April 2018, was for a nationwide class in the amount of \$8.75 million. The
19 portion of that settlement allocated to California couriers was \$6 million. This settlement,
20 which covers just over a two-year period and California couriers only, is for almost twice as
21 much as the California portion of the prior Singer settlement.

22 **Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510, 1198, 1194) and Fair Labor**
23 **Standards Act (29 U.S.C. §207(a)(1))**³

24 22. I ascribed some value to the overtime claims released by couriers as part of the
25 settlement, though I believe that value is minimal for the reasons explained below. Cal. Lab.

26 ³ The claims that are being added to the Second Amended Complaint under Cal. Lab.
27 Code §§ 201, 202, 203, 204, and 210 are similarly related to the overtime allegations insofar as
28 they relate to failing to pay overtime wages due upon termination and failing to pay overtime
wages twice each calendar month.

1 Code § 1198 and Wage Order 9 require employers to pay their employees at their overtime rate
2 of pay for hours worked in excess of eight per day and/or 40 per week. Cal. Lab. Code § 1194
3 permits an employee receiving less than his or her overtime wages to recover the unpaid balance
4 of such wages in a civil action. Likewise, the Fair Labor Standards Act requires that an
5 employer pay time-and-a-half an employee’s regular rate of pay for all hours worked beyond
6 forty in a workweek. See 29 U.S.C. §207(a)(1).
7

8 23. Here, I believe there would have been significant issues in proving what
9 constitutes compensable time and whether time spent without a passenger in the car or waiting
10 to receive a ride request is compensable.⁴ I also think there would have been challenges in
11 achieving class certification because many couriers do not have overtime claims. For example,
12 FLSA claims brought on behalf of drivers for another major gig economy company, Uber, have
13 not been successful in Razak v. Uber Technologies, Inc., 2018 WL 1744467, at *1 (E.D. Pa.
14 Apr. 11, 2018), appeal pending Third Cir. Appeal No. 18-1944. And Judge Chen dismissed
15 with prejudice overtime claims in the Massachusetts Uber litigation, based on the uncertainty
16 regarding what would constitute “work time” under circumstances identical to those presented
17 here. Yucesoy v. Uber Techs., Inc., No. 15-CV-00262-EMC, 2016 WL 493189, *6 (N.D. Cal.
18 Feb. 9, 2016).

19 24. However, if the Court did certify this claim, and if Plaintiffs were to prevail on
20 the misclassification issue, I estimate that the value of this claim would be \$1.5 million.

21 **Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1)**
22 **and FLSA (29 U.S.C. § 201, et seq.)**

23
24 ⁴ Wage Order 9 defines “hours worked” as “time during which an employee is subject to
25 the control of an employer, [] includ[ing] all the time the employee is suffered or permitted to
26 work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11090. “California courts
27 considering whether on-call time constitutes hours worked have primarily focused on the extent
28 of the employer’s control,” and have relied upon the same factors employed by the Ninth
Circuit when interpreting whether time is compensable under the FLSA. See Mendiola v. CPS
Sec. Sols., Inc. (2015) 60 Cal. 4th 833, 840-41, reh’g denied (Mar. 18, 2015) (quoting list of
seven factors from Owens v. Local No. 169 (9th Cir. 1992) 971 F.2d 347, 351).

1 25. Cal. Lab. Code § 1194 permits an employee receiving less than the legal
2 minimum wages (currently \$12.00 per hour under California law) to recover the unpaid balance
3 of minimum wage in a civil action. Section 1194.2 further provides for an award of liquidated
4 damages in a minimum wage action unless an employer can show that the violation was in good
5 faith and that it had reasonable grounds for believing it was not subject to minimum wage
6 requirements. Likewise, the federal Fair Labor Standards Act requires that employers pay at
7 least the federal minimum wage of \$7.25 per hour for all hours worked. See 29 U.S.C. § 201, et
8 seq.

9
10 26. I believe that Plaintiffs faced a significant hurdle in resolving this claim on a
11 class-wide basis, as discovery has not revealed that Postmates had a uniform policy or practice
12 that would support a finding of liability (or no liability) on this claim for all couriers and may
13 well have required individualized analysis. There would have been significant issues in proving
14 what constitutes compensable time and whether time spent traveling to a pickup location or
15 waiting to receive a delivery request is compensable.⁵

16 27. Courts have generally agreed with this assessment when considering proposed
17 settlements of the same claims for Uber drivers:

18 [W]ith respect to minimum wage and overtime, the primary question appears to be
19 whether drivers would be entitled to compensation for time spent waiting to perform a
20 task. See Docket No. 724 at 11. This Court previously dismissed with prejudice the
21 minimum wage and overtime claims in *Yucesoy*, finding that Plaintiffs had failed to
22 plead specific facts to support their claim that waiting time should be compensable.
23 *Yucesoy*, Docket No. 194 at 10-11. For example, there Plaintiffs did not explain how
often ride requests came in, how many requests they had to accept, and the magnitude of
the risk of deactivation if requests were not accepted. ... While the Court does not

24 ⁵ Wage Order 9 defines “hours worked” as “time during which an employee is subject to
25 the control of an employer, [] includ[ing] all the time the employee is suffered or permitted to
26 work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11090. “California courts
27 considering whether on-call time constitutes hours worked have primarily focused on the extent
28 of the employer’s control,” and have relied upon the same factors employed by the Ninth
Circuit when interpreting whether time is compensable under the FLSA. See *Mendiola v. CPS
Sec. Sols., Inc.* (2015) 60 Cal. 4th 833, 840-41, *reh’g denied* (Mar. 18, 2015) (quoting list of
seven factors from *Owens v. Local No. 169* (9th Cir. 1992) 971 F.2d 347, 351).

1 conclude that drivers could not prevail on this claim were sufficient allegations pleaded
2 and evidence presented, there are significant risks.

3 O'Connor, 201 F. Supp. 3d at 1125.

4 **Failure to Provide Itemized Wage Statements (Cal. Lab. Code § 226, Wage Order 9)**

5 28. Cal. Lab. Code § 226 (and the relevant Wage Order) permits an employee to
6 recover actual damages or a penalty if he or she does not receive an itemized statement
7 containing certain information about the employee's compensation.

8 29. I believe that Plaintiffs could show a technical violation of § 226(a), because
9 Postmates' weekly emails to couriers informing them of their weekly pay does not set forth the
10 information required by § 226(a)(2) (emails do not show hours), (a)(3) (emails do not show pay
11 per ride), (a)(4) (emails do not show deductions), (a)(6) (emails do not show dates of the pay
12 period), and (a)(7) (emails do not show full name of courier or the last four digits of the
13 courier's Social Security Number).

14 30. However, to recover under § 226, an employee must also show injury. Injury
15 exists under § 226 when an employee is not provided with a pay statement at all, § 226(e)(2), or
16 when there is a deficient wage statement and an employee cannot promptly and easily determine
17 from the statement alone the information required. Courts have determined that this injury
18 generally requires that the employee be unable to "quickly verify earnings when looking at the
19 wage statements." Holak v. K Mart Corp., (E.D. Cal. Sept. 30, 2014) 2014 WL 4930762, *7. I
20 believe it would be difficult for Plaintiffs to show injury here because Postmates provides
21 couriers with access to information about their earnings per ride in the Postmates app. Thus,
22 Postmates couriers can quickly verify their earnings by using the app.

23 31. Moreover, even assuming that Plaintiffs can show injury arising from a violation
24 of § 226, such a violation is actionable only if it is "knowing and intentional," which may be
25 difficult in light of Postmates' ongoing position that couriers are properly classified as
26 independent contractors. Indeed, even after the California Supreme Court's decision in
27 Dynamex, there is still a heated dispute regarding whether gig economy workers like Postmates
28

1 couriers are employees or independent contractors, including whether Dynamex applies to all
2 the claims pled here, or even PAGA claims, and the lack of any definitive court rulings. Thus,
3 Plaintiffs believe they properly assigned negligible value to this claim.
4

5 **Failure to Provide Meal and Rest Breaks (Cal. Lab. Code §§ 226.7, 512, Wage Order 9)**

6 32. Cal. Lab. Code §§ 226.7 and 512 (and the relevant Wage Order) permit an
7 employee to recover one additional hour of pay at the employee’s regular rate of compensation
8 for each workday that the employee is not provided with appropriate meal or rest breaks.

9 33. Judge Chhabria of the Northern District of California agreed that these types of
10 claims had little to no value in granting approval in Cotter. See Civ. A. No. 3:13-cv-04065-VC
11 Dkt. 246 (approving settlement that valued meal and rest break claims as having no value), and
12 Judge Chen of the Northern District of California agreed with this assessment in preliminarily
13 approving a settlement of misclassification-related claims against Uber. See O’Connor v. Uber
14 Techs., Inc. (N.D. Cal. Mar. 29, 2019, No. 13-CV-03826-EMC) 2019 WL 1437101, at *11
15 (noting that Plaintiffs’ “meal and rest break claims were blunted by Uber’s argument that its
16 entire system can be understood to constitute a policy of ‘permitting’ or ‘authorizing’ breaks
17 whenever a driver wants” such that “it was reasonable for Plaintiffs’ counsel to assign no or
18 little value to these claims when considering the overall full-verdict value.”) (internal quotations
19 omitted).
20

21 34. Here, I determined that Plaintiffs would have faced significant obstacles in
22 establishing liability on these claims. California courts have held that an employer satisfies its
23 obligation under the meal and rest break laws “if it relieves its employees of all duty,
24 relinquishes control over their activities and permits them a reasonable opportunity to take an
25 uninterrupted 30–minute break, and does not impede or discourage them from doing so.”
26 Safeway, Inc. v. Superior Court (2015) 238 Cal. App. 4th 1138, 1148, review denied (Oct. 21,
27 2015) (quoting Brinker Rest. Corp. v. Superior Court (2012) 53 Cal. 4th 1004, 1040). Here,
28

1 couriers had free rein to sign on and off the app anytime they wanted. For this reason, Plaintiffs
2 believe they properly assigned negligible value to this claim.

3 **One in Seven Day's Rest (Cal. Labor Code §§ 551, 552, and 558)**

4 35. Cal. Lab. Code § 551 provides that every person in every occupation is entitled
5 to one day's rest in seven, and Cal. Lab. Code § 552 prohibits employers from requiring an
6 employee to work more than six days out of seven. Plaintiffs believe they would face difficult
7 hurdles in proving this claim on a class-wide basis given that many couriers drove only
8 occasionally and given that it is undisputed that couriers are able to sign on and off the app
9 whenever they wish and can drive as much or as little as they wish. Accordingly, I believe there
10 would be a substantial risk of no recovery on this claim.
11

12 **Requiring Drivers To Agree to Unlawful Terms (Cal. Labor Code § 432.5)**

13 36. Cal. Lab. Code § 432.5 makes it unlawful for an employer to require an
14 employee or applicant to agree, in writing, to a term or condition that the employer knows to be
15 prohibited by law. Here, there is an argument Postmates required couriers to accept its
16 agreements, which contained numerous illegal provisions. However, Plaintiffs believe that they
17 would face a challenge in overcoming Postmates' defenses to this claim, including that it had a
18 good faith belief that the provisions of its agreements were lawful because it had a good faith
19 basis for believing that its couriers are properly classified as independent contractors.
20 Accordingly, I believe there would be a substantial risk of no recovery on this claim.

21 **Failure to Provide Paid Sick Leave (Cal. Labor Code §§ 245-249)**

22 37. Cal. Labor Code § 246 provides that an employer must provide any employee
23 who, on or after July 1, 2015, works in California for the same employer for 30 days or more
24 within a year from the start of employment, with paid sick days. If Plaintiffs succeed in proving
25 employee status, then couriers who drove more than 30 days in a calendar year arguably
26 accrued a certain number of paid sick days and were entitled to use these accrued paid sick days
27 for purposes enumerated in Labor Code section 246.5(a)(1)-(2).
28

1 38. However, Plaintiffs likely would face serious challenges in proving liability
2 under section 246 because they must first prove the employees’ hourly rate of pay, a figure that
3 the Court might find to be incalculable in the case of couriers who use Postmates. See Cal.
4 Labor Code § 246(k). Even if calculable, the Court may conclude that individual issues
5 predominate for purposes of class certification. Moreover, because employees must be
6 employed for at least 90 days before being able to use paid sick leave, a court may conclude that
7 many of the couriers who use Postmates infrequently may not be entitled to paid sick leave at
8 all. See Cal. Labor Code § 246(c).

9
10 **Failure to Pay Reporting Time (Wage Order 9)**

11 39. Wage Order 9, § 5, requires that for each workday that a California employee is
12 required to report for work and does report, but is either not put to work or is furnished less than
13 half of that employee’s usual or scheduled day’s work, each such employee must be paid an
14 amount equal to half of his or her usual or scheduled day’s pay, or in any event must be paid an
15 amount equal to 2 hours at the employee’s regular rate of pay. Here, the claim would
16 presumably apply where couriers signed onto the app but received no delivery requests and
17 made no deliveries. I believe there is a substantial risk of no recovery on this claim because
18 couriers can indisputably work as often as they like and are not required to “report” or sign onto
19 the app at any particular time. Thus, because couriers are arguably never “required” to report
20 for work, I do not ascribe any value to this claim.

21 **Failure to Keep Accurate Records (Cal. Lab. Code §§ 226, 1174.5, 353)**

22 40. Cal. Lab. Code § 1174 requires employers to maintain payroll records pertaining
23 to its employees, and Cal. Lab. Code § 1174.5 provides for penalties for willful failures to
24 maintain such records. A finding that an employer’s failure to comply with § 1174 was in good
25 faith precludes liability for the violation. Dalton, 2011 WL 1045107, *6 (granting summary
26 judgment on § 1174 claim because of a good faith dispute that employees were independent
27 contractors).

1 41. As set forth above, even if Plaintiffs were to prevail on the misclassification
2 issue, I believe it would be difficult for Plaintiffs to show that Postmates does not maintain all
3 information required by §1174, and, even if it does not, it would be difficult for Plaintiffs to
4 overcome Postmates' good faith defense to liability with respect to this claim. Accordingly, I
5 believe there would be a substantial risk of no recovery on this claim.
6

7 **Unfair, Unlawful, and Fraudulent business practices under the UCL**

8 42. Plaintiffs also added a claim for unfair business practices under the UCL based
9 on Defendant's violations of the Labor Code. To the extent this cause of action would result in
10 restitution, such recovery is already accounted for in the calculations above and in Plaintiffs'
11 Motion for Preliminary Approval, which assigned a value to the underlying wage claims and
12 expense reimbursement claims in the case. Therefore, rather than double-counting this possible
13 recovery again under these causes of action, Plaintiffs assumed these claims would have no
14 value when calculating maximum exposure.

15 43. Attached hereto as **Exhibit 1** is a true and correct copy of the parties' proposed
16 Settlement Agreement.

17 44. Attached hereto as **Exhibit 2** is a true and correct copy of an article written about
18 me by Diana Kapp, titled, "Uber's Worst Nightmare", San Francisco Magazine (May 18, 2016).

19
20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct.
22

23 Executed on October 8, 2019, in Boston, Massachusetts.
24


25 By: 
26 Shannon Liss-Riordan
27
28

EXHIBIT 1

1 SHANNON LISS-RIORDAN (SBN 310719)
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8 *Giovanni Jones, Dora Lee, Kellyn Timmerman,*
9 *and Joshua Albert, on behalf of themselves and*
10 *others similarly situated and in their capacities as*
11 *Private Attorney General Representatives*

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Attorney for Defendant Postmates Inc.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN FRANCISCO**

15
16 JACOB RIMLER, GIOVANNI JONES,
17 DORA LEE, KELLYN TIMMERMAN, and
18 JOSHUA ALBERT, on behalf of themselves
19 and others similarly situated and in their
capacities as Private Attorney General
Representatives,

20 Plaintiffs,

21 v.

22 POSTMATES INC.,

23 Defendant.
24

Case No. CGC-18-567868

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1 This Class Action Settlement Agreement and Release, including Exhibits A through C
2 hereto (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and
3 among Plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and Joshua
4 Albert (“Plaintiffs”) on behalf of themselves and the Settlement Class, as defined below, on the
5 one hand, and Defendant Postmates Inc. (“Defendant” or “Postmates”) on the other hand.
6 Plaintiffs and Defendant (collectively, the “Parties”) enter into this Agreement to effect a full
7 and final settlement and preclusive judgment resolving all claims brought or that could have
8 been brought against Postmates in the following putative collective, representative, and class
9 actions: (1) Rimler v. Postmates, Inc., Case No. CGC-18-567868 in the Superior Court of
10 California, San Francisco County, and the related appeal docketed at No. A156450 in the
11 California Court of Appeal, First Appellate District; (2) Lee v. Postmates, Inc., Case No. 3:18-
12 cv-03421-JCS, in the United States District Court for the Northern District of California, and
13 the related appeals docketed at Nos. 19-15024 and 19-80055 in the United States Court of
14 Appeals for the Ninth Circuit; and (3) Albert v. Postmates, Inc., Case No. 18-cv-07592-JCS, in
15 the United States District Court for the Northern District of California; including as amended
16 pursuant to this Agreement (taken together, the three cases shall be referred to as “the Action”),
17 and all claims based on or reasonably related thereto. This Agreement is intended to fully and
18 finally compromise, resolve, discharge, and settle the Released Claims, as defined and on the
19 terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

20 I. RECITALS

21 This Agreement is made in consideration of the following facts:

22 1.1. WHEREAS, on July 5, 2018, Plaintiff Jacob Rimler filed a California Private
23 Attorneys General Act (“PAGA”), Labor Code §§ 2698, *et seq.* representative action complaint
24 in the Superior Court of California, San Francisco County (Case No. CGC-18-567868),
25 asserting on behalf of himself and all couriers classified by Postmates as independent
26 contractors in California various wage-related claims against Postmates arising from Postmates’

1 alleged misclassification of couriers as independent contractors. On July 11, 2018, Plaintiff
2 Rimler filed a First Amended Complaint, which added Plaintiff Giovanni Jones (“the Rimler
3 action”);

4 1.2. WHEREAS, on August 17, 2018, Postmates filed a Petition for an Order
5 Compelling Arbitration, which the Rimler Plaintiffs opposed. On January 2, 2019, the Court
6 denied Postmates’ Petition, and Postmates filed a notice of appeal. Before any briefing was
7 conducted on the appeal, Postmates and the Rimler Plaintiffs agreed to mediate the Rimler
8 Action and requested an extension of briefing deadlines in light of the mediation, which the
9 Court granted;

10 1.3. WHEREAS, on May 8, 2018, Plaintiff Dora Lee filed a class action complaint in
11 the Superior Court of California, San Francisco County (Case No. CGC-18-566394) on behalf
12 of herself and a proposed class consisting of all couriers in California classified by Postmates as
13 independent contractors, asserting various wage-related claims against Postmates arising from
14 Postmates’ alleged misclassification of couriers as independent contractors. On June 8, 2018,
15 Postmates filed a Notice of Removal to the United States District Court for the Northern District
16 of California, Case No. 3:18-cv-03421-JCS. On July 23, 2018, Postmates filed a Motion to
17 Compel Arbitration. On October 15, 2018, the Court granted Plaintiff Lee’s Motion for Leave
18 to Amend the Complaint to add Plaintiffs Kellyn Timmerman and Joshua Albert, and granted
19 Postmates’ Motion to Compel Arbitration of Plaintiff Lee’s claims. On November 6, 2018,
20 Postmates filed a Motion to Compel Arbitration for Plaintiff Timmerman. On December 17,
21 2018, the Court granted Postmates’ Motion to Compel Arbitration and dismissed the case so
22 that Plaintiffs Lee and Timmerman could pursue an appeal to the United States Court of
23 Appeals for the Ninth Circuit. On January 4, 2019, Plaintiffs Lee and Timmerman filed a notice
24 of appeal, which is pending as Ninth Cir. Case No. 19-15024 (together with the case dismissed
25 by the Northern District of California, the “Lee Action”). Subsequently, Plaintiffs Lee and
26 Timmerman moved the District Court to certify its orders for interlocutory review. The Court

1 granted the motion, and Plaintiffs Lee and Timmerman filed a petition in Ninth Cir. Case No.
2 19-80055, seeking permission to appeal. On July 30, 2019, the Ninth Circuit denied the
3 petition;

4 1.4. WHEREAS, on December 17, 2018, the District Court in Lee severed Plaintiff
5 Joshua Albert's claims to proceed as a separate case, Northern District of California Case No.
6 3:18-cv-07592-JCS. On January 4, 2019, Plaintiff Albert filed a Second Amended Complaint
7 asserting a PAGA claim based on various wage-related claims against Postmates arising from
8 Postmates' alleged misclassification of couriers as independent contractors (the "Albert"
9 Action). The parties were engaged in written discovery until they requested and received a stay
10 to participate in mediation;

11 1.5. WHEREAS, Plaintiffs allege generally that Postmates improperly classified them
12 and all putative Settlement Class Members as independent contractors rather than employees,
13 and assert derivative claims related thereto;

14 1.6. WHEREAS, Postmates denies the allegations in the Action; maintains that each
15 courier's claims must be individually arbitrated pursuant to any arbitration agreement to which
16 that courier may be bound; denies that it has engaged in any wrongdoing; denies that any
17 Settlement Class Member was ever an employee of Postmates; denies that Plaintiffs' allegations
18 state valid claims; denies that a litigation class could properly be certified in the Action; denies
19 that Plaintiffs' claims could properly be maintained as a collective, class or representative
20 action; and states that it is entering into this Settlement Agreement solely to eliminate the
21 burden, expense, and delay of further litigation and arbitrations, and on the express conditions
22 that: (a) if for any reason the Settlement is not finalized according to the terms of this
23 Agreement, the Settlement and the documents generated as a result of the Settlement shall be
24 void *ab initio*, and shall not be admissible or usable for any purpose in any of the cases included
25 in the Action or any other civil or administrative proceeding or arbitration; and (b) this
26 Settlement and the documents generated as a result of the Settlement are not admissible or

1 usable in any other civil or administrative proceeding or arbitration, except to the extent
2 necessary to enforce this Settlement and the orders, judgment and agreements arising from this
3 Settlement;

4 1.7. WHEREAS, a bona fide dispute exists as to whether any amount of wages or
5 penalties are due from Postmates to any putative Settlement Class Member or to the California
6 Labor and Workforce Development Agency (“LWDA”);

7 1.8. WHEREAS, in preparation for mediation, Postmates and Plaintiffs engaged in
8 extensive informal discovery, exchanging information, documents and voluminous data, which
9 enabled the parties and the mediator to thoroughly evaluate Plaintiffs’ claims and the claims of
10 the putative Settlement Class Members, and the likely outcomes, risks, and expense of pursuing
11 litigation;

12 1.9. WHEREAS, the Plaintiffs and Postmates attended an in-person mediation
13 session with professional mediator Tripper Ortman of Ortman Mediation, who is experienced in
14 mediating class action disputes, before agreeing to the terms of this arm’s-length Settlement;

15 1.10. WHEREAS, as a result of the mediation, Plaintiffs and Plaintiffs’ Counsel
16 believe that the global Settlement provides a favorable recovery for the Settlement Class, based
17 on the claims asserted, the evidence developed, and the damages that might be proven against
18 Postmates in the Action. The Plaintiffs and Plaintiffs’ Counsel further recognize and
19 acknowledge the expense and length of continued proceedings necessary to prosecute the
20 Action against Postmates through trial and appeals. They also have considered the uncertain
21 outcome and the risk of any litigation, especially in complex litigation such as the Action, as
22 well as the difficulties and delays inherent in any such litigation. They are also mindful of the
23 inherent challenges of proof and the strength of the defenses to the alleged claims, and therefore
24 believe that it is desirable that the Released Claims be fully and finally compromised, settled,
25 and resolved with prejudice as set forth herein, subject to the approval of the Court;

1 1.11. WHEREAS, Plaintiffs and Plaintiffs’ Counsel, based on their own independent
2 investigations and evaluations, have examined the benefits to be obtained under the terms of this
3 Settlement Agreement, have considered the claims of the Plaintiffs, the claims of the average
4 Settlement Class Member, the risks associated with the continued prosecution of the Action, and
5 the likelihood of success on the merits of the Action, and believe that, after considering all the
6 circumstances, including the uncertainties surrounding the risk of further litigation and the
7 defenses that Postmates has asserted and could assert, the proposed Settlement set forth in this
8 Agreement is fair, reasonable, adequate, in the best interests of the Plaintiffs and the Settlement
9 Class, and confers substantial benefits upon the Settlement Class;

10 1.12. WHEREAS, Plaintiffs warrant and represent that they are effecting this
11 Settlement and executing this Agreement after having received full legal advice as to their
12 respective rights and have had the opportunity to obtain independent counsel to review this
13 Agreement;

14 1.13. WHEREAS, the Parties further agree that the Agreement, the fact of this
15 Settlement, any of the terms of this Agreement, and any documents filed in connection with the
16 Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as, an
17 admission, finding, or evidence of: (i) any wrongdoing by any Released Parties; (ii) any
18 violation of any statute, law, or regulation by Released Parties; (iii) any liability on the claims or
19 allegations in the Action on the part of any Released Parties; (iv) any waiver of Postmates’ right
20 to arbitration or the enforceability of any Postmates arbitration agreement; or (v) the propriety
21 of certifying a litigation class or pursuing representative relief under PAGA in the Action or any
22 other proceeding; and shall not be used by any Person for any purpose whatsoever in any
23 administrative or legal proceeding, including but not limited to arbitrations, other than a
24 proceeding to enforce the terms of the Agreement. There has been no final determination by
25 any court as to the merits of the claims asserted by Plaintiffs against Postmates, nor has there
26

1 been any final determination as to whether a class should be certified or whether representative
2 claims may properly be pursued, other than for settlement purposes only;

3 1.14. WHEREAS, for settlement purposes only, Postmates will stipulate to the
4 certification of class claims that are subject to the certification requirements of California Code
5 of Civil Procedure section 382, on the express condition that if this Settlement Agreement is not
6 preliminarily or finally approved, this paragraph, the Settlement Agreement, and any class
7 certified pursuant to the Settlement Agreement are all void *ab initio*. Postmates disputes that
8 certification is proper for the purposes of litigating the class claims proposed in or flowing from
9 the claims asserted in the Rimler, Lee, or Albert lawsuits;

10 1.15. WHEREAS, the Parties desire to compromise and settle all Released Claims,
11 including, all issues and claims that have been, could have been, or should have been brought
12 against Postmates or related persons in the Action, and all claims brought on a putative class
13 and representative basis in the Rimler, Lee, and Albert lawsuits;

14 1.16. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
15 AGREED, by the Plaintiffs for themselves and on behalf of the Settlement Class and by
16 Postmates, that, subject to the approval of the Court, the Action (including Rimler, Lee, and
17 Albert, the lawsuits that comprise the Action) shall be settled, compromised, and dismissed, on
18 the merits and with prejudice, and the Released Claims shall be finally and fully compromised,
19 settled, and dismissed as to the Released Parties, in the manner and upon the terms and
20 conditions hereafter set forth in this Settlement Agreement.

21 **II. DEFINITIONS**

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

24 2.1 “Authorized Claimant” means any Settlement Class Member who submits a
25 valid and timely Claim that qualifies for a payment under the terms of this Settlement
26

1 Agreement and who by validly and timely submitting the Claim using the Claim Form consents
2 to join as a party plaintiff in the Fair Labor Standards Act (“FLSA”) claims in this Action.

3 2.2 “Authorized Claimants’ Released Claims” means all of the Settlement Class
4 Members’ Released Claims as well as any and all claims, debts, liabilities, demands, obligations,
5 guarantees, penalties, costs, expenses, attorneys’ fees, damages, liquidated damages, action or
6 causes of action of whatever kind or nature, whether known or unknown, contingent or accrued,
7 against the Released Parties or any of them based on putative violations of federal law based on
8 or related to the claims asserted in or that could have been asserted in this Action under the
9 FLSA. “Authorized Claimants’ Released Claims” include any unknown claims that an
10 Authorized Claimant does not know or suspect to exist in his or her favor, which if known by
11 him or her, might have affected this Settlement Agreement and release of the Released Parties.

12 2.3 “Bar Date” means the final time and date by which a Claim Form must be
13 postmarked or submitted to the Settlement Administrator for a Settlement Class Member to be
14 eligible to receive an Individual Settlement Payment. The Bar Date shall be specifically
15 identified and set forth in the Preliminary Approval Order and the Settlement Class Notice.

16 2.4 “Claim” means the submission to be made by a Settlement Class Member using
17 the Claim Form, which form shall serve as the Settlement Class Member’s means of requesting
18 payment from the Total Settlement Amount and serve as that Settlement Class Member’s
19 Consent to Join as a party plaintiff to the FLSA claims asserted in this Action pursuant to 29
20 U.S.C. § 216(b).

21 2.5 “Claim Form” means the document included in the Settlement Class Notice
22 without material variation from the relevant portion of Exhibit A. The Claim Form, if signed by
23 a Settlement Class Member and timely and validly submitted to the Settlement Administrator,
24 shall serve as that Settlement Class Member’s Consent to Join as a party plaintiff to the FLSA
25 claims asserted in this Action pursuant to 29 U.S.C. § 216(b), and effect a full and complete
26 release of all claims under the FLSA based on or reasonably related to the claims asserted in this

1 Action. To be valid, a Claim Form must be signed without any deletion or amendment to its
2 language regarding the release of the FLSA claims and without any deletion or amendment to
3 any other portion. If the Court does not finally approve this Settlement Agreement, any Consent
4 to Join and release of the FLSA claims filed on behalf of any Settlement Class Member shall be
5 void *ab initio*.

6 2.6 “Consent to Join” means a Settlement Class Member’s consent to join as a party
7 plaintiff to the FLSA claims asserted in this Action pursuant to 29 U.S.C. § 216(b). A
8 Settlement Class Member’s signed Claim Form that is timely and validly submitted to the
9 Settlement Administrator shall serve as that Settlement Class Member’s Consent to Join.

10 2.7 “Courier” means any individual who has been approved to use or has used the
11 Postmates platform as an independent contractor courier.

12 2.8 “Superior Court” means the Superior Court of California, San Francisco County.

13 2.9 “Dispute Resolution Fund” means the fund consisting of Two Hundred and Fifty
14 Thousand dollars and no cents (\$250,000) set aside from the Total Settlement Amount to be
15 used: (i) to resolve any bona fide disputes that may arise regarding the calculation and
16 disbursement of Individual Settlement Payments according to the Plan of Allocation, as
17 provided in Section III(8)(f); and (ii) to disburse Individual Settlement Payments to individuals
18 mistakenly excluded from the Settlement Class, as provided in Section III(8)(f). The Dispute
19 Resolution Fund shall be paid from the Total Settlement Amount.

20 2.10 “Effective Date” means seven (7) days after which both of the following events
21 have occurred: (i) the Court’s Final Approval order and Judgment has been entered, and (ii) the
22 Court’s Final Approval order and Judgment have become Final.

23 2.11 “Estimated Miles” means the estimated total number of miles from the location
24 where a delivery offer is accepted to the location where orders are picked up and to the location
25 where orders are delivered, for each Settlement Class Member during the Settlement Period, as
26 determined by Postmates’ records.

1 2.12 “Exclusion/Objection Deadline” means the final date by which a Settlement
2 Class Member may either (i) object to any aspect of the Settlement (pursuant to the Preliminary
3 Approval Order and Section VIII), or (ii) request to be excluded from the Settlement (pursuant
4 to the Preliminary Approval Order and Section VII). The Exclusion/Objection Deadline shall
5 be sixty (60) days after the Mailed Notice Date, and shall be specifically identified and set forth
6 in the Preliminary Approval Order and the Settlement Class Notice.

7 2.13 “Final” when referring to a judgment or order, means that (i) the judgment is a
8 final, appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of
9 the date on which all times to appeal therefrom have expired, or (b) an appeal or other review
10 proceeding of the judgment having been commenced, such appeal or other review is finally
11 concluded and no longer is subject to review by any court, whether by appeal, petitions for
12 rehearing or re-argument, petitions for re-hearing *en banc*, petitions for writ of certiorari, or
13 otherwise, and such appeal or other review has been finally resolved in such manner that affirms
14 the judgment order in its entirety.

15 2.14 “Final Approval” means the Court’s entry of an order that the Named Plaintiffs
16 and Postmates will seek from the Court, to be agreed upon by the Parties, and the entry of which
17 shall reflect the Court’s Judgment finally approving the Settlement Agreement.

18 2.15 “Final Approval Hearing” means the hearing that is to take place after the entry
19 of the Preliminary Approval Order and after the Mailed Notice Date for purposes of: (i)
20 entering Final Approval; (ii) determining whether the Settlement Agreement shall be approved
21 as fair, reasonable, and adequate; (iii) ruling upon an application by Settlement Class Counsel
22 for Attorneys’ Fees; and (iv) ruling on the application for a Settlement Class Counsel Award.

23 2.16 “General Released Claims” includes all of the Settlement Class Members’
24 Released Claims, with the addition of: (i) violations of Title VII of the Civil Rights Act of 1964;
25 (ii) violations of the Civil Rights Act of 1866; (iii) violations of the Americans with Disabilities
26 Act; (iv) violations of any and all potential claims against Postmates that could be brought under

1 corresponding state or local law; and (v) any claims for wages, penalties, breach of an express
2 or implied contract, breach of the covenant of good faith and fair dealing, breach of fiduciary
3 duty, fraud, misrepresentation, defamation, slander, retaliation, discrimination, harassment,
4 wrongful termination, infliction of emotional distress, loss of future earnings or profits or any
5 other claims based upon any state or federal public policy, or any other alleged wrongful
6 conduct or injury, arising out of or in any way connected with any acts or omissions occurring
7 during the Settlement Period, based on the claims that were alleged in the Action or that arise
8 out of or relate to Plaintiffs' relationship with Postmates or the services Plaintiffs provided
9 using Postmates' platform, or that arise out of or relate to the facts alleged in the action, in
10 addition to all claims based on or arising under the federal and state law sections included in the
11 Settlement Class Members' Released Claims and any other equivalent federal, state, or local
12 law of any state or locality in which Plaintiffs reside and/or used Postmates' platform as an
13 independent contractor courier.

14 2.17 "Individual Settlement Payment" means the amount payable from the Total
15 Settlement Amount to each Settlement Class Member who does not timely and properly request
16 exclusion from the Settlement Class and submits a Claim Form. The Individual Settlement
17 Payment shall be calculated pursuant to Section V herein.

18 2.18 "Judgment" means the judgment to be entered in the Action on Final Approval of
19 this Settlement.

20 2.19 "Legally Authorized Representatives" means an administrator/administratrix,
21 personal representative, or executor/executrix of a deceased Settlement Class Member's estate;
22 a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any
23 other legally appointed Person responsible for handling the business affairs of a Settlement
24 Class Member who is not the Settlement Class Member's counsel.

25 2.20 "Mailed Notice Date" means the date of the initial distribution of the Settlement
26 Class Notice to Settlement Class Members as set forth in Section VI.

1 2.21 “Opt-Out List” means the Court-approved list of all persons who timely and
2 properly request exclusion from the Settlement Class as set forth in Section VII.

3 2.22 “PAGA Claims” means Plaintiffs Rimler, Jones, and Albert’s representative
4 claims seeking penalties pursuant to PAGA, as alleged in the Rimler and Albert Complaints
5 and/or based on any other provision of the Labor Code, Wage Orders, or any other statute or
6 regulation based upon independent contractor misclassification to the fullest extent permitted by
7 law.

8 2.23 “PAGA Payment” means a total payment of \$250,000 to settle all claims under
9 the PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to the
10 PAGA and 25% will be distributed to Settlement Class Members.

11 2.24 “Plaintiffs” means Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman,
12 and Joshua Albert.

13 2.25 “Plaintiffs’ Counsel” means Lichten & Liss-Riordan, P.C.

14 2.26 “Plan of Allocation” means the plan for allocating the Total Settlement Amount
15 between and among Settlement Class Members as approved by the Court.

16 2.27 “Preliminary Approval Date” means the date that the Court enters the
17 Preliminary Approval Order and thus: (i) preliminarily approves the Settlement Agreement, and
18 the exhibits thereto, and (ii) enters an order providing for notice to the Settlement Class, an
19 opportunity to opt out of the Settlement Class, an opportunity to submit timely objections to the
20 Settlement, a procedure for submitting Claims, and setting a hearing on the fairness of the terms
21 of the Settlement Agreement, including approval of the Settlement Class Counsel Award.

22 2.28 “Preliminary Approval Order” means the order that the Plaintiffs and Postmates
23 will seek from the Court, without material variation from Exhibit B. Entry of the Preliminary
24 Approval Order shall constitute preliminary approval of the Settlement Agreement.

25 2.29 “Released Claims” shall be construed as broadly as possible to effect complete
26 finality over this litigation involving Postmates. “Released Claims” include (i) Settlement Class
27

1 Members' Released Claims, (ii) General Released Claims, and (iii) Authorized Claimants'
2 Released Claims. Notwithstanding any other provision of this Settlement Agreement,
3 "Released Claims" do not include claims for personal injuries. Moreover, the release of any
4 claims under the FLSA contemplated by this Settlement Agreement shall be effectuated only
5 after a Settlement Class Member has timely and validly submitted a Claim and thereby
6 Consented to Join as a party to the FLSA claims asserted in this action pursuant to 29 U.S.C. §
7 216(b).

8 2.30 "Released Parties" means (i) Postmates Inc. and its past, present, and future
9 parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other
10 legal entities, whether foreign or domestic, that are owned or controlled by Postmates (but not
11 including couriers who use the Postmates platform); and (ii) the past, present, and future
12 shareholders, officers, directors, members, investors, agents, employees, agents, consultants,
13 representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors,
14 and assigns of the entities listed in (i).

15 2.31 "Second Amended Complaint" means the Second Amended Complaint, without
16 material variation from Exhibit C, that Settlement Class Counsel shall seek to file in Rimler, the
17 lead lawsuit, pursuant to Paragraph 3.6 and shall file concurrently with the submission of the
18 motion for preliminary approval of the Settlement so that the Second Amended Complaint may
19 be filed promptly upon entry of the Preliminary Approval Order. The Second Amended
20 Complaint shall (i) add Dora Lee, Kellyn Timmerman, and Joshua Albert as named Plaintiffs,
21 and (ii) add the claims alleged in the Lee and Albert actions, including any and all class and
22 representative action claims, and also any and all potential claims necessary to effectuate the
23 release described herein.

24 2.32 "Service Awards" means the amount approved by the Court to be paid to each
25 Plaintiff in addition to their respective Individual Settlement Payments, in recognition of their
26 efforts in coming forward as named plaintiffs and as consideration for a full, general, and

1 comprehensive release of the General Released Claims. The Service Award amount payable to
2 Plaintiffs is not to exceed Five Thousand Dollars (\$5,000) each.

3 2.33 “Settlement” means the settlement of this Action between and among Plaintiffs
4 and Postmates, as set forth in this Settlement Agreement, including all attached Exhibits, which
5 are an integral part of this Settlement Agreement and are incorporated in their entirety by
6 reference.

7 2.34 “Settlement Administrator” means the administrator selected by the parties.

8 2.35 “Settlement Administrator Expenses” means the maximum amount to be paid to
9 the Settlement Administrator from the Total Settlement Amount, which shall be \$450,000. All
10 Settlement Administrator Expenses are to be paid exclusively from the Total Settlement
11 Amount.

12 2.36 “Settlement Class” means any and all individuals classified by Postmates as
13 independent contractor couriers who entered into an agreement to use or used the Postmates
14 platform as an independent contractor courier in California during the Settlement Period.

15 2.37 “Settlement Class Counsel” means Lichten & Liss-Riordan, P.C.

16 2.38 “Settlement Class Counsel Award” means (i) the attorneys’ fees for Settlement
17 Class Counsel’s litigation and resolution of the Action, including the Rimler, Lee, and Albert
18 lawsuits, and any and all arbitrations and claims resolved by this Settlement, as awarded by the
19 Court, and (ii) all expenses and costs incurred by Settlement Class Counsel in connection with
20 litigation and resolution of Rimler, Lee, and Albert, and any and all arbitrations and claims
21 resolved by this Settlement, as awarded by the Court, which, together, may not exceed thirty-
22 three percent (33%) of the Total Settlement Amount.

23 2.39 “Settlement Class Information” means information regarding Settlement Class
24 Members that Postmates will in good faith compile from its records and provide to the
25 Settlement Administrator, solely for purposes of the Settlement Administrator’s administration
26 of the settlement, and for no other purpose. Settlement Class Information shall be provided to

1 the Settlement Administrator and shall include, if possible, for each Settlement Class Member:
2 full name, last known address, email address, and Estimated Miles. Because Settlement Class
3 Members' private information is included in the Settlement Class Information, the Settlement
4 Administrator shall maintain the Settlement Class Information in confidence and shall use and
5 disclose Settlement Class Information only for purposes of this Settlement and for no other
6 purpose; access shall be limited to employees of the Settlement Administrator with a need to use
7 the Settlement Class Information as part of the administration of the Settlement.

8 2.40 "Settlement Class Member" means any member of the Settlement Class.

9 2.41 "Settlement Class Members' Released Claims" means any and all present and
10 past claims, actions, demands, causes of action, suits, debts, guarantees, obligations, damages,
11 penalties, rights or liabilities, of any nature and description whatsoever, known or unknown,
12 existing or potential, recognized now or hereafter, contingent or accrued, expected or
13 unexpected, pursuant to any theory of recovery (including but not limited to those based in
14 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or
15 regulation, and for claims for compensatory, consequential, punitive or exemplary damages,
16 statutory damages, penalties, interest, attorneys' fees, costs, or disbursements) that are based on
17 reasonably related to the claims alleged in or that could have been alleged in the *Rimler* Second
18 Amended Complaint, including any allegations in *Lee, Albert*, and/or *Rimler* preceding said
19 amended complaint, and all misclassification claims, and specifically including: claims pursuant
20 to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*; California Labor Code
21 sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226,
22 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.5, 450, 510, 512, 551-552, 558, 1174,
23 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804; the Private
24 Attorneys General Act ("PAGA"), California Labor Code section 2698 *et seq.*; California Code
25 of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and
26 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code

1 sections 17200 *et seq.*; and any other similar state, federal, local, or common law, statute,
2 regulation, or ordinance for unpaid wages, minimum wages, regular wages, tips, overtime
3 wages (including but not limited to calculation of the correct overtime or regular rate), working
4 more than six days in seven, expense reimbursement, wage statements, payroll recordkeeping,
5 reporting time, improper deduction of wages, failure to provide workers' compensation
6 insurance, meal periods, rest breaks, sick leave, final pay, penalties for timely payment of wages
7 upon discharge, waiting time penalties, PAGA penalties, unfair business practices, all claims
8 arising out of or relating to the statutory causes of action described herein, restitution, interest,
9 costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages,
10 exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-
11 judgment interest at any time during the Settlement Period.

12 2.42 “Settlement Class Notice” means the notice of class, representative, and
13 collective action settlement and enclosed Claim Form to be provided to Settlement Class
14 Members, without material variation from the relevant portion of Exhibit A.

15 2.43 “Settlement Period” means June 3, 2017 through October 17, 2019.

16 2.44 “Total Settlement Amount” means Eleven Million Five Hundred Thousand
17 Dollars and zero cents (\$11,500,000), which will resolve all Released Claims, and is the
18 maximum amount that Postmates is obligated to pay under this Settlement Agreement under any
19 circumstances to resolve and settle this Action, subject to Court approval. The Total Settlement
20 Amount includes all costs and fees, including, but not limited to, the Settlement Class Counsel
21 Award, Settlement Administrator Expenses, escrow costs and expenses, Service Awards,
22 interest, taxes and tax expenses, all payments to the Settlement Class and Plaintiffs, Settlement
23 Class Members' tax obligations arising out of the Settlement, and the PAGA Payment.

24 2.45 “Void Date” means the date by which any checks issued to Settlement Class
25 Members shall become void, i.e., on the 181st day after mailing.

1 **III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT**
2 **FOR PRELIMINARY AND FINAL APPROVAL**

3 3.1 Upon execution of this Settlement Agreement, the Plaintiffs shall submit to the
4 Court a motion for preliminary approval of the Settlement. The motion for preliminary
5 approval shall include a proposed plan for sending the Settlement Class Notice to Settlement
6 Class Members within twenty (20) days after the Preliminary Approval Date (the "Mailed
7 Notice Date"), and establishing a period of sixty (60) days from the Mailed Notice Date within
8 which any Settlement Class Member (i) may request exclusion from the respective Settlement
9 Class, (ii) object to the proposed Settlement, or (iii) object to Settlement Class Counsel's
10 request for the Settlement Class Counsel Award and for Service Awards to the Plaintiffs (the
11 Exclusion/Objection Deadline). The motion for preliminary approval shall also request that any
12 hearing on final approval of the Settlement and any determination on the request for a
13 Settlement Class Counsel Award and Service Awards (the Final Approval Hearing) be set for
14 after the Exclusion/Objection Deadline; that Settlement Class Counsel shall file a petition for
15 the Settlement Class Counsel Award and Service Awards at least twenty-one (21) days before
16 the Exclusion/Objection Deadline; that any opposition briefs on such motions and petitions be
17 filed fourteen (14) days before the Final Approval Hearing; and that any reply briefs on such
18 motions and petitions be filed seven (7) days before the Final Approval Hearing.

19 3.2 The Parties stipulate, for settlement purposes only, to certification of the
20 Settlement Class under California Code of Civil Procedure § 382 and California Rules of Court,
21 Rule 3.769, excluding the Settlement Class's PAGA Claims, on the express condition that if the
22 Settlement is not Preliminarily or Finally Approved, this paragraph, the Settlement Agreement,
23 and any class certified pursuant to the Settlement Agreement are all void *ab initio*. The Parties
24 also agree that this stipulation is in no way an admission that class certification is proper under
25 the standard applied for litigation purposes, and that this stipulation shall not be admissible, and
26 may not be used by any person for any purpose whatsoever, in any legal or administrative
27 proceeding, including but not limited to arbitrations, other than a proceeding to enforce the
28

1 terms of the Agreement, as further set forth in this Agreement. Postmates expressly reserves the
2 right to oppose certification of any purported class should the settlement fail to become final
3 and effective.

4 3.3 The Settlement is not intended to and may not be deemed to affect the
5 enforceability of any arbitration agreement between Postmates and any member of the
6 Settlement Class, including Plaintiffs.

7 3.4 Settlement Class Counsel and Plaintiffs agree to cooperate in good faith and to
8 use their best efforts to seek a stay in the Lee Action and to keep the Albert Action stayed
9 pending Final Approval of the Settlement, and upon Final Approval of the Settlement,
10 Settlement Class Counsel and Plaintiffs agree to dismiss the Lee and Albert Actions with
11 prejudice.

12 3.5 The Parties stipulate to the form of, and agree to submit to the Court for its
13 consideration this Settlement Agreement, and the following Exhibits to this Settlement
14 Agreement: Settlement Class Notice (Exhibit A), [Proposed] Preliminary Approval Order
15 (Exhibit B), and [Proposed] Second Amended Complaint (Exhibit C).

16 3.6 Solely for purposes of implementing this Agreement and effectuating the
17 proposed Settlement, the Parties agree and stipulate that:

18 3.6.1 Plaintiffs' Counsel shall amend the letters sent on behalf of Plaintiffs to
19 the LWDA to add any and all claims alleged in the Rimler, Lee, and Albert actions, and any and
20 all potential claims necessary to effectuate the Released Claims.

21 3.6.2 Plaintiffs shall seek the Court's permission to file the Second Amended
22 Complaint, without material variation from Exhibit C, and Postmates shall consent to such
23 amendment pursuant to Cal. Rule of Court 3.1324. The Second Amended Complaint shall be
24 filed concurrently with the submission of the motion for preliminary approval of the Settlement
25 Agreement so that the Second Amended Complaint may be filed or deemed filed promptly upon
26 entry of the Preliminary Approval Order. Obtaining the Court's approval to file the Second

1 Amended Complaint, the subsequent prompt entry of the Second Amended Complaint, and the
2 dismissal of the Lee and Albert Actions are material conditions of this Settlement Agreement.
3 The Parties agree that the filing of the Second Amended Complaint will streamline the
4 settlement process. The Parties further agree and stipulate that the allegations in the Second
5 Amended Complaint are deemed controverted by the answer previously filed by Postmates in
6 response to the currently operative complaint, such that no further responsive pleading from
7 Postmates is required. If for any reason the Settlement Agreement does not become Final or the
8 Effective Date does not occur, the Second Amended Complaint shall not be operative and shall
9 be deemed withdrawn; the parties agree to submit a stipulated motion to strike the Second
10 Amended Complaint, and agree the Court shall strike the allegations of the Second Amended
11 Complaint, so the operative complaint in the Rimler Action shall revert to the filed complaint
12 that preceded the Second Amended Complaint; the Lee and Albert Actions shall proceed based
13 on the operative complaints as currently filed; and the amended letters sent to the LWDA
14 pursuant to paragraph 3.6.1 shall be void *ab initio*.

15 3.6.3 The Court may enter the Preliminary Approval Order, without material
16 variation from Exhibit B, preliminarily approving the Settlement and this Agreement. Among
17 other things, the Preliminary Approval Order shall grant leave to preliminarily certify the
18 Settlement Class for settlement purposes only; approve the Plaintiffs as class representatives,
19 appoint Settlement Class Counsel to represent the Settlement Class, and appoint the Settlement
20 Administrator; approve the Settlement Class Notice, and the notice plan embodied in the
21 Settlement Agreement, and approve them as consistent with California Code of Civil Procedure
22 § 382 and Rules of Court, Rule 3.769 and due process; set out the requirements for disputing the
23 information upon which Settlement Class Members' share of the Settlement will be calculated,
24 objecting to the Settlement Agreement, excluding Settlement Class Members from the
25 Settlement Class, all as provided in this Settlement Agreement; provide that certification of the
26 Settlement Class and all actions associated with each certification are undertaken on the

1 condition that each certification and other actions shall be automatically vacated and of no force
2 or evidentiary effect if this Agreement is terminated, as provided in this Agreement, or if the
3 Settlement does not become Final; preliminarily enjoin all Settlement Class Members, and their
4 Legally Authorized Representatives and Plaintiffs' Counsel, unless and until they submit a
5 timely request for exclusion pursuant to the Settlement Agreement, from filing or otherwise
6 participating in any existing or initiating any other suit, arbitration, or action in any forum based
7 on the Settlement Class Members' Released Claims, or from attempting to effect an opt-out of a
8 group, class, or subclass of individuals; and schedule the Final Approval Hearing.

9 3.7 Within 10 days of the Preliminary Approval Date, Settlement Class Counsel will
10 notify the LWDA of the Preliminary Approval Order.

11 3.8 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval
12 order and Judgment, to be agreed upon by the Parties, the entry of which is a material condition
13 of this Settlement and that, among other things:

14 3.8.1 Finally approves the Settlement as fair, reasonable, and adequate and
15 directs its consummation pursuant to the terms of the Settlement Agreement;

16 3.8.2 Finds that Settlement Class Counsel and Plaintiffs adequately represented
17 the Settlement Class for the purpose of entering into and implementing the Agreement;

18 3.8.3 Re-confirms the appointment of the Settlement Administrator and finds
19 that the Settlement Administrator has fulfilled its initial duties under the Settlement;

20 3.8.4 Finds that the Settlement Class Notice (i) constituted the best practicable
21 notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise
22 Settlement Class Members of the pendency of the Action, and their right to exclude themselves
23 from or object to the proposed settlement and to appear at the Final Approval Hearing; (iii) was
24 reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive
25 notice; and (iv) met all applicable requirements of California Rule of Court 3.769, due process,
26 and any other applicable rules or law;

1 3.8.5 Approves the Opt-Out List and determines that the Opt-Out List is a
2 complete list of all Settlement Class Members who have timely requested exclusion from the
3 Settlement Class and, accordingly, shall neither share in the Settlement nor be bound by the
4 Final Approval order and Judgment;

5 3.8.6 Directs that the Final Approval order and Judgment of dismissal shall be
6 final and entered forthwith;

7 3.8.7 Without affecting the finality of the Final Approval order and Judgment,
8 retains continuing jurisdiction over the Plaintiffs, the Settlement Class and Postmates as to all
9 matters concerning the administration, consummation, and enforcement of this Settlement
10 Agreement;

11 3.8.8 Adjudges that, as of the Final Approval Date, the Plaintiffs and all
12 Settlement Class Members who have not been excluded from the Settlement Class as provided
13 in the Opt-Out List approved by the Court, and their Legally Authorized Representatives, heirs,
14 estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents,
15 assigns, and successors, and/or anyone claiming through them or acting or purporting to act for
16 them or on their behalf, regardless of whether they have received actual notice of the proposed
17 Settlement, have conclusively compromised, settled, discharged, and released the General
18 Released Claims (in the case of the Plaintiffs), the Authorized Claimants' Released Claims (in
19 the case of the Authorized Claimants), and Settlement Class Members' Released Claims (in the
20 case of the Settlement Class Members) against Postmates and the Released Parties, and are
21 bound by the provisions of this Settlement Agreement;

22 3.8.9 Affirms that, notwithstanding the submission of a timely request for
23 exclusion, Settlement Class Members will still be bound by the settlement and release of the
24 PAGA Claims or remedies under the Judgment pursuant to Arias v. Superior Court (2009) 46
25 Cal. 4th 969, as requests for exclusion do not apply to the PAGA Claims, and further affirms
26 that the State's claims for civil penalties pursuant to PAGA are also extinguished;

1 proceeding (including by seeking to amend a pending complaint to include class allegations, or
2 seeking class certification in a pending action) based on the Settlement Class Members’
3 Released Claims;

4 3.8.12 Determines that the Agreement and the Settlement provided for herein,
5 and any proceedings undertaken pursuant thereto, are not, and should not in any event be
6 offered, received, or construed as evidence of, or a presumption, concession, or admission by,
7 any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation
8 class or collective, or that PAGA representative claims may validly be pursued, or of any
9 misrepresentation or omission in any statement or written document approved or made by any
10 Party; provided, however, that reference may be made to this Agreement and the Settlement
11 provided for herein in such proceedings as may be necessary to effectuate the provisions of this
12 Agreement, as further set forth in this Agreement;

13 3.8.13 Directs Settlement Class Counsel to seek dismissal of the Lee and Albert
14 Actions with prejudice within 14 days of Final Approval;

15 3.8.14 Orders that the preliminary approval of the Settlement, certification of the
16 Settlement Class, and Final Approval of the proposed Settlement, and all actions associated with
17 them, are undertaken on the condition that they shall be vacated and void *ab initio* if the
18 Settlement Agreement is terminated or disapproved in whole or in part by the Court, or any
19 appellate court and/or other court of review in which event the Agreement and the fact that it
20 was entered into shall not be offered, received, or construed as an admission or as evidence for
21 any purpose, including but not limited to an admission by any Party of liability or non-liability
22 or of any misrepresentation or omission in any statement or written document approved or made
23 by any Party, or of the certifiability of a litigation class or the appropriateness of maintaining a
24 representative action, as further provided in Section XI;

25 3.8.15 Authorizes the Parties, without further approval from the Court, to agree
26 to and adopt such amendments, modifications, and expansions of this Agreement, including all

1 Exhibits hereto, as (i) shall be consistent in all material respects with the Final Approval order
2 and (ii) do not limit the rights of Settlement Class Members; and

3 3.8.16 Contains such other and further provisions consistent with the terms of
4 this Settlement Agreement to which the Parties expressly consent in writing.

5 3.9 At the Final Approval Hearing and as a part of the final approval of this
6 Settlement, Settlement Class Counsel will also request approval of the Plan of Allocation set
7 forth in Section V. Any modification to the Plan of Allocation by the Court shall not (i) affect
8 the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
9 terminate the Settlement Agreement, or (iii) impose any obligation on Postmates to increase the
10 consideration paid in connection with the Settlement.

11 3.10 At the Final Approval Hearing, Settlement Class Counsel may also request entry
12 of an Order approving the Settlement Class Counsel Award and for the Service Awards to the
13 Plaintiffs. Any such Settlement Class Counsel Award or Service Award shall be paid
14 exclusively from the Total Settlement Payment. In no event shall any Released Party otherwise
15 be obligated to pay for any attorneys' fees and expenses or Service Awards. The disposition of
16 Settlement Class Counsel's application for a Settlement Class Counsel Award, and for Service
17 Awards, is within the sound discretion of the Court and is not a material term of this Settlement
18 Agreement, and it is not a condition of this Settlement Agreement that such application be
19 granted. Any disapproval or modification of such application by the Court shall not (i) affect
20 the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
21 terminate the Settlement Agreement, or (iii) increase the consideration any Released Party pays
22 in connection with the Settlement.

23 3.11 In no event shall any Released Party be obligated to pay settlement
24 administration expenses beyond those provided for in this Agreement.

25 3.12 Within 10 days after entry of Judgment, Settlement Class Counsel will provide a
26 copy of the Judgment to the LWDA.

1 4.5 If no timely objection to the Settlement is made, the payment of the Settlement
2 Class Counsel Award, the Service Awards, the Settlement Administrator Expenses, the
3 Individual Settlement Payments, and the PAGA Payment shall be made by the Settlement
4 Administrator from the Total Settlement Amount within thirty (30) days after the Effective Date.
5 The Parties agree to a six month grace period to come to agreement regarding terms applicable
6 in the event any appeal of the Settlement is filed.

7 4.6 The Settlement Administrator shall pay the Settlement Class Counsel Award by
8 check, payable to “Lichten & Liss-Riordan, P.C.” Settlement Class Counsel shall provide the
9 Settlement Administrator notice of receipt of the Settlement Class Counsel Award.

10 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

11 5.1 Within fourteen (14) calendar days following the Effective Date, Postmates shall
12 provide the Total Settlement Amount (\$11,500,000) to the Settlement Administrator. The
13 Settlement Administrator shall thereafter distribute the funds in the manner and at the times set
14 forth in this Agreement.

15 5.2 To receive an Individual Settlement Payment from the Total Settlement Amount,
16 a Settlement Class Member or his or her Legally Authorized Representative must timely submit
17 a Claim Form that satisfies the requirements of paragraph 5.3, must not have submitted a
18 request for exclusion, and must be eligible for a payment under the Plan of Allocation.

19 5.3 A Claim Form is timely if it is postmarked by the Bar Date and mailed to the
20 Settlement Administrator at the address in the Settlement Class Notice, or if it is submitted
21 online to the Settlement Administrator, in accordance with the online submission instructions to
22 be provided by the Settlement Administrator, by the Bar Date. The Claim Form must be signed
23 (electronically, if submitted online) under penalty of perjury. To be valid, a Claim Form must
24 be signed without any deletion or amendment to its language regarding the release of FLSA
25 claims and without any deletion or amendment to any other portion.

1 5.4 Settlement Class Members who timely submit a Claim Form will receive their
2 proportionate share of the Total Settlement Amount. No Class Member will receive less than
3 \$10.

4 5.5 Settlement Class Members are not eligible to receive any compensation other
5 than the Individual Settlement Payment.

6 5.6 The Settlement Administrator shall calculate and distribute the Individual
7 Settlement Payments for the Settlement Class Members within thirty (30) days following the
8 Effective Date, provided Postmates has provided the Total Settlement Amount to the Settlement
9 Administrator in accordance with Paragraph 5.1.

10 5.7 Individual Settlement Payments shall be tied to the following distribution
11 formula:

12 Settlement class members will be awarded points proportional to the estimated
13 number of miles driven while using the Postmates application as a courier, with
14 one point for every estimated mile driven. Settlement class members who either
15 opt out of arbitration, initiate arbitration, or demonstrate in writing an interest in
16 initiating an arbitration demand against Postmates prior to October 17, 2019 will
17 have their points doubled for purposes of this distribution formula (to account for,
18 from plaintiffs' perspective, these drivers' greater likelihood of having their
19 claims pursued, in light of Postmates' arbitration clauses).

20 Postmates will produce Settlement Class Information needed for the allocation to be calculated.

21 The Total Settlement Amount is non-reversionary.

22 5.8 Following distribution of the Individual Settlement Payments to Settlement Class
23 Members, any Settlement Class Members who received checks for more than \$100 that remain
24 uncashed more than 60 days after distribution will receive a reminder to cash their check. All
25 funds not claimed prior to the Void Date (i.e. all funds from uncashed checks and any remaining
26 funds in the Dispute Resolution Fund) shall be redistributed to the Settlement Class Members
27 who received and cashed their Individual Settlement Payments (as well as to Settlement Class
28 Members who submitted late claims by that date, to the extent that settlement funds remain
available to pay these late claimants). These unclaimed funds shall be redistributed pursuant to
the same formula described in Paragraph 5.7. These residual funds will only be distributed to

1 Settlement Class Members for whom this second payment would be at least \$50. The value of
2 any uncashed checks following this residual distribution will be donated on a *cy pres* basis to
3 Legal Aid at Work.

4 5.9 The Individual Settlement Payments received shall be reported by the Settlement
5 Administrator to the applicable governmental authorities on IRS Form 1099s (if required). The
6 portions allocated to Service Awards shall likewise be reported on IRS Form 1099s by the
7 Settlement Administrator. The Settlement Administrator shall be responsible for issuing copies
8 of IRS Form 1099s for the Plaintiffs and Settlement Class Members.

9 **VI. NOTICE PROCEDURES**

10 6.1 No more than fourteen (14) calendar days after entry of the Preliminary
11 Approval Order, Postmates shall provide the Settlement Administrator with the Settlement
12 Class Information for purposes of sending the Settlement Class Notice to Settlement Class
13 Members.

14 6.2 No more than thirty (30) calendar days after entry of the Preliminary Approval
15 Order (on the Mailed Notice Date), the Settlement Administrator shall send the Settlement Class
16 Notice to the Settlement Class Members, via electronic mail.

17 6.3 The Settlement Class Notice will inform Settlement Class Members of their right
18 to request exclusion from the Settlement, of their right to object to the Settlement, and of their
19 right to dispute the information upon which their share of the Settlement will be calculated and
20 the claims to be released.

21 6.4 The Settlement Class Notice shall include an explanation for how the Estimated
22 Miles will be used to calculate the Individual Settlement Payments. The Settlement
23 Administrator's determination of the amount of any Settlement Class Member's Estimated
24 Miles shall be binding upon the Settlement Class Member, and the Parties. There will be a
25 presumption that Postmates' records are correct, absent evidence produced by a Settlement
26 Class Member to the contrary.

1 6.5 If any Settlement Class Notice sent via electronic mail to any Settlement Class
2 Member is undeliverable, the Settlement Administrator shall mail the Settlement Class Notice to
3 each Settlement Class Member whose Settlement Class Notice was undeliverable. Before
4 mailing, the Settlement Administrator shall make a good-faith attempt to obtain the most-
5 current names and postal mail addresses for all Settlement Class Members to receive such postal
6 mail, including cross- checking the names and/or postal mail addresses it received from
7 Postmates, as well as any other sources, with appropriate databases (e.g., the National Change
8 of Address Database) and performing further reasonable searches (e.g., through Lexis/Nexis)
9 for more-current names and/or postal mail addresses for Settlement Class Member. All
10 Settlement Class Members' names and postal mail addresses obtained through these sources
11 shall be protected as confidential and not used for purposes other than the notice and
12 administration of this Settlement. The Settlement Administrator shall exercise its best judgment
13 to determine the current mailing address for each Settlement Class Member. The address
14 determined by the Settlement Administrator as the current mailing address shall be presumed to
15 be the best mailing address for each Settlement Class Member.

16 6.6 If any Settlement Class Notice to a Settlement Class Member is returned to the
17 Settlement Administrator with a forwarding address, the Settlement Administrator shall forward
18 the postal mailing to that address. For any remaining returned postal mailings, the Settlement
19 Administrator shall make a good-faith search of an appropriate database (as described in the
20 preceding paragraph), and postal mailings shall be forwarded to any new postal mail address
21 obtained through such a search. In the event that any Settlement Class Notice is returned as
22 undeliverable a second time, no further postal mailing shall be required. The Settlement
23 Administrator shall maintain a log detailing the instances Settlement Class Notices are returned
24 as undeliverable.

25 6.7 At least two reminders will be sent to Settlement Class Members following the
26 initial Settlement Class Notice, and the parties will agree to any further reminders that may be
27

1 reasonably necessary to assure adequate opportunity for class members to participate in the
2 settlement.

3 6.8 The Parties agree that the procedures set forth in this Section constitute
4 reasonable and the best practicable notice under the circumstances and an appropriate and
5 sufficient effort to locate current addresses for Settlement Class Members such that no
6 additional efforts to do so shall be required.

7 6.9 The Settlement Administrator will provide Settlement Class Notice by, at a
8 minimum, (i) electronic mail notice without material variation from the form attached as the
9 relevant portion of Exhibit A; (ii) if necessary in accordance with Paragraph 6.7, first-class mail
10 (where available) notice without material variation from the relevant portion of Exhibit A; and
11 (iii) a content-neutral settlement website accessible to Settlement Class Members managed by
12 the Settlement Administrator, and approved by counsel for the Parties, which will contain
13 further information about the Settlement, including relevant pleadings. The Settlement Class
14 Notice shall comply with California Rule of Court 3.769 and due process.

15 6.10 Prior to the Final Approval Hearing, the Settlement Administrator shall prepare a
16 declaration of due diligence and proof of dissemination with regard to the mailing of the
17 Settlement Class Notice, and any attempts by the Settlement Administrator to locate Settlement
18 Class Members, its receipt of valid Claim Forms (and copies of same), and its inability to
19 deliver the Settlement Class Notice to Settlement Class Members due to invalid addresses (“Due
20 Diligence Declaration”), to Settlement Class Counsel and counsel for Postmates for presentation
21 to the Court. Settlement Class Counsel shall be responsible for filing the Due Diligence
22 Declaration with the Court.

23 6.11 If any individual whose name does not appear in the Settlement Class
24 Information, believes that he or she is a Settlement Class Member, he or she shall have the
25 opportunity to dispute his or her exclusion from the Settlement Class. If an individual believes
26 he or she is a Settlement Class Member, he or she must notify the Settlement Administrator
27

1 within a reasonable amount of time after the distribution of the Settlement Class Notice. The
2 Parties will meet and confer regarding any such individuals in an attempt to reach an agreement
3 as to whether any such individual should be regarded as a Settlement Class Member. If the
4 Parties so agree, such an individual will have all of the same rights as any other Settlement
5 Class Member under this Agreement. In the event that the Parties agree that the individual is a
6 Settlement Class Member, the Individual Settlement Payment to such individual shall be
7 disbursed from the Dispute Resolution Fund, as long as sufficient money is left in the Dispute
8 Resolution Fund. Under no circumstances will any action under this paragraph increase the
9 Total Settlement Amount.

10 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

11 7.1 Settlement Class Members (with the exception of the Plaintiffs) may opt out of
12 the Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement Class
13 must submit timely, written requests for exclusion. To be effective, such a request must include
14 the Settlement Class Member’s name, address, and telephone number; a clear and unequivocal
15 statement that the Settlement Class Member wishes to be excluded from the Settlement Class;
16 and the signature of the Settlement Class Member or the Legally Authorized Representative
17 (who is not the Settlement Class Member’s counsel) of the Settlement Class Member. The
18 request must be mailed or emailed to the Settlement Administrator at the address provided in the
19 Settlement Class Notice and must be postmarked or emailed no later than the
20 Exclusion/Objection Deadline. The date of the postmark shall be the exclusive means used to
21 determine whether a request for exclusion has been timely submitted. Requests for exclusion
22 must be exercised individually by the Settlement Class Member, not as or on behalf of a group,
23 class, or subclass, except that such individual exclusion requests may be submitted by the
24 Settlement Class Member’s Legally Authorized Representative who is not the Settlement Class
25 Member’s counsel. All requests for exclusion must be submitted by the requesting Settlement
26

1 Class Member (or their Legally Authorized Representative who is not the Settlement Class
2 Member's counsel), even if the Settlement Class Member is represented by counsel.

3 7.2 The Settlement Administrator shall promptly log each request for exclusion that
4 it receives and provide copies of the log and all such requests for exclusion to Settlement Class
5 Counsel and counsel for Postmates upon request. The Settlement Administrator shall
6 automatically notify Settlement Class Counsel and counsel for Postmates if and when the
7 number of timely-submitted requests for exclusion reaches 250.

8 7.3 The Settlement Administrator shall prepare a list of all persons who timely and
9 properly requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the
10 Final Approval Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

11 7.4 All Settlement Class Members who are not included in the Opt-Out List
12 approved by the Court shall be bound by this Settlement Agreement, and all their claims shall
13 be dismissed with prejudice and released as provided for herein, even if they never received
14 actual notice of the Action or this proposed Settlement.

15 7.5 The Settlement Administrator, in its sole discretion, shall determine whether a
16 request for exclusion was timely and properly submitted. The Settlement Administrator's
17 decision shall be final, binding, and nonappealable.

18 7.6 The Plaintiffs agree not to request exclusion from the Settlement Class.

19 7.7 Settlement Class Members may request exclusion from the Settlement. Any
20 such Settlement Class Member may also object to the PAGA portion of the Settlement.

21 7.8 Notwithstanding the submission of a timely request for exclusion, Settlement
22 Class Members will still be bound by the settlement and release of the PAGA Claims or
23 remedies under the Judgment pursuant to Arias v. Superior Court (2009) 46 Cal. 4th 969.
24 Requests for exclusion do not apply to the PAGA Claims, and will not be effective to preclude
25 the release of the PAGA Claims.

1 7.9 Settlement Class Members may object to or opt out of the Settlement, but may
2 not do both. Any Settlement Class Member who submits a timely request for exclusion may not
3 file an objection to the Settlement, submit a Claim, or receive a Settlement Payment, and shall
4 be deemed to have waived any rights or benefits under the Settlement Agreement.

5 7.10 No later than ten (10) business days after the Exclusion/Objection Deadline, the
6 Settlement Administrator shall provide to Settlement Class Counsel and counsel for Postmates
7 the Opt-Out List together with copies of the exclusion requests. Notwithstanding any other
8 provision of this Settlement Agreement, if more than two hundred fifty (250) Settlement Class
9 Members exercise their right to opt out of the Settlement, Postmates at its sole and absolute
10 discretion may rescind and revoke the Settlement Agreement by sending written notice that it
11 revokes the Settlement pursuant to this Paragraph to Settlement Class Counsel within fourteen
12 (14) business days following receipt of the Opt-Out List.

13 **VIII. PROCEDURES FOR OBJECTIONS**

14 8.1 Any Settlement Class Member who wishes to object to the fairness,
15 reasonableness, or adequacy of this Agreement or the proposed Settlement must provide to the
16 Settlement Administrator (who shall forward it to Settlement Class Counsel and counsel for
17 Postmates), and file with the Court, a timely statement of the objection.

18 8.2 All written objections and supporting papers must (a) clearly identify the case
19 name and number, (b) be submitted to the Court either by mailing them to the Civil Clerk,
20 Superior Court of California, San Francisco County, 400 McAllister St., Room 103, San
21 Francisco, CA 94102, or by filing them in person at the same address, and (c) be filed or
22 postmarked no later than the Exclusion/Objection Deadline. The filing date or the date of the
23 postmark on the return-mailing envelope shall be the exclusive means used to determine
24 whether the written objection has been timely submitted.

25 8.3 The objection must contain at least the following: (i) the objector's full name,
26 address, telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the

1 specific legal and factual basis for each objection argument; and (iv) a statement whether the
2 objecting person or entity intends to appear at the Final Approval Hearing, either in person or
3 through counsel and, if through counsel, a statement identifying that counsel by name, bar
4 number, address, and telephone number. All objections shall be signed by the objecting
5 Settlement Class Member (or his Legally Authorized Representative), even if the Settlement
6 Class Member is represented by counsel.

7 8.4 Any Settlement Class Member (and/or his/her attorney), or any attorney working
8 for a governmental entity or other third party, who wishes to appear in the Action to object to
9 the Settlement or who is representing or assisting a Settlement Class Member in connection
10 with any objection to the Settlement (including, but not limited to, by drafting or preparing
11 papers for an objection on behalf of a Settlement Class Member) must provide to the Settlement
12 Administrator (who shall forward it to Settlement Class Counsel and counsel for Postmates) and
13 file with the Clerk of the Court a notice of appearance no later than the Exclusion/Objection
14 Deadline.

15 8.5 The right to object to the proposed Settlement must be exercised individually by
16 a Settlement Class Member. Attempted collective, group, class, or subclass objections shall be
17 ineffective and disregarded. Individual objections may be submitted by a Settlement Class
18 Member's Legally Authorized Representative (who is not the Settlement Class member's
19 counsel).

20 8.6 Settlement Class Members who object to the proposed Settlement shall remain
21 Settlement Class Members, and shall be deemed to have voluntarily waived their right to
22 exclude themselves from the Settlement Class or pursue an independent remedy against
23 Postmates and the Released Parties. To the extent any Settlement Class Member objects to the
24 proposed Settlement Agreement, and such objection is overruled in whole or in part, such
25 Settlement Class Member will be forever bound by the Final Approval order and Judgment.

1 8.7 It shall be Settlement Class Counsel's sole responsibility to respond to any
2 objections made with respect to any application for the Settlement Class Counsel Award and
3 Service Awards.

4 **IX. RELEASES**

5 9.1 The Released Claims against each and all of the Released Parties shall be
6 released and dismissed with prejudice and on the merits (without an award of costs to any party
7 other than as provided in this Agreement) upon entry of the Final Approval order and Judgment.

8 9.2 As of the Final Approval Date, the Plaintiffs and all Settlement Class Members
9 who have not been excluded from the Settlement Class as provided in the Opt-Out List,
10 individually and on behalf of their Legally Authorized Representatives, heirs, estates, trustees,
11 executors, administrators, representatives, agents, successors, and assigns, and anyone claiming
12 through them or acting or purporting to act on their behalf, agree to forever release, discharge,
13 hold harmless, and covenant not to sue each and all of the Released Parties from each and all of
14 the Plaintiffs' General Released Claims (in the case of the Plaintiffs), the Authorized Claimants'
15 Released Claims (in the case of the Authorized Claimants), and the Settlement Class Members'
16 Released Claims (in the case of the Settlement Class Members), and by operation of the
17 Judgment becoming Final shall have fully and finally released, relinquished, and discharged all
18 such claims against each and all of the Released Parties; and they further agree that they shall
19 not now or hereafter initiate, maintain, or assert any of the General Released Claims (in the case
20 of the Plaintiffs), the Authorized Claimants' Released Claims (in the case of the Authorized
21 Claimants), or the Settlement Class Members' Released Claims (in the case of the Settlement
22 Class Members), against the Released Parties in any other court action or before any
23 administrative body, tribunal, arbitration panel, or other adjudicating body. Without in any way
24 limiting the scope of the releases described in Paragraphs 2.16, 2.29, and 2.41, or in the
25 remainder of this Section, this release covers, without limitation, any and all claims for
26 attorneys' fees, costs, or disbursements incurred by Settlement Class Counsel, or by the

1 Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any
2 manner to the Action, the Settlement of the Action, and/or the Released Claims, except to the
3 extent otherwise specified in this Agreement.

4 9.3 As of the Final Approval Date, the Plaintiffs and all Settlement Class Members
5 who have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be
6 permanently barred and enjoined from initiating, asserting, or prosecuting against the Released
7 Parties in any federal or state court or tribunal any and all General Released Claims (in the case
8 of the Plaintiffs), Authorized Claimants' Released Claims (in the case of the Authorized
9 Claimants), and Settlement Class Members' Released Claims (in the case of the Settlement
10 Class Members), as further provided in Paragraph 3.8.11.

11 9.4 The Plaintiffs and the Settlement Class Members expressly acknowledge that
12 they are familiar with principles of law such as Section 1542 of the California Civil Code,
13 which provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
15 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
16 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
17 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
18 THE DEBTOR.

19 With respect to the Settlement Class Released Claims, as described in Paragraph 2.41, each
20 Settlement Class Member who has not been excluded from the Settlement Class as provided in
21 the Opt-Out List shall be deemed to have expressly, knowingly, and voluntarily waived and
22 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he or she
23 may otherwise have had pursuant to Section 1542 of the California Civil Code and all similar
24 federal, state, and local laws, rights, rules, and legal principles of any other jurisdiction that may
25 be applicable herein. In connection with the release, the Settlement Class Members
26 acknowledge that they are aware that they may hereafter discover claims presently unknown

1 and unsuspected or facts in addition to or different from those which they now know or believe
2 to be true with respect to matters released herein. Nevertheless, the Settlement Class Members
3 acknowledge that a portion of the consideration received herein is for a release with respect to
4 unknown damages and complaints, whether resulting from known injuries and consequences or
5 from unknown injuries or unknown consequences of known or unknown injuries, and state that
6 it is the intention of the Settlement Class Members in agreeing to this release fully, finally, and
7 forever to settle and release all matters and all claims that exist, hereafter may exist, or might
8 have existed (whether or not previously or currently asserted in any action), constituting the
9 Settlement Class Members' Released Claims.

10 9.5 With respect to the General Released Claims, as described in Paragraph 2.16,
11 each Plaintiff shall be deemed to have expressly, knowingly, and voluntarily waived and
12 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he or she
13 may otherwise have had pursuant to Section 1542 of the California Civil Code and all similar
14 federal, state, and local laws, rights, rules, and legal principles of any other jurisdiction that may
15 be applicable herein. In connection with the release, Plaintiffs acknowledge that they are aware
16 that they may hereafter discover claims presently unknown and unsuspected or facts in addition
17 to or different from those which they now know or believe to be true with respect to matters
18 released herein. Nevertheless, Plaintiffs acknowledge that a portion of the consideration
19 received herein is for a release with respect to unknown damages and complaints, whether
20 resulting from known injuries and consequences or from unknown injuries or unknown
21 consequences of known or unknown injuries, and state that it is the intention of Plaintiffs in
22 agreeing to this release fully, finally, and forever to settle and release all matters and all claims
23 that exist, hereafter may exist, or might have existed (whether or not previously or currently
24 asserted in any action), constituting the General Released Claims.

25 9.6 Each Plaintiff further acknowledges, agrees, and understands that: (i) he or she
26 has read and understands the terms of this Agreement; (ii) he or she has been advised in writing

1 to consult with an attorney before executing this Agreement; (iii) he or she has obtained and
2 considered such legal counsel as he or she deems necessary; (iv) he or she has been given
3 twenty-one (21) days to consider whether or not to enter into this Agreement (although he or
4 she may elect not to use the full 21 day period at his option).

5 9.7 Subject to Court approval, the Plaintiffs and all Settlement Class Members who
6 have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be
7 bound by this Settlement Agreement, and all of the Released Claims shall be dismissed with
8 prejudice and released, even if they never received actual notice of the Action or this Settlement

9 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

10 10.1 The Settlement Administrator or its authorized agents in consultation with the
11 Parties and subject to the supervision, direction, and approval of the Court, shall calculate the
12 allocation of and oversee the distribution of the Total Settlement Amount.

13 10.2 The Total Settlement Amount shall be applied as follows:

14 10.2.1 To pay the costs and expenses incurred in connection with providing
15 Settlement Class Notice to potential Settlement Class Members, locating Settlement Class
16 Members' last-known postal mail addresses and processing any objections, requests for
17 exclusion or challenges to calculations of Estimated Miles;

18 10.2.2 After the Effective Date as provided in Paragraph 2.10, and subject to the
19 approval and further order(s) of the Court, to pay Plaintiffs Service Awards based on
20 contributions and time expended assisting in the litigation, up to the amounts described in
21 Paragraph 2.29.

22 10.2.3 After the Effective Date as provided in Paragraph 2.10, and subject to the
23 approval and further order(s) of the Court, to pay the Settlement Class Counsel Award as
24 ordered by the Court;

1 10.2.4 After the Effective Date as provided in Paragraph 2.10, and subject to the
2 approval and further order(s) of the Court, to distribute 75% of the PAGA Payment to the
3 LWDA;

4 10.2.5 After the Effective Date as provided in Paragraph 2.10, and subject to the
5 approval and further order(s) of the Court, to distribute the Individual Settlement Payments
6 from the Total Settlement Amount for the benefit of the Settlement Class pursuant to the Plan of
7 Allocation, or as otherwise ordered by the Court.

8 10.3 If any portion of the Total Settlement Amount is not successfully redistributed to
9 Settlement Class Members after the initial Void Date (i.e. checks are not cashed or checks are
10 returned as undeliverable after the second distribution), then after the Void Date for
11 redistributed checks, the Settlement Administrator shall void the check and shall direct such
12 unclaimed funds to be paid to Legal Aid at Work. Such unclaimed funds may also be used to
13 resolve disputes regarding the distribution of settlement funds.

14 10.4 Settlement Class Members who are not on the Opt-Out List approved by the
15 Court, shall be subject to and bound by the provisions of the Settlement Agreement, the releases
16 contained herein, and the Judgment with respect to all Settlement Class Members' Released
17 Claims, regardless of whether they obtain any distribution from the Total Settlement Amount.

18 10.5 Payment from the Total Settlement Amount shall be deemed conclusive of
19 compliance with this Settlement Agreement as to all Settlement Class Members.

20 10.6 No Settlement Class Member shall have any claim against the Plaintiffs,
21 Settlement Class Counsel, or the Settlement Administrator based on distributions made
22 substantially in accordance with this Settlement Agreement and/or orders of the Court. No
23 Settlement Class Member shall have any claim against Postmates or its counsel relating to
24 distributions made under this Settlement.

25 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**
26 **OF SETTLEMENT AGREEMENT**

1 11.1 If the Court does not approve the Settlement as set forth in this Settlement
2 Agreement, or if the Court enters the Judgment and appellate review is sought, and on such
3 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
4 Approval order does not otherwise become Final, then this Settlement Agreement shall be
5 cancelled, terminated, and void *ab initio*, unless all Parties, in their sole discretion within thirty
6 (30) days from the date such ruling becomes final, provide written notice to all other Parties
7 hereto of their intent to proceed with the Settlement under the terms of the Judgment as it may
8 be modified by the Court or any appellate court.

9 11.2 Postmates shall have the right to withdraw from the Settlement if the number of
10 Settlement Class Members who attempt to exclude themselves from the Settlement Class equals
11 or exceeds 250. If Postmates chooses, pursuant to its sole and absolute discretion, to exercise
12 this right, it must do so within fourteen (14) days of receipt of the Opt-Out List as provided in
13 Paragraphs 7.2 & 7.9, by providing written notice to Settlement Class Counsel.

14 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is
15 materially modified by the Court or on appeal, (ii) the Judgment does not become Final, or
16 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective for any
17 reason, then: (a) the Parties stipulate and agree that the Settlement, this Agreement, the
18 Settlement Class Information, the Opt-Out List, and all documents exchanged and filed in
19 connection with the Settlement shall be treated as inadmissible mediation communications
20 under Cal. Evid. Code §§ 1115 et seq., (b) the Settlement shall be without force and effect upon
21 the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with the
22 exception of this Paragraph, which shall remain effective and enforceable; (c) the Parties shall
23 be deemed to have reverted *nunc pro tunc* to their respective status prior to execution of this
24 Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in
25 connection with the Settlement, including the certification of the Settlement Class, shall be
26 vacated without prejudice to any Party's position on the issue of class certification, the issue of

1 amending the complaint, or any other issue, in this Action or any other action, and the Parties
2 shall be restored to their litigation positions existing on the date of execution of this Agreement;
3 and (e) the Parties shall proceed in all respects as if the Settlement Agreement and related
4 documentation and orders had not been executed, and without prejudice in any way from the
5 negotiation or fact of the Settlement or the terms of the Settlement Agreement. The Settlement
6 Agreement, the Settlement, all documents, orders, and evidence relating to the Settlement, the
7 fact of their existence, any of their terms, any press release or other statement or report by the
8 Parties or by others concerning the Settlement Agreement, the Settlement, their existence, or
9 their terms, and any negotiations, proceedings, acts performed, or documents executed pursuant
10 to or in furtherance of the Settlement Agreement or the Settlement shall not be admissible in
11 any proceeding, and shall not be offered, received, or construed as evidence of a presumption,
12 concession, or an admission of liability, of unenforceability of any arbitration agreement, of the
13 certifiability of a litigation class, or of any misrepresentation or omission in any statement or
14 written document approved or made, or otherwise used by any Person for any purpose
15 whatsoever, in any trial of this Action or any other action or proceedings. Plaintiffs, Settlement
16 Class Counsel and the Settlement Administrator shall return to counsel for Postmates all copies
17 of the Settlement Class Information and Opt-Out Lists and shall not use or disclose the
18 Settlement Class Information or Opt-Out List for any purpose or in any proceeding.

19 11.4 Postmates does not agree or consent to certification of the Settlement Class for
20 any purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement
21 is terminated pursuant to its terms, or the Effective Date for any reason does not occur, all
22 Orders certifying the Settlement Class for purposes of effecting this Settlement Agreement, and
23 all preliminary and/or final findings regarding the Settlement Class shall be void *ab initio* and
24 automatically vacated upon notice to the Court, the Action shall proceed as though the
25 Settlement Class had never been certified pursuant to this Settlement Agreement and such
26 findings had never been made, and the Action shall revert *nunc pro tunc* to the procedural status

1 quo as of the date and time immediately before the execution of the Settlement Agreement, in
2 accordance with this Settlement Agreement.

3 **XII. ADDITIONAL PROVISIONS**

4 12.1 In the event that one or more of the Parties to this Settlement Agreement
5 institutes any legal action, arbitration, or other proceeding against any other party to enforce the
6 provisions of this Settlement Agreement or to declare rights and/or obligations under this
7 Settlement Agreement, the prevailing party shall be entitled to recover from the unsuccessful
8 party reasonable attorneys' fees and costs, including expert witness fees incurred in connection
9 with any enforcement actions.

10 12.2 Unless otherwise specifically provided here, all notices, demands, or other
11 communications given hereunder shall be in writing and shall be deemed to have been duly
12 given as of the third business day after mailing by United States registered or certified mail,
13 return receipt requested, addressed as follows:

14 To Plaintiffs and the Settlement Class:

15 Shannon Liss-Riordan, Esq.
16 Lichten & Liss-Riordan, P.C.
17 729 Boylston Street
Suite 2000
Boston, MA 02116

18 To Defendants:

19 Theane Evangelis, Esq.
20 Gibson, Dunn & Crutcher LLP
21 333 South Grand Avenue
Los Angeles, CA 90071-3197

22 12.3 All of the Exhibits to this Settlement Agreement are an integral part of the
23 Settlement and are incorporated by reference as though fully set forth herein.

24 12.4 The Parties agree that the recitals are contractual in nature and form a material
25 part of this Settlement Agreement.

26 12.5 The Plaintiffs and Settlement Class Counsel acknowledge that an adequate
27 factual record has been established that supports the Settlement and hereby waive any right to

1 conduct further discovery to assess or confirm the Settlement. Notwithstanding the prior
2 sentence, the Parties agree to reasonably cooperate with respect efforts to identify the last-
3 known addresses of Settlement Class Members.

4 12.6 Unless otherwise noted, all references to “days” in this Agreement shall be to
5 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
6 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

7 12.7 This Agreement supersedes all prior negotiations and agreements and may be
8 amended or modified only by a written instrument signed by counsel for all Parties or the
9 Parties’ successors-in-interest.

10 12.8 The Parties reserve the right, subject to the Court’s approval, to agree to any
11 reasonable extensions of time that might be necessary to carry out any of the provisions of this
12 Agreement. Such extensions must be in writing to be enforceable.

13 12.9 The Settlement Agreement, the Settlement, the fact of the Settlement’s existence,
14 any of terms of the Settlement Agreement, any press release or other statement or report by the
15 Parties or by others concerning the Settlement Agreement or the Settlement, and any
16 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance
17 of the Settlement Agreement or the Settlement: (i) may not be deemed to be, may not be used as,
18 and do not constitute an admission or evidence of the validity of any Released Claims or of any
19 wrongdoing or liability of Postmates; (ii) may not be deemed to be, may not be used as, and do
20 not constitute an admission or evidence of any fault, wrongdoing, or omission by Postmates in
21 any trial, civil, criminal, arbitration, or administrative proceeding of the Action or any other
22 action or proceedings in any court, administrative agency, arbitral forum or other tribunal;
23 (iii) may not be used as evidence of any waiver of, unenforceability of, or as a defense to any
24 Postmates arbitration agreement; and (iv) may not be used as evidence in any class certification
25 proceeding.

1 12.10 The Released Parties shall have the right to file the Settlement Agreement, the
2 Final Approval order and Judgment, and any other documents or evidence relating to the
3 Settlement in any action that may be brought against them in order to support a defense or
4 counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith
5 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion
6 or similar defense or counterclaim.

7 12.11 The Parties to the Settlement Agreement agree that the Total Settlement Amount
8 and the other terms of the Settlement were negotiated at arm’s length and in good faith by the
9 Parties, resulted from an arm’s-length mediation session facilitated by Tripper Ortman, and
10 reflect a settlement that was reached voluntarily based upon adequate information and sufficient
11 discovery and after consultation with experienced legal counsel.

12 12.12 The Plaintiffs and Settlement Class Counsel have concluded that the Settlement
13 set forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the
14 Plaintiffs asserted against Postmates, including the claims on behalf of the Settlement Class, and
15 that it promotes the best interests of the Settlement Class.

16 12.13 To the extent permitted by law, all agreements made and orders entered during
17 the course of the Action relating to the confidentiality of information shall survive this
18 Settlement Agreement.

19 12.14 The Parties agree that Plaintiffs and Settlement Class Counsel are not required to
20 return any documents or data produced by Postmates until the final resolution of the Action.
21 Within sixty (60) days following the Effective Date, Settlement Class Counsel shall return to
22 Postmates all documents and data produced in the Action or in connection with the Parties’
23 mediation, or confirm in writing that all such documents have been destroyed.

24 12.15 The waiver by one Party of any breach of this Settlement Agreement by any
25 other Party shall not be deemed a waiver of any other prior or subsequent breach of this
26 Settlement Agreement.

1 arm's-length negotiations. No parol or other evidence may be offered to explain, construe,
2 contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances
3 under which this Settlement Agreement was made or executed.

4 12.22 Except where this Settlement Agreement itself provides otherwise, all terms,
5 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been
6 relied upon by the Parties in entering into this Settlement Agreement.

7 12.23 This Settlement Agreement shall be governed by California law. Any action or
8 dispute based on this Settlement Agreement, including any action or to enforce any of the terms
9 of this Settlement Agreement, shall be commenced and maintained only in the Superior Court of
10 California, San Francisco County, which shall retain jurisdiction over all such actions and
11 disputes.

12 12.24 All Parties to this Settlement Agreement shall be subject to the jurisdiction of the
13 Superior Court of California, San Francisco County for all purposes related to this Settlement
14 Agreement.

15 12.25 The Court shall retain continuing and exclusive jurisdiction over the Parties to
16 this Settlement Agreement for the purpose of the administration and enforcement of this
17 Settlement Agreement.

18 12.26 The headings used in this Settlement Agreement are for the convenience of the
19 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

20 12.27 In construing this Settlement Agreement, the use of the singular includes the
21 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

22 12.28 Each Party to this Settlement Agreement warrants that he, she, or it is acting
23 upon his, her, or its independent judgment and upon the advice of counsel, and not in reliance
24 upon any warranty or representation, express or implied, of any nature or of any kind by any
25 other Party, other than the warranties and representations expressly made in this Settlement
26 Agreement.

1 12.29 Signatory counsel warrant that they are fully authorized to execute this
2 Agreement on behalf of their respective clients listed below. Each Counsel signing this
3 Settlement Agreement on behalf of his/her clients who are unable to sign the Agreement on the
4 date that it is executed by other Parties represents that such counsel is fully authorized to sign
5 this Settlement Agreement on behalf of his/her clients; provided, however, that all Parties who
6 have not executed this Agreement on the date that it is executed by the other Parties shall
7 promptly thereafter execute this Agreement and in any event no later than one (1) week after the
8 Agreement has been executed by counsel.

9 IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys,
10 and intending to be legally bound hereby, have duly executed this Settlement Agreement as of
11 the date set forth below.

12
13 Dated: September 24, 2019

By:



Shannon Liss-Riordan
LICHTEN & LISS-RIORDAN, P.C.

Attorneys for Plaintiffs JACOB RIMLER,
GIOVANNI JONES, DORA LEE,
KELLYN TIMMERMAN, and JOSHUA
ALBERT

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19 Dated: September ____, 2019

By:

Theane Evangelis
Michele L. Maryott
Dhananjay S. Manthripragada
GIBSON, DUNN & CRUTCHER LLP

Attorneys for Defendant
POSTMATES, INC.

1 upon any warranty or representation, express or implied, of any nature or of any kind by any
2 other Party, other than the warranties and representations expressly made in this Settlement
3 Agreement.

4 12.29 Signatory counsel warrant that they are fully authorized to execute this
5 Agreement on behalf of their respective clients listed below. Each Counsel signing this
6 Settlement Agreement on behalf of his/her clients who are unable to sign the Agreement on the
7 date that it is executed by other Parties represents that such counsel is fully authorized to sign
8 this Settlement Agreement on behalf of his/her clients; provided, however, that all Parties who
9 have not executed this Agreement on the date that it is executed by the other Parties shall
10 promptly thereafter execute this Agreement and in any event no later than one (1) week after the
11 Agreement has been executed by counsel.

12 IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys,
13 and intending to be legally bound hereby, have duly executed this Settlement Agreement as of
14 the date set forth below.

15
16 Dated: September __, 2019

By: _____
Shannon Liss-Riordan
LICHTEN & LISS-RIORDAN, P.C.

Attorneys for Plaintiffs JACOB RIMLER,
GIOVANNI JONES, DORA LEE,
KELLYN TIMMERMAN, and JOSHUA
ALBERT

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22 Dated: September 24, 2019

By: Theane Evangelis
Theane Evangelis
Michele L. Maryott
Dhananjay S. Manthripragada
GIBSON, DUNN & CRUTCHER LLP

Attorneys for Defendant
POSTMATES, INC.

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Dated: September __, 2019

By: _____
Robert Rieders
General Counsel
POSTMATES INC.

Dated: September __, 2019

By: _____
Jacob Rimler
NAMED PLAINTIFF

Dated: September __, 2019

By: _____
Giovanni Jones
NAMED PLAINTIFF

Dated: September __, 2019

By: _____
Dora Lee
NAMED PLAINTIFF

Dated: September __, 2019

By: _____
Kellyn Timmerman
NAMED PLAINTIFF

Dated: September __, 2019

By: _____
Joshua Albert
NAMED PLAINTIFF

EXHIBIT A

Please read notice below and CLICK HERE if you want to claim your share of the settlement.

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

**(Rimler, et al. v. Postmates, Inc., San Francisco Superior Court
Case No. CGC-18-567868)**

A proposed class action settlement has been reached in a lawsuit involving certain current and former Postmates couriers in California alleging that couriers should be classified as employees, and that Postmates has violated provisions of California labor law by classifying drivers as independent contractors. Postmates denies these allegations. Under the settlement, Postmates agrees to pay \$11,500,000. The Court in charge of the lawsuit still has to decide whether to approve the settlement. If it does, then Postmates couriers who used the Postmates mobile application as couriers between June 3, 2017, and October 17, 2019, will be eligible for payment as part of the settlement. Postmates' records show you are or were a courier at some point between June 3, 2017, and October 17, 2019, and may be entitled to **receive a payment [LINK TO CLAIM PORTAL]** from the settlement.

YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE READ THIS NOTICE CAREFULLY. YOU ARE NOT BEING SUED. THIS IS NOT A SOLICITATION FROM A LAWYER

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Claim and Receive a Payment	<p>If you are a member of the Settlement Class, you must submit a claim [LINK TO CLAIM PORTAL] to receive a payment. Instructions on submitting a claim are set forth in section 6 below [LINK TO SECTION 6].</p> <p>After the Court approves the settlement, the payment will be mailed to you at the address you include in your claim form. If your address changes, please notify the Claims Administrator as explained below.</p> <p>You cannot make a claim if you exclude yourself from the Settlement Class. As detailed below, being a member of the Settlement Class means that you may make a claim and will release specified claims that you may have against Postmates. This means that you will give up your right to be part of another lawsuit or other legal proceeding, including individual arbitration, against Postmates relating to the claims being resolved in this settlement.</p> <p>Additionally, you will also release Fair Labor Standards Act (“FLSA”) claims that you may have against Postmates if you do not opt out of the Settlement Class. See the explanation below.</p>
Exclude Yourself From the Settlement	<p>If you do not want to receive payment from the settlement, and do not want to be a member of the Settlement Class, you must exclude yourself by sending a letter to the Claims Administrator no later than [DATE].</p> <p>If you request exclusion from the Settlement Class, you will receive no money from the settlement (even if you submit a claim), but you</p>

	<p>will retain your right to sue Postmates for the claims asserted in this lawsuit in a different lawsuit or in individual arbitration. See section 4 below for more information.</p> <p>Instructions to exclude yourself are set forth below.</p>
Object to the Settlement	<p>If you want to object to the settlement, you must file with the Court a statement explaining why you do not like the settlement. You cannot object to ask the Court for a higher payment for yourself personally, although you can object to the payment terms (or any other terms) that apply generally to the settlement class.</p> <p>Directions are provided below.</p>
Do Nothing	<p>If you do nothing, you will remain a member of the Settlement Class, but you will not receive a payment.</p> <p>As detailed below, being a member of the Settlement Class means that you will release specified claims that you may have against Postmates.</p>

1. Why did I get this Notice?

The plaintiffs and the defendant in the *Rimler, et al. v. Postmates, Inc.*, San Francisco Superior Court Case No. CGC-18-567868 case have reached a settlement.

You received this Notice because you have been identified as a Settlement Class member.

The Settlement Class is defined as the following:

Any and all individuals classified by Postmates as independent contractor couriers who entered into an agreement to use or used the Postmates platform as an independent contractor courier to offer delivery services to customers in California between June 3, 2017, and October 17, 2019.

This Notice explains the lawsuit, the settlement of that lawsuit, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the settlement.

2. What is the class action lawsuit about?

On July 5, 2018, Plaintiff Jacob Rimler filed a complaint in the San Francisco County Superior Court, bringing claims on behalf of individuals who used the Postmates app as couriers and the state of California. Giovanni Jones, Dora Lee, Kellyn Timmerman, and Joshua Albert were later added as named plaintiffs, and the case was amended to add class action claims on behalf of couriers who are part of the Settlement Class. This case is entitled *Rimler, et al. v. Postmates Inc.*, Case Number CGC-18-567868.

The lawsuit claims that Postmates violated California law, including by misclassifying couriers as independent contractors, failing to reimburse couriers' necessary business expenses, and failing to pay minimum wages and overtime.

Postmates denies that it violated the law in any way, denies couriers were, or are, employees, and further denies that the lawsuit is appropriate for class treatment for any purpose other than this settlement. Nothing in this Notice, the settlement, or any actions to carry out the terms of the settlement means that Postmates admits any fault, guilt, negligence, wrongdoing, or liability whatsoever.

The Court did not decide in favor of the Plaintiffs (couriers) or the Defendant (Postmates) in the lawsuit. Instead, the parties in the lawsuit agreed to a settlement that they believe is a fair, reasonable, and adequate compromise. The parties reached this agreement after lengthy negotiations and independent consideration of the risks of litigation and benefits of settlement through a formal conference with an experienced mediator. The Plaintiffs and their lawyers have considered the substantial benefits from the Settlement that will be given to the Settlement Class Members and balanced those benefits with the risk that a trial could end in a verdict in Postmates' favor. They also considered the value of the immediate benefit to Settlement Class Members versus the cost and delay of litigation through trial and appeals. Counsel for the Plaintiffs believe that the amount Postmates has agreed to pay is fair, adequate, and reasonable in light of the risks and time required to continue litigating this case.

The Judge overseeing the case has reviewed the settlement. She approved the named plaintiffs to serve as representatives for the Settlement Class defined in section 1, above. She also approved the law firm Lichten & Liss-Riordan, P.C. to serve as class counsel.

3. What are the terms of the settlement?

The full settlement agreement is available at [http://www.\[website\].com](http://www.[website].com). Subject to the Judge's approval, a summary of the terms of the settlement include:

Settlement Amount If the settlement is approved by the Court, Postmates will pay \$11,500,000 to the Settlement Class to settle the lawsuit and obtain a release of the claims discussed below in section 4.

The settlement amount includes:

- Payments to settlement class members
- Attorneys' fees and costs not to exceed \$3,833,333 for class counsel
- Administration expenses estimated at \$450,000
- Payment to the California Labor Workforce Development Agency of \$250,000 for PAGA penalties, of which 75% (\$187,500) will be paid to the State of California and 25% (\$62,500) will be paid to the settlement class members
- Awards not to exceed \$5,000 each to plaintiffs Rimler, Jones, Timmerman, Lee, and Albert.

Calculation of Settlement Class Member Awards To calculate each class member's share of the settlement, the claims administrator will review Postmates' records from June 3, 2017, through October 17, 2019. Settlement class members will be awarded points proportional to the

estimated number of miles driven while using the Postmates application as a courier. Settlement class members will receive one (1) point for every estimated mile driven, which will be doubled to two (2) points for every estimated mile for settlement class members who have opted out of arbitration, initiated arbitration, or demonstrated in writing an interest in initiating an arbitration demand against Postmates by October 17, 2019.

These points do not have a value fixed at a particular dollar amount; that amount will vary depending upon how many settlement class members submit a claim and are receiving payments under this Agreement.

The determination of each class member's estimated miles driven shall be based on the relevant records that Postmates is able to identify.

The Net Settlement Amount will be distributed to settlement class members in proportion to their number of points (but no class member who submits a claim will receive less than \$10). The Net Settlement Amount will be calculated by subtracting from the Settlement Amount the attorney's fees for class counsel, class counsel's litigation costs, settlement administration expenses, the incentive awards to the named plaintiffs, employment taxes, and the amount to be paid to California Labor and Workforce Development Agency.

Settlement Class Members who do not exclude themselves from the Settlement as provided for below will be entitled to receive a payment pursuant to the Settlement only **if a claim is timely submitted and the class member does not opt out of the class.**

If you do not submit a timely claim for payment, you will not receive a payment, but you will remain part of the Settlement Class, and you will release all claims you may have related to the allegations in the case, as described in section 4 below.

If you exclude yourself from the settlement, you will not receive a payment, but you will retain the ability to sue Postmates for the claims asserted in this lawsuit in a different lawsuit or in individual arbitration. See section 4 below for more information.

Tax Matters Nothing in this settlement or this Notice is intended to constitute tax advice. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the settlement.

Conditions of Settlement The payment of settlement class member awards is conditioned upon the Court entering an order at or following a final approval hearing on the settlement, and the settlement becoming final.

4. What do I release by participating in this settlement?

If you participate in this settlement, you will release, relinquish, and discharge, with prejudice, Postmates and the Released Parties from all the "Settlement Class Members' Released Claims."

Settlement Class Members can participate in the settlement by doing nothing, by submitting a claim, or by remaining in the class and objecting to the settlement.

The Settlement Class Members' Released Claims being released in this Settlement are defined as follows:

Any and all present and past claims, actions, demands, causes of action, suits, debts, guarantees, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, contingent or accrued, expected or unexpected, pursuant to any theory of recovery (including but not limited to those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs, or disbursements) that are based on reasonably related to the claims alleged in or that could have been alleged in the *Rimler* Second Amended Complaint, including any allegations in *Lee*, *Albert*, and/or *Rimler* preceding said amended complaint, and all misclassification claims, and specifically including: claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*; California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.5, 450, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804; the Private Attorneys General Act ("PAGA"), California Labor Code section 2698 *et seq.*; California Code of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code sections 17200 *et seq.*; and any other similar state, federal, local, or common law, statute, regulation, or ordinance for unpaid wages, minimum wages, regular wages, tips, overtime wages (including but not limited to calculation of the correct overtime or regular rate), working more than six days in seven, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers' compensation insurance, meal periods, rest breaks, sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time penalties, PAGA penalties, unfair business practices, all claims arising out of or relating to the statutory causes of action described herein, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest at any time between June 3, 2017 and October 17, 2019.

The Settlement Class Members' Released Claims as defined above include a release of claims for any type of relief that can be released as a matter of law, including without limitation any claims for compensatory, consequential, punitive or exemplary damages, statutory damages, liquidated damages, punitive damages, restitution, disgorgement, injunctive relief, declaratory relief, equitable relief, an accounting, penalties (including waiting time penalties pursuant to Labor Code section 203, wage statement penalties pursuant to Labor Code section 226, and civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code sections 558 and 2698, *et seq.*) ("PAGA"), interest, attorneys' fees, costs or disbursements.

The Settlement Class Members' Released Claims also include, but are not limited to, any and all claims for attorneys' fees, costs or disbursements incurred by class counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or by the Named Plaintiffs or

Settlement Class Members or any of them, in connection with or related in any manner to the Litigation, the Settlement of the Action, the administration of such Settlement and/or the Released Claims, except to the extent otherwise specified in this Agreement.

All Class Members who do not timely and formally opt out of the settlement by requesting exclusion as described below shall be bound by this release for all claims. For Fair Labor Standards Act (“FLSA”) claims, all Settlement Class Members (other than Named Plaintiffs) who submit a claim shall be bound by the release of the FLSA claims. The Named Plaintiffs have agreed in advance to release their FLSA claims, in addition to other claims.

With respect to all Settlement Class Members (other than Named Plaintiffs), Settlement Class Members do not release other claims that are not within the definition of Settlement Class Members’ Released Claims, including claims for retaliation, wrongful termination, unemployment, disability, worker’s compensation, claims outside of the Class Period, and claims that cannot be released as a matter of law.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit or legal proceeding in any forum against Postmates and the Releasees about the legal issues resolved by this Settlement. It also means that all of the Court’s orders in this litigation will apply to you and legally bind you.

If you wish to obtain additional information about this settlement or your rights to object to, or exclude yourself from, this lawsuit, you may also contact the class counsel at [www.\[website\].com](http://www.[website].com) or any other lawyer.

5. How much will my payment be?

The exact amount that each Settlement Class Member will receive cannot be calculated until (1) the Court approves the Settlement; (2) amounts are deducted from the Net Settlement Fund for the costs of providing notice to the Settlement Class, administering the settlement, paying lawyers’ fees and expenses, and making enhancement payments approved by the Court; and (3) the Settlement Administrator determines the number of Settlement Class members who excluded themselves, submitted valid claims, and after payments are made, successfully received their payment.

Approximately 30 days after the settlement becomes final, initial settlement shares will be distributed.

6. How can I get a payment?

To receive a payment under this settlement, **you must submit a claim by [redacted].**

Your Claimant ID is [#####] and your Control Number is [#####].

Claims can be submitted online by navigating to the web page at [link to claim form] and

following the instructions, or by filling out the enclosed claim form and submitting it to the Claims Administrator, at the following address, by mail or e-mail:

[Claims Administrator's Claim Form Mailing Address]

[Claims Administrator's Claim Form Email Address]

If you do not submit a claim by [REDACTED], you will not receive payment under the settlement.

IMPORTANT:

You must notify the Claims Administrator of any change of address to ensure receipt of your settlement payment.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. The claims administrator shall direct any unclaimed funds to Legal Aid at Work. If your check is lost or misplaced, you should contact the claims administrator immediately to request a replacement.

If you opt out of the settlement and also submit a claim for payment, you will not receive payment under the settlement, and will be treated as an opt-out as described in section 7 below.

The Court will hold a hearing on [REDACTED], 2019, to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a couple months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of this settlement?

If you do not wish to participate in this settlement, you must exclude yourself from the settlement or "opt out." If you opt out, you will receive no money from the settlement, and you will not be bound by its terms. To opt out, you must submit a written request to the Claims Administrator.

The address to send opt-out requests to the Claims Administrator is:

[Mailing address for opt-out requests.]

Your request for exclusion must contain: (1) a clear statement that you wish to be excluded from the settlement in the Rimler v. Postmates class action; (2) your name (and former names, if any), address, and telephone number; and (3) your signature (or the signature of your legally-authorized representative, who is not your lawyer). Your request for exclusion must be postmarked no later than [REDACTED], [REDACTED]. Written requests for exclusion that are postmarked after this date, or are unsigned by an individual class member, will be rejected, and those class members will remain bound by the settlement and the releases described above.

8. How do I tell the Court that I don't like the settlement?

Any class member who has not opted out and believes that the settlement should not be finally approved by the court for any reason may object to the proposed settlement. All objections must be in writing and contain at least the following: (1) the case name and number, which is *Rimler v. Postmates, Inc.*, in the Superior Court of the State of California, in and for the County of San Francisco, Case No. CGC-18-567868; (2) your name, current address, telephone number, and dates of service with Postmates; (3) a description of why you believe the settlement is unfair; (4) a statement whether you intend to appear at the final approval hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number.

The objections must be sent to the Claims Administrator and Court on or before _____, 2019. Objections may be submitted to the Court either by mailing them to the Civil Clerk, Superior Court of California, San Francisco County, 400 McAllister St., Room 103, San Francisco, CA 94102, or by filing them in person at the same address.

To object to the settlement, you must not opt out of the settlement, and if the court approves the settlement, you will be bound by the terms of the settlement in the same way as settlement class members who do not object. Any class member who does not object in the manner provided in this notice shall have waived any objection to the settlement, whether by appeal or otherwise.

The address for the Claims Administrator is

[Mailing address for objections.]

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

The court will hold a final approval hearing at _____ on _____, 2019, at the San Francisco County Superior Court in Department 304, located at 400 McAllister Street, San Francisco, California 94102. At this hearing the court will consider whether the settlement is fair, reasonable, and adequate. The purpose of this hearing is for the court to determine whether to grant final approval to the settlement. If the settlement is not approved, or if there are objections to the settlement and the settlement is appealed, the litigation may continue and take some time (possibly years) to resolve. If there are objections, the court will consider them. The court will listen to people who have made a timely written request to speak at the hearing. This hearing may be rescheduled by the court without further notice to you, so you should check [www.\[website\].com](http://www.[website].com) to determine whether the hearing has been rescheduled. You are not required to attend the final approval hearing, although any settlement class member is welcome to attend the hearing at their own expense.

10. How do I get more information about the settlement?

You may call the Claims Administrator at _____ or write to [Claims Administrator Mailing Address]; or contact *Rimler* class counsel at [insert number].

This notice summarizes the proposed settlement. More details are in the settlement agreement. You may receive a copy of the settlement agreement document, or get more details about the lawsuit, by writing to Lichen & Liss-Riordan, P.C., 729 Boylston Street, Suite 2000, Boston MA

02116 or by examining the documents at the following website: [URL for Claims Administrator website hosting Rimler case filings and settlement agreement]

The address for Class counsel is as follows:

Shannon Liss-Riordan
Anne Kramer
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
www.llrlaw.com
Tel: 617-994-5800
Fax: 617-994-5801
Email: claims@llrlaw.com

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

Claimant ID: [#####]
Control Number: [#####]

CLAIM FORM

Rimler et al. v. Postmates Inc.,
San Francisco Superior Court Case No. CGC-18-567868

To claim your share of the settlement proceeds from the *Rimler v. Postmates, Inc.* class action settlement, you must complete and return this form no later than

_____.

Claims Administrator
ADDRESS
CITY, STATE, ZIP
Tel: (617) XXX-XXXX
email@email.com

Name: _____

Address: _____

Home Phone: _____ Cell Phone: _____

Email address (optional): _____

TO RECEIVE YOUR SETTLEMENT PAYMENT, YOU MUST SIGN AND DATE BELOW.

BY SIGNING BELOW, you are agreeing to the terms of the settlement, consenting to join the Settlement Class in *Rimler v. Postmates, Inc.*, and agreeing to release all federal Fair Labor Standards Act (“FLSA”) wage and hour claims against Postmates that are covered by the Settlement, in addition to the other claims against Postmates that you are releasing as a Settlement Class Member.

(Signature)

(Date)

EXHIBIT B

1 SHANNON LISS-RIORDAN (SBN 310719)
(sliss@llrlaw.com)

2 ANNE KRAMER (SBN 315131)
(akramer@llrlaw.com)

3 LICHTEN & LISS-RIORDAN, P.C.

4 729 Boylston Street, Suite 2000
5 Boston, MA 02116

6 Telephone: (617) 994-5800

7 Facsimile: (617) 994-5801

8 Attorneys for Plaintiffs JACOB RIMLER,
GIOVANNI JONES, DORA LEE, KELLYN
9 TIMMERMAN, and JOSHUA ALBERT

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN FRANCISCO**

12 JACOB RIMLER, GIOVANNI JONES,
13 DORA LEE, KELLYN TIMMERMAN, and
14 JOSHUA ALBERT on behalf of themselves
and others similarly situated and in their
15 capacities as Private Attorney General
Representatives,

16 Plaintiffs,

17 v.

18 POSTMATES INC.,

19 Defendant.

Case No. CGC-18-567868

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Department 304
Hon. Anne-Christine Massullo

Hearing Date: October 17, 2019
Hearing Time: 9:15 am

1 This matter, having come before The Honorable Anne-Christine Massullo of the
2 Superior Court of the State of California, in and for the County of San Francisco, at 9:15 a.m.
3 on October 17, 2019, with Lichten & Liss-Riordan P.C. as counsel for Plaintiffs Jacob Rimler,
4 Giovanni Jones, Dora Lee, Kellyn Timmerman, and Joshua Albert (collectively “Named
5 Plaintiffs”), and Gibson Dunn & Crutcher LLP appearing as counsel for Defendant Postmates
6 Inc. (“Postmates” or “Defendant”) (collectively, “the Parties”), and the Court having carefully
7 considered the briefs, argument of counsel, and all matters presented to the Court and good
8 cause appearing, the Court hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of
9 Class Action Settlement.
10

11 **IT IS HEREBY ORDERED:**

- 12 1. The Court preliminarily approves the Class Action Settlement Agreement attached as
13 Exhibit 1 to the Declaration of Shannon Liss-Riordan in Support of Plaintiffs’ Motion
14 for Preliminary Approval of Class Action Settlement. This is based on the Court’s
15 determination that the Settlement Agreement is within the range of possible final
16 approval, pursuant to the provisions of Section 382 of the California Code of Civil
17 Procedure and California Rules of Court, rule 3.769.
- 18 2. This Order incorporates by reference the definitions in the Agreement, and all terms
19 defined therein shall have the same meaning in this Order as set forth in the Agreement.
- 20 3. The Total Settlement Amount that Defendant shall pay is \$11,500,000.00. It appears to
21 the Court on a preliminary basis that the settlement amount and terms are fair, adequate,
22 and reasonable as to all potential Settlement Class Members when balanced against the
23 probable outcome of further litigation relating to certification, liability, and damages
24 issues. It further appears that substantial investigation and research have been conducted
25 such that counsel for the Parties are able to reasonably evaluate their respective
26 positions. It further appears to the Court that settlement at this time will avoid
27 substantial additional costs by all Parties, as well as avoid the delay and risks that would
28 be presented by the further prosecution of the Litigation. It further appears that the

1 Settlement has been reached as the result of intensive, serious and non-collusive, arm's-
2 length negotiations.

- 3
- 4 4. The Court preliminarily finds that the Settlement appears to be within the range of
5 reasonableness of a settlement that could ultimately be given final approval by this
6 Court. The Court has reviewed the monetary recovery that is being granted as part of the
7 Settlement and preliminarily finds that the monetary settlement awards made available
8 to Class Members is fair, adequate, and reasonable when balanced against the probable
9 outcome of further litigation relating to certification, liability, and damages issues.
- 10 5. The Agreement specifies for an attorneys' fees and costs award not to exceed thirty-
11 three and one-third (33.33%) percent of the Total Settlement Amount to Class Counsel,
12 and proposed service awards to the Named Plaintiffs of \$5,000 each. While these awards
13 appear to be within the range of reasonableness and supported by the individual
14 dismissals being provided by each of the Named Plaintiffs, the Court will not approve
15 the amount of attorneys' fees and costs until the Final Approval Hearing. Similarly, the
16 Court will not decide the amount of any Service Award until the Final Approval
17 Hearing.
- 18 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to certification of
19 a class for settlement purposes only. This stipulation will not be deemed admissible in
20 this or any other proceeding should this Settlement not become Final. For settlement
21 purposes only, the Court conditionally certifies the following Settlement Class: "Any
22 and all individuals classified by Postmates as independent couriers who entered into an
23 agreement to use or used the Postmates platform as an independent contractor courier in
24 California between June 3, 2017, and October 17, 2019."
- 25 7. The Court concludes that, for settlement purposes only, the Settlement Class meets the
26 requirements for certification under section 382 of the California Code of Civil
27 Procedure in that: (a) the Settlement Class is ascertainable and so numerous that joinder
28 of all members of the Settlement Class is impracticable; (b) common questions of law

1 and fact predominate, and there is a well-defined community of interest amongst the
2 members of the Settlement Class with respect to the subject matter of the litigation;
3 (c) the claims of the named plaintiffs are typical of the claims of the members of the
4 Settlement Class; (d) the Settlement Class Representatives will fairly and adequately
5 protect the interests of the members of the Settlement Class; (e) a class action is superior
6 to other available methods for the efficient adjudication of this controversy; and
7 (f) counsel for the Settlement Class is qualified to act as counsel for the Settlement Class
8 Representatives in their individual capacities and as the representatives of the Settlement
9 Class.
10

11 8. The Court provisionally appoints Plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee,
12 Kellyn Timmerman, and Joshua Albert as the Representatives of the Settlement Class.
13 The Court provisionally appoints Lichten & Liss-Riordan P.C. as Class Counsel for the
14 Settlement Class.

15 9. The Court finds that the Class Notice appears to fully and accurately inform Settlement
16 Class Members of all material elements of the proposed Settlement, of the Settlement
17 Class Members' right to be excluded from the Settlement Class by submitting a written
18 opt-out request, and of each member's right and opportunity to object to the Settlement.
19 The Court further finds that the distribution of the Class Notice substantially in the
20 manner and form set forth in the Agreement and this Order meets the requirements of
21 due process, is the best notice practicable under the circumstances, and shall constitute
22 due and sufficient notice to all persons entitled thereto. The Court orders the
23 dissemination of the notice pursuant to the terms set forth in the Agreement.

24 10. Within fourteen (14) calendar days of this order, Defendant shall provide, confidentially,
25 to the Claims Administrator the best information that it can identify in its possession,
26 custody or control following a good faith inquiry with respect to the full names, social
27 security number (if provided to Defendant), last known addresses, e-mail addresses, and
28 the applicable number of rides for potential Settlement Class Members. Within thirty

1 (30) calendar days of this Order, the Claims Administrator shall email the Class Notice
2 to all identified potential Settlement Class Members.

3
4 11. The Court hereby preliminarily approves the proposed procedure for exclusion from the
5 Settlement. Any Settlement Class Member may individually choose to opt out of and be
6 excluded from the Settlement Class as provided in the Notice by following the
7 instructions for requesting exclusion from the Settlement Class that are set forth in the
8 Notice. To be effective, a request for exclusion must include the Settlement Class
9 Member's name, address, and telephone number; a clear and unequivocal statement that
10 the Settlement Class Member wishes to be excluded from the Settlement Class; and the
11 signature of the Settlement Class member or the Legally Authorized Representative
12 (who is not the Settlement Class Member's counsel). All requests for exclusion must be
13 postmarked within thirty (30) calendar days after the date the Notice is mailed to the
14 Settlement Class or, in the case of a re-mailed Notice, not more than twenty-one (21)
15 calendar days after the date the Notice is re-mailed, whichever is later. Any such person
16 who chooses to opt out of and be excluded from the Settlement Class will not be entitled
17 to any recovery under the Settlement and will not be bound by the Settlement or have
18 any right to object, appeal, or comment thereon. Settlement Class Members who have
19 not requested exclusion shall be bound by all determinations of the Court, the
20 Agreement, and Judgment. A request for exclusion may only opt out that particular
21 individual, and any attempt to effect an opt-out of a group, class, or subclass of
22 individuals is not permitted and will be deemed invalid.

23 12. Any Class Member who has not opted out may object to the fairness, reasonableness, or
24 adequacy of the Settlement by timely submitting a statement of the objection. Class
25 Members will have thirty (30) days from the date of the Notices to postmark their
26 written objections to the Claims Administrator.

27 13. A final approval hearing shall be held before this Court on _____, 2019 at 9:15 am
28 in Department 304 of the San Francisco County Superior Court to determine all

1 necessary matters concerning the Settlement, including: whether the proposed settlement
2 of the Litigation on the terms and conditions provided for in the Agreement is fair,
3 adequate, and reasonable and should be finally approved by the Court; whether an Order
4 Granting Final Approval should be entered herein; whether the plan of allocation
5 contained in the Agreement should be approved as fair, adequate, and reasonable to the
6 Class Members; and to finally approve Class Counsel's fees and litigation costs,
7 Plaintiffs' service awards, and the claims administration expenses. All papers in support
8 of the motion for final approval and the motion for attorneys' fees, costs and service
9 awards shall be filed with the Court and served on all counsel no later than twenty-one
10 (21) days before the hearing; any opposition briefs shall be filed fourteen (14) days
11 before the hearing; and any reply briefs shall be filed seven (7) days before the hearing.
12

13 14. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
14 shall be construed as a concession or admission by Defendant in any way, and shall not
15 be used as evidence of, or used against Defendant as, an admission or indication in any
16 way, including with respect to any claim of any liability, wrongdoing, fault or omission
17 by Defendant or with respect to the truth of any allegation asserted by any person.
18 Whether or not the Settlement is finally approved, neither the Settlement, nor any
19 exhibit, document, statement, proceeding or conduct related to the Settlement, nor any
20 reports or accounts thereof, shall in any event be construed as, offered or admitted in
21 evidence as, received as or deemed to be evidence for any purpose adverse to the
22 Defendant, including, but not limited to, evidence of a presumption, concession,
23 indication or admission by Defendant of any liability, fault, wrongdoing, omission,
24 concession or damage. In the event the Settlement does not become effective in
25 accordance with the terms of the Agreement, or the Settlement is not finally approved,
26 or is terminated, canceled, or fails to become effective for any reason, this Order shall be
27 rendered null and void and shall be vacated; the Parties shall revert to their respective
28 positions as of before entering into the Agreement; and the Settlement Agreement and

1 this Order shall be void *ab initio*. In such an event, the Court's orders regarding the
2 Settlement, including this Preliminary Approval Order, shall not be used or referred to in
3 litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the
4 Settlement Agreement with respect to the effect of the Settlement Agreement if it is not
5 approved.

6
7 15. The Court reserves the right to adjourn or continue the date of the final approval hearing
8 and all dates provided for in the Agreement without further notice to Settlement Class
9 Members, and retains jurisdiction to consider all further applications arising out of or
10 connected with the proposed Settlement.

11 **IT IS SO ORDERED.**

12
13 Dated: _____

14 BY ORDER OF THE COURT
15 HON. ANNE-CHRISTINE MASSULLO
16 SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

1 SHANNON LISS-RIORDAN (SBN 310719)

(sliss@llrlaw.com)

2 ANNE KRAMER (SBN 315131)

(akramer@llrlaw.com)

3 LICHTEN & LISS-RIORDAN, P.C.

4 729 Boylston Street, Suite 2000

Boston, MA 02116

5 Telephone: (617) 994-5800

6 Facsimile: (617) 994-5801

7 Attorneys for Plaintiffs JACOB RIMLER,

GIOVANNI JONES, DORA LEE, KELLYN

8 TIMMERMAN, and JOSHUA ALBERT

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN FRANCISCO**

12
13 JACOB RIMLER, GIOVANNI JONES,
14 DORA LEE, KELLYN TIMMERMAN, and
15 JOSHUA ALBERT, on behalf of themselves
16 and others similarly situated and in their
17 capacities as Private Attorney General
18 Representatives,

19 Plaintiffs,

20 v.

21 POSTMATES INC.,

22 Defendant.

Case No. CGC-18-567868

23 **SECOND AMENDED CLASS ACTION**
24 **AND PAGA COMPLAINT**

- 25 1. Unlawful/Unfair Business Practices,
(Cal. Bus. & Prof. Code § 17200)
- 26 2. Failure to Reimburse for Business
Expenses (Cal. Lab. Code § 2802)
- 27 3. Unpaid Wages (Cal. Lab. Code §§ 201-
204)
- 28 4. Minimum Wage (Cal. Lab. Code §§
1194, 1197)
5. Overtime (Cal. Lab. Code §§ 510,
1194)
6. Meal & Rest Breaks (Cal. Lab. Code
§226.7)
7. Wage Statements (Cal. Lab. Code §
226)
8. Failure to Provide Sick Leave (Cal.
Lab. Code §§245-249)
9. Failure to Pay Reporting Time (Wage
Order 9)

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- 10. Failure to Post Pay Days (Cal. Lab. Code §207)
- 11. Untrue/Misleading Advertising (Cal. Bus. & Prof. Code §17500)
- 12. FLSA Minimum Wage (29 U.S.C. § 201 et seq.)
- 13. FLSA Overtime (29 U.S.C. § 201 et seq.)
- 14. Private Attorneys General Act, Cal. Lab. Code §§ 2698, *et seq.*)

1 **II. PARTIES**

2 3. Plaintiff Jacob Rimler is an adult resident of Pasadena, California, where he has
3 worked as a courier for Postmates.

4 4. Plaintiff Giovanni Jones is an adult resident of San Francisco, California, where
5 he has worked as a courier for Postmates.

6 5. Plaintiff Dora Lee is an adult resident of Huntington Beach, California, where she
7 has worked as a courier for Postmates.

8 6. Plaintiff Kellyn Timmerman is an adult resident of San Diego, California, where
9 she has worked as a courier for Postmates.

10 7. Plaintiff Joshua Albert is an adult resident of Sacramento, California, where he
11 has worked as a courier for Postmates.

12 8. Defendant Postmates, Inc. (“Postmates”) is a Delaware corporation,
13 headquartered in San Francisco, California.

14 **III. JURISDICTION**

15 9. This Court has jurisdiction over Plaintiffs’ PAGA claim pursuant to California
16 Code of Civil Procedure § 410.10.

17 10. The monetary relief which Plaintiffs seek is in excess of the jurisdictional
18 minimum required by this Court and will be established according to proof at trial.

19 11. Venue is proper in this Court pursuant to Code of Civ. P. §§ 395 and 395.5
20 because Postmates has its principal place of business in San Francisco County. Furthermore,
21 Defendant engages in business activities in and throughout the State of California, including San
22 Francisco County.
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1 **IV. STATEMENT OF FACTS**

2 12. Postmates is a San Francisco-based delivery service, which engages couriers
3 across the state of California to deliver food and other merchandise to its customers at their
4 homes and businesses.

5 13. Postmates offers customers the ability to order food and other items via a mobile
6 phone application or via its website, which Postmates couriers then deliver to customers.

7 14. Postmates holds itself out to the public as a delivery service. Its website
8 homepage advertises that it offers customers “Anything, anywhere, anytime.” Postmates’
9 website also promotes its “Postmates Unlimited” service where customers can subscribe and
10 receive unlimited free deliveries, touting “Pay once, free delivery all year.” Its website also
11 boasts that “Postmates is transforming the way goods move around cities by enabling anyone to
12 have anything delivered on-demand.”

13 15. Plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and
14 Joshua Albert have driven for Postmates at various times, including over the last year, and some
15 continue to drive for Postmates.

16 16. Postmates classifies its couriers like Plaintiffs as “independent contractors,” but
17 under California law, they should be classified as employees.

18 17. Postmates couriers perform services within Postmates’s usual course of business
19 as a delivery service. The couriers’ services are fully integrated into Postmates’ business.
20 Without couriers to perform deliveries, Postmates would not exist.

21 18. Postmates couriers are not typically engaged in their own delivery business. When
22 delivering items for Postmates customers, they wear the “hat” of Postmates.

23 19. In addition, Postmates maintains the right of control over the couriers’
24 performance of their jobs and exercises detailed control over them.
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1 **V. CLASS ALLEGATIONS**

2 25. Plaintiffs bring this case as a class action pursuant to California Code of Civil
3 Procedure § 382 on behalf of all individuals who used the Postmates platform as couriers in
4 California since June 3, 2017.

5 26. Plaintiffs and other class members have uniformly been deprived reimbursement
6 of their necessary business expenditures

7 27. The members of the class are so numerous that joinder of all class members is
8 impracticable.

9 28. Common questions of law and fact regarding Postmates' conduct in classifying
10 couriers as independent contractors, failing to reimburse them for business expenditures, and
11 failing to ensure they are paid at least minimum wage and overtime for all weeks, exist as to all
12 members of the class and predominate over any questions affecting solely any individual
13 members of the class. Among the questions of law and fact common to the class are:
14

- 15 a. Whether the work performed by class members—providing delivery services to
16 customers—is within Postmates's usual course of business;
- 17 b. Whether class members are typically engaged in their own businesses or whether
18 they wear the "hat" of Postmates when performing delivery services;
- 19 c. Whether class members have been required to follow uniform procedures and
20 policies regarding their work for Postmates;
- 21 d. Whether these class members have been required to bear the expenses of their
22 employment, such as expenses for maintaining their vehicles and expenses for gas,
23 insurance, phone and data plan.

24 29. Named plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman,
25 and Joshua Albert are class members who suffered damages as a result of Postmates' conduct
26 and actions alleged herein.
27

1 30. The named plaintiffs' claims are typical of the claims of the class, and the named
2 plaintiffs have the same interests as the other members of the class.

3 31. The named plaintiffs will fairly and adequately represent and protect the interests
4 of the class. The named plaintiffs have retained able counsel experienced in class action
5 litigation. The interests of the named plaintiffs are coincident with, and not antagonistic to, the
6 interests of the other class members.

7 32. The questions of law and fact common to the members of the class predominate
8 over any questions affecting only individual members, including legal and factual issues relating
9 to liability and damages.

10 33. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy because joinder of all class members is impractical. Moreover,
12 since the damages suffered by individual members of the class may be relatively small, the
13 expense and burden of individual litigation makes it practically impossible for the members of
14 the class individually to redress the wrongs done to them. The class is readily definable as
15 Postmates knows which couriers have signed up to use the Postmates platform as couriers since
16 June 3, 2017. Further, prosecution of this action as a class action will eliminate the possibility of
17 repetitive litigation. There will be no difficulty in the management of this action as a class action.

18
19 **VI. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

20 34. Plaintiffs allege that Postmates violated the Labor Code by willfully
21 misclassifying its couriers in violation of Cal. Labor Code § 226.8. Plaintiffs also allege that
22 Postmates has violated PAGA by failing to reimburse courier employees for all reasonably
23 necessary expenditures incurred by couriers in discharging their duties, including fuel, insurance,
24 and maintenance costs in violation of Cal. Lab. Code § 2802. Plaintiffs also allege that Postmates
25 has violated Cal. Lab. Code §§ 1197 and 1194 by failing to ensure that its couriers receive the
26 applicable state minimum wage for all hours worked and by impermissibly counting customers'
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1 tips toward their minimum wage obligations. Additionally, Postmates has violated Cal. Lab.
2 Code §§ 1194, 1198, 510, and 554 by failing to pay the appropriate overtime premium for all
3 overtime hours worked beyond forty per week or eight hours per day. Plaintiffs further allege
4 that Postmates violated Cal. Lab. Code § 204 by failing to pay its couriers for the entirety of their
5 waiting time.

6
7 35. On May 1, 2018, Plaintiff Rimler gave written notice of Postmates’s violations to
8 the California Labor Code as alleged in this complaint to the Labor and Workforce Development
9 Agency (“LWDA”) via online filing and to Postmates’s general counsel via certified mail. On
10 May 7, 2018, Plaintiff Jones gave written notice of Postmates’s violations to the California Labor
11 Code as alleged in this complaint to the LWDA via online filing and to Postmates’s general
12 counsel via certified mail. On December 4, 2018, Plaintiff Albert gave written notice of
13 Postmates’s violations to the California Labor Code as alleged in this complaint to the LWDA
14 via online filing and to Postmates’s general counsel via certified mail. On September 24, 2019,
15 these Plaintiffs and Plaintiffs Lee and Timmerman gave written notice of additional violations to
16 the LWDA via online filing and to Postmates’s general counsel via certified mail.

17 36. It has been 65 days since the LWDA was notified of the Labor Code violations
18 asserted in this Complaint, and the LWDA has not provided any notice that it will or will not
19 investigate the alleged violations. See Cal. Lab. Code § 2699.3(a)(2)(A).

20 **VII. COLLECTIVE ACTION ALLEGATIONS**

21 37. Plaintiffs bring Counts XII and XIII under 29 U.S.C. 216(b) of the Fair Labor
22 Standards Act (“FLSA”). Plaintiffs and other Postmates couriers are similarly situated in that
23 they are all subject to Postmates’s common plan or practice of failing to pay the federal
24 minimum wage for all hours worked and overtime for hours worked by drivers in excess of forty
25 (40) in a given week.

COUNT I

**Unfair Competition in Violation of California Business and Professions Code
§ 17200 et seq.**

38. Postmates’s conduct, as set forth above, violates the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”). Postmates’s conduct constitutes unlawful business acts or practices, in that Postmates has violated California Business and Professions Code Section 17500 and California Labor Code Sections 351, 353, 432.5, 450, 2802, 3700.5, 3712, 3715, 3700, and 226.8.

39. As a result of Postmates’s unlawful conduct and violation of Cal. Labor Code §§ 450 and 2802, Plaintiffs and class members suffered injury in fact and lost money and property, including, but not limited to loss of business expenses that couriers were required to pay in order to do their jobs.

40. As a result of Postmates’s s unlawful conduct and violation of Cal. Labor Code § 3700.5, 3712, 3715, 3700, and 226.8, Plaintiffs and class members suffered injury in fact because they were required to self-insure against any accidents or harm while Postmates gained an unfair competitive advantage over its competitors by avoiding the need to pay for worker’s compensation insurance for its couriers.

41. As a result of Postmates’s unlawful conduct and violation of Cal. Labor Code § 432.5, Plaintiffs and class members suffered injury in fact because they were required to agree to terms and conditions in their agreements with Postmates that are prohibited by law. Pursuant to Cal. Labor Code § 2804, any contract or agreement made by Plaintiffs to waive rights and benefits conferred by California law is null and void.

42. Pursuant to California Business and Professions Code § 17203, Plaintiffs and class members seek declaratory and injunctive relief for Postmates’s unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs and class

1 members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in
2 bringing this action.

3
4 **COUNT II**

5 **Independent Contractor Misclassification and Expense Reimbursement Violation**
6 **(Cal. Labor Code §§ 226.8, 450, 2753, and 2802)**

7 43. As set forth above, Postmates knowingly misclassified couriers as independent
8 contractors in violation of California Labor Code Sections 226.8 and 2753. Further, Postmates's
9 conduct, in misclassifying Postmates couriers as independent contractors and failing to reimburse
10 them for expenses they paid that should have been borne by their employer, constitutes a
11 violation of California Labor Code Sections 450 and 2802.

12 **COUNT III**

13 **Failure to Pay Wages Due at Termination**
14 **(Cal. Labor Code §§ 201-203, 204, 206.5, 208, 210, 227.3)**

15 44. Postmates's actions as set forth herein violate California Labor Code § 204, which
16 requires that Defendant pay all wages due upon the termination of any class member who has
17 since stopped working for Postmates, and § 227.3, which requires that Postmates pay the cash
18 value of all vested but unused vacation time upon termination. Certain members of the class
19 have been terminated by Postmates, but Postmates has willfully failed to make immediate
20 payment of the full wages due to these couriers as required under California state law.

21 45. Plaintiffs further allege that Postmates violated Cal. Lab. Code § 204 by failing to
22 pay its couriers for the entirety of their waiting time.

23 46. Pursuant to Cal. Labor Code §§ 204, 218, 218.5 and 218.6, Plaintiffs are entitled
24 to payment of unpaid wages or compensation, including interest thereon, as well as reasonable
25 attorneys' fees, and costs of suit.

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COUNT IV

Minimum Wage (Cal. Labor Code §§ 1194, 1197, 1197.1 1182.12, Wage Order 9)

47. Plaintiffs allege that they worked at rates below the state minimum wage. Pursuant to Cal. Lab. Code §§ 218.5 and 218.6, 1194, 1194.2, and 1194.3, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

48. Cal. Lab. Code § 1197 states that the minimum wage is that set by the commission in the applicable wage order, in this case Wage Order 9. Wage Order 9 incorporates by reference the minimum wage set by statute.

49. Postmates failed to pay Plaintiffs and class members minimum wage. Defendant's actions as set forth herein violate Labor Code §§ 1194, 1197, 1197.1, and 1182.12 because Defendant compensated Plaintiffs at rates so low that they fell below the state minimum wage.

COUNT V

Overtime (Cal. Labor Code §§ 510, 1194, 1198, Wage Order 9)

50. Cal. Lab. Code § 1198 and Wage Order 9 require employers to pay their employees at their overtime rate of pay for hours worked in excess of eight per day and/or 40 per week.

51. Postmates' actions as set forth herein violate Cal. Labor Code §§ 510, 1194, 1198 because Postmates has failed to pay overtime compensation to Plaintiffs and class members when due for all hours worked over forty (40) per week, or over eight per day.

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COUNT VI

Meal and Rest Breaks (Cal. Labor Code §§ 226.7, 512, 551, 552, 558 and Wage Order 9)

52. Wage Order 9 and Cal. Lab. Code § 226.7 require employers to provide all employees with one 10-minute duty-free rest period for every four hours worked each day, or major fraction thereof. Likewise, Cal. Lab. Code § 512 and Wage Order 9 require employers to provide all employees with one 30-minute duty-free meal period if such employee works more than five hours in one day and a second 30-minute duty-free meal period if such employee works more than ten hours in one day. In addition, Cal. Lab. Code §§ 551 and 552 precludes an employer from causing an employee to work more than six days in seven.

53. Postmates has failed to provide the requisite duty-free meal and rest periods to Plaintiffs and class members as required by California state law. Accordingly, Plaintiffs and members of the class are entitled to one hour of pay at their regular rate of pay for each day on which they were not provided with a 10-minute duty-free rest period and one hour of pay at their regular rate of pay for each day on which they were not provided with a 30-minute duty-free meal period, plus interest. Plaintiffs are also entitled to civil penalties for days in which they worked more than six days in seven pursuant to Cal. Lab. Code § 558, as well as interest upon unpaid wages or compensation, reasonable attorney's fees, and costs of suit pursuant to Cal. Labor Code §§ 218.5 and 218.6.

COUNT VII

Failure to Keep Accurate Records and Provide Itemized Wage Statements (Cal. Labor Code §§ 226, 353, 1174, and 1174.5)

54. Labor Code § 353 requires that every employer in California maintain "accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department." Similarly, Labor Code § 1174(d) requires that every employer in California maintain "payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed” in California. In addition, Cal. Lab. Code §
3 1174(d) requires that these records “be kept in accordance with rules established for this purpose
4 by the [Industrial Welfare] commission.” Rules established by the commission, Wage Order 9, §
5 7, require that every employer in California “keep accurate information with respect to each
6 employee,” including without limitation, “time records showing when the employee begins and
7 ends each work period,” as well as “[m]eal periods, split shift intervals and total daily hours
8 worked.”
9

10 55. Moreover, Postmates’s action as set forth herein constitute a violation of Cal.
11 Labor Code § 226, because Postmates unlawfully failed to provide Plaintiffs and members of the
12 putative class with accurate itemized wage statements in writing showing gross wages earned,
13 total hours worked, deductions, net wages earned, pay period, the name of the employee and the
14 last four digits of his or her social security number, the legal name of the employer, and/or all
15 applicable hourly rates. Postmates further failed to comply with current or former employees’
16 requests to inspect or copy records, in violation of Labor Code Section 226(c).

17 56. Because Postmates knowingly and intentionally failed to provide timely, accurate,
18 itemized wage statements to Plaintiffs as required by Labor Code Section 226(a), and such
19 failure has caused injury to Plaintiffs by preventing them from accurately knowing the amount of
20 wages to which they are and were entitled, Plaintiffs and each member of the putative class are
21 entitled to recover fifty dollars for the initial pay period in which a violation of § 226 occurred,
22 and one hundred dollars for each violation of § 226 in a subsequent pay period, not to exceed a
23 penalty of four thousand dollars per member of the putative class plus attorney fees, costs, and
24 injunctive relief. Postmates is also subject to statutory penalties pursuant to Cal. Lab. Code §
25 226.3. Likewise, Postmates has failed to maintain accurate records in compliance with Cal. Lab.
26

1 Code §§ 353 and 1174. Accordingly, Plaintiffs are entitled to collect and seek a civil penalty
2 from Postmates in the amount of \$500 pursuant to Cal. Lab. Code § 1174.5.

3
4 **COUNT VIII**

5 **Failure to Provide Paid Sick Leave (Cal. Labor Code §§ 245-249)**

6 57. Cal. Labor Code § 246 provides that an employer must provide any employee
7 who, on or after July 1, 2015, works in California for the same employer for 30 days or more
8 within a year from the start of employment, with paid sick days.

9 58. Plaintiffs and members of the class accrued a certain number of paid sick days
10 and were entitled to use these accrued paid sick days for purposes enumerated in Labor Code
11 section 246.5(a)(1)-(2). Postmates violated the requirement of Cal. Labor Code § 246 when it
12 failed to implement policies and procedures that would allow Plaintiffs to accrue and use paid
13 sick days when permitted.

14 59. Accordingly, pursuant to Labor Code §§ 248.5 and 558, Plaintiffs and class
15 members are entitled to the payment of sick days unlawfully withheld from them multiplied by
16 three; or two hundred fifty dollars (\$250), whichever amount is greater. Likewise, pursuant to
17 Labor Code §§ 248.5 and 558, Plaintiffs and class members are entitled to additional penalties,
18 not to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in
19 the amount of fifty dollars (\$50) to each Plaintiff or class member.

20 **COUNT IX**

21 **Failure to Pay Reporting Time (Wage Order 9)**

22 60. Wage Order 9, § 5, requires that for each workday that a California employee is
23 required to report for work and does report, but is either not put to work or is furnished less than
24 half of that employee's usual or scheduled day's work, each such employee must be paid an
25 amount equal to half of his or her usual or scheduled day's pay, or in any event must be paid an
26 amount equal to 2 hours at the employee's regular rate of pay.

1 61. Plaintiffs and members of the putative class, have periodically been required to
2 report for work but have either not been put to work, or have been furnished with less than half
3 of his or her usual or scheduled day's work. Accordingly, Plaintiffs and members of the putative
4 class or an identifiable subset thereof are entitled to and seek payment from Postmates of
5 compensation pursuant to Wage Order 9, § 5, plus interest.

6
7 **COUNT X**

8 **Failure to Post Pay Days and to Pay in Cash-Negotiable Instruments**
9 **(Cal. Labor Code §§ 207, 212, 213)**

10 62. Cal. Labor Code § 207 requires an employer to post in a conspicuous place a
11 notice specifying the regular pay days and time and place of payment. Cal. Labor Code §§ 212
12 and 213 require payment in negotiable, cash-equivalent instruments.

13 63. Postmates has not provided such public, posted notice as required by Cal. Labor
14 Code § 207. Postmates has provided compensation in a manner prohibited under Cal. Labor
15 Code §§ 212 and 213.

16 **COUNT XI**

17 **Untrue or Misleading Advertising—Business and Professions Code § 17500**

18 64. Plaintiffs reallege and incorporate by reference the allegations in the preceding
19 paragraphs as if fully alleged herein.

20 65. Postmates intended to perform services.

21 66. Postmates disseminated advertising before the public in California that: (a)
22 contained statements that were illegal, untrue or misleading; (b) Postmates knew, or in the
23 exercise of reasonable care should have known, was illegal, untrue or misleading; (c) concerned
24 the personal property or services or their disposition or performance; and (d) was likely to
25 mislead or deceive a reasonable consumer. The illegal, untrue and/or misleading statements and
26 representations made by Postmates include but are not limited to: Words stating or implying that
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1 couriers will be accurately compensated for all of their waiting time, when in fact Postmates
2 underreports the amount of time couriers spend waiting for a delivery.

3 **COUNT XII**

4 **Unpaid Minimum Wage Under the FLSA**

5 67. Postmates's willful conduct in failing to ensure its employees receive the federal
6 minimum wage, and requiring its employees to pay for the expenses of their employment (all of
7 which contribute to them not receiving the federal minimum wage), violates the FLSA, 29
8 U.S.C. § 201, *et seq.* This claim is brought on behalf of a class of similarly situated individuals
9 who have worked for Postmates in California and may choose to "opt in" to this case, pursuant to
10 29 U.S.C. § 216(b).

11 **COUNT XIII**

12 **Unpaid Overtime Under the FLSA**

13 68. The Fair Labor Standards Act, 29 U.S.C. §207(a)(1), states that an employee must
14 be paid overtime, equal to one and one-half (1.5) times the employee's regular rate of pay, for all
15 hours worked in excess of 40 per week. Plaintiffs sometimes worked in excess of forty (40)
16 hours per week but were not paid premium pay for all hours worked over 40 in a week. As a
17 direct and proximate result of Postmates's unlawful conduct, Plaintiffs have suffered lost wages
18 and other damages. This claim is brought on behalf of a class of similarly situated individuals
19 who may choose to "opt-in" to this case, pursuant to 29 U.S.C. § 216(b).

20 **COUNT XIV**

21 **Penalties Pursuant to Labor Code Private Attorneys General Act of 2004**
22 **Violation of Cal. Lab. Code §§ 2698, *et seq.***

23 69. Plaintiffs reallege and incorporate by reference the allegations in the preceding
24 paragraphs as if fully alleged herein. Plaintiffs are aggrieved employees as defined by Cal. Lab.
25 Code § 2699(c) as they were employed by Postmates during the applicable statutory period and
26 suffered injury as a result of Postmates's Labor Code violations. Accordingly, Plaintiffs seek to
27

1 recover on behalf of the State of California, as well as themselves and all other current and
2 former aggrieved employees of Postmates who have worked in California, the civil penalties
3 provided by PAGA, plus reasonable attorney's fees and costs.

4 25. Postmates couriers are entitled to penalties for Postmates's violations of Cal. Lab.
5 Code § 2802, § 226(a), § 226.8 and §§ 1194, 1197, 1198, 510, and 554 as set forth by Cal. Lab.
6 Code § 2699(f). Plaintiffs seek civil penalties pursuant to PAGA for: (1) the willful
7 misclassification of delivery workers as independent contractors in violation of Cal. Lab. Code §
8 226.8; (2) failure to reimburse courier employees for all necessary expenditures incurred in
9 performing their duties, including but not limited to owning or leasing and maintaining their
10 vehicles, fuel, phones, and data, in violation of Cal. Lab. Code §2802; (3) failure to assure that
11 all couriers received at least the applicable minimum wage for all hours worked in violation of
12 Cal. Lab. Code §§ 1194, 1197; (4) failure to assure that all couriers received the appropriate
13 overtime premium for all overtime hours worked beyond forty per week or eight hours per day in
14 violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554; (5) failure to provide proper itemized
15 wage statements that include hours worked and hourly wages and are accessible outside the
16 Postmates Application in violation of Cal. Lab. Code § 226(a); (6) failure to pay all overtime
17 premium wages twice each calendar month in violation of Cal. Lab. Code §§ 204 & 210; (7)
18 failure to pay all overtime wages due upon termination (or within 72 hours of termination for
19 voluntary terminations) in violation of Cal. Lab. Code §§ 201, 202, and 203; (8) failure to
20 provide statutorily required meal and rest breaks in violation of Cal. Lab. Code §§ 226.7, 512, &
21 1198; and (9) failure to keep proper pay records "showing the hours worked daily by and the
22 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
23 employees employed" in California as well as the amount of gratuities received by Plaintiffs in
24 violation of Cal. Labor Code § 1174(d) and § 353.

25
26 26. Cal. Lab. Code § 2699(f) provides for civil penalties for violation of all Labor
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1 Code provisions for which no civil penalty is specifically provided. There is no specified civil
2 penalty for violations of Cal. Lab. Code § 2802. With respect to minimum wage violations
3 under Cal. Lab. Code §§ 1197 and 1194, § 1197.1 imposes a civil penalty in addition to any
4 other penalty provided by law of one hundred (\$100) for each underpaid employee for each pay
5 period for which the employee is underpaid in addition to an amount sufficient to recover
6 underpaid wages and liquidated damages, and, for each subsequent violation of Labor §§1197
7 and 1194, two hundred and fifty dollars (\$250) for each underpaid employee for each pay period
8 for which the employee is underpaid in addition to an amount sufficient to recover underpaid
9 wages and liquidated damages. With respect to overtime violations under Labor Code §§ 510
10 and 558, the statute imposes a civil penalty in addition to any other penalty provided by law of
11 fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for
12 which the employee was underpaid in addition to an amount sufficient to recover unpaid wages,
13 and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each
14 pay period for which the employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages. With respect to violations of Labor Code § 226.8, Labor Code § 226.8(b)
16 imposes a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
17 thousand dollars (\$15,000) for each violation. With respect to meal and rest break violations
18 under Labor Code §§ 226.7, 512, Labor Code § 558 imposes a civil penalty in addition to any
19 other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid
20 employee for each pay period for which the employee was underpaid in addition to an amount
21 sufficient to recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for
22 each underpaid employee for each pay period for which the employee was underpaid in addition
23 to an amount sufficient to recover underpaid wages. With respect to violations of Labor Code §
24 226(a), Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by
25 law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one
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1 thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §
2 226(a). With respect to violations of Labor Code §§ 201, 202, 203 & 204, Labor Code § 210
3 imposes a civil penalty in addition to any other penalty provided by law of one hundred dollars
4 (\$100) per aggrieved employee for the first violation, and two hundred (\$200) dollars per
5 aggrieved employee plus twenty-five percent of the amount unlawfully withheld. With respect
6 to violations of Labor Code § 1174(d), Labor Code § 1174.5 imposes a civil penalty of \$500 per
7 aggrieved employee for each willful failure to maintain records.
8

9 27. Plaintiffs complied with the notice requirement of Cal. Lab. Code §2699.3 and
10 served a written notice to the LWDA through its website's online filing portal, and on Defendant
11 Postmates via Certified Mail, return receipt requested, on May 1, 2018, May 7, 2018, December
12 4, 2018, and September 24, 2019. It has been 65 days or more since the LWDA was notified of
13 the Labor Code violations asserted in this Complaint, and the LWDA has not provided any
14 notice that it will or will not investigate the alleged violations.

15 WHEREFORE, Plaintiffs request that this Court enter the following relief:

- 16 a. Declare and find that the Defendant violated Wage Order 9, the UCL, Cal. Lab. Code
17 §§ 201-204, 207, 226.8, 226.7, 245-249, 2802, 1194, 1197, 1198, 510, 554, and the
18 Fair Labor Standards Act, 29 U.S.C. § 201 et seq.;
- 19 b. Certify this case as a class action under Count I through XI and appoint Plaintiffs
20 Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and Joshua Albert and
21 their counsel to represent a class of Postmates couriers who have made deliveries in
22 the state of California since June 3, 2017;
- 23 c. Certify this case as a collective action pursuant to 29 U.S.C. § 216(b);
- 24 d. Award compensatory damages, including all expenses and wages owed, in an amount
25 according to proof;
- 26 e. Enter Judgment in Plaintiffs' favor on their PAGA claim pursuant to Cal. Lab. Code
27

1 §2699(c);

- 2 f. Award penalties in an amount according to proof;
- 3 g. Award pre- and post-judgment interest;
- 4 h. Award reasonable attorneys' fees, costs, and expenses;
- 5 i. Public injunctive relief in the form of an order requiring Defendant to comply with
- 6 the California Labor Code; and
- 7 j. Any other relief to which the Plaintiffs may be entitled.
- 8

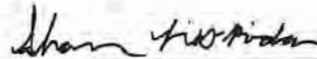
9 Respectfully submitted,

10 JACOB RIMLER, GIOVANNI JONES, DORA

11 LEE, KELLYN TIMMERMAN, and JOSHUA

12 ALBERT,

13 By their attorneys,

14 

15 Shannon Liss-Riordan, SBN 310719

16 Anne Kramer, SBN 315131

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20 (617) 994-5800

21 Email: sliss@llrlaw.com

22 Dated: September 24, 2019

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EXHIBIT 2

Uber's Worst Nightmare

Diana Kapp | Photo: Justin Kaneps | May 18, 2016

Shannon Liss-Riordan just put a \$100 million dent in the sharing economy giant. She's out for a lot more than that.



The most reviled woman in Silicon Valley was badly in need of some coffee.

It was 8:40 a.m. on the Friday before Super Bowl Sunday, and Shannon Liss-Riordan had just arrived in the café of the Westin St. Francis, one arm pulling a rolling suitcase, the other carrying a still-warm laptop. Wearing a black blazer, black pants, and black leather boots, the attorney stood out among the throngs of jersey-clad football fans overtaking the lobby—an all-business peregrine falcon among so many colorful squawking parakeets. “Don’t ask,” she exhaled apologetically, having rolled up 25 minutes late. “You wouldn’t believe how many motions we’ve filed in the last 48 hours.”

That morning’s stupor, like so many before it, would prove worthwhile. After months of drafting briefs into the wee hours, cramming for the California bar exam (necessary because she wasn’t yet licensed to practice law in the state), and continuous, body-clock-wrecking cross-country flights, Liss-Riordan would soon win the largest settlement of her career: \$100 million for 385,000 Uber drivers in California and Massachusetts who’d sued the company for misclassifying them as freelancers rather than employees. Ultimately, the deal, which was announced on April 21, came together secretly and hurriedly, in a flurry of meetings over two weeks in April. While legal pundits are still debating the settlement’s winners and losers (the New York Times chalked up a victory for Uber; Mother Jones called it for the workers), one thing

is certain: By preempting the scheduled June 20 trial, Uber avoided having to face off against Liss-Riordan, who was eager to go for the jugular.

When I met her on Super Bowl Friday, Liss-Riordan was brimming with confidence that she could convince a San Francisco jury that Uber's drivers were not independent contractors, as the company contended, but in fact employees, highly controlled by management and due a host of protections conferred by decades of hard-fought labor battles. Now, two months later, she is almost rueful about the resolution. "I was so looking forward to this trial," she tells me on the Saturday after news of the settlement broke.



For months before its climax, Liss-Riordan's class action lawsuit had taken on bellwether status in Silicon Valley. Many onlookers believed that the ruling would finally resolve the worker-classification debate looming scythe-like over the head of the new sharing economy. Some predicted that, should Liss-Riordan prevail, the suit could cripple Uber, kill other startups in their cradles, and, hell, maybe even end the whole trendy "gig economy" sector as a whole. That the suit didn't slay Uber once and for all doesn't mean that it didn't inflict major pain on it. Asked to list the most important reforms assured by the \$100 million settlement, Liss-Riordan touts the deal's ability to bolster drivers' job security; to force Uber to implement a more favorable tipping policy; and to give workers the means to organize as a group, granting them representation "akin to what unions provide."

But that's not everything she was gunning for, I suggest—drivers still won't be considered employees under the settlement. "I only settled, and I would only settle," she responds, "because I believe what we achieved is a significant achievement in the lives of drivers." (This contention was strongly disputed earlier this week by several lawyers pursuing their own class-action cases against Uber. "She has single-handedly stuck a knife in the back of every Uber driver in the country," one of them told Bloomberg.) But more to the point, Liss-Riordan says, she's far from finished with Uber and its myriad cousins. The round-one bell may have dinged, but the attorney intends to continue her crusade on behalf of workers, calling large corporations to the mat and wringing major concessions and siphoning huge sums from them when necessary.

Independent contractors, a class of worker that is expected to characterize 40 percent of all U.S. laborers by 2020, are due no benefits, guarantee of hours, or minimum wage, enabling the enterprises that employ them to keep labor costs low. But if this galaxy of free agents suddenly has to be treated like employees, with all the expensive benefits that the status conveys—well, let's just say that Silicon Valley offers Liss-Riordan a wealth of opportunity. In fact, when I called her to talk about the Uber settlement, she told me she had just selected the last of the furniture for her new Geary Street office. That's right, the first annex of Liss-Riordan's Boston-based firm will soon open in San Francisco. It'll be located right off of Union Square.

When I visited her in January in Boston's Back Bay neighborhood, where her firm, Lichten & Liss-Riordan, PC, is headquartered, Liss-Riordan stood outside her office and gestured at the businesses lining the block. Dunkin Donuts, Boston Cab, Lord & Taylor, Starbucks—at one time or another, she has sued all of them for labor violations. “Yes,” she laughed, “it gets pretty hard avoiding all my companies.”

Uber came into Liss-Riordan's sights in 2012 when, during a dinner in San Francisco, a friend whipped out his phone to show off a cool new app. She saw the cars crawling around his screen and immediately grokked the model—back in Boston, she was representing cab drivers who wanted the benefits allotted to employees. Seeing the glint in her eye, her friend blurted, “Don't you dare. Do not put them out of business!”

Liss-Riordan sealed a major victory on December 9 of last year, when the class action lawsuit she had filed on behalf of 8,000 California Uber drivers in 2013 was upgraded by a San Francisco judge to include basically every single Uber driver in California—more than half of the company's current U.S. workforce. Suddenly, the Wall Street Journal was calling her “one of the most influential and controversial figures in Silicon Valley,” and her lawsuit was threatening the very existence of the world's largest privately held company (current valuation: approximately \$68 billion, greater than Ford, Honda, and GM).

The crux of her case was whether the sharing economy habit of using contractors rather than fully vested employees violates basic labor laws. It was a question that could potentially affect the fortunes of dozens of would-be and actual unicorns in Silicon Valley, including Google Express, Postmates, Handy, Caviar, Instacart, GrubHub, DoorDash, Jolt, and Lyft, all of which Liss-Riordan is in some stage of suing. Indeed, the attorney could throw a stone at any car driving down Post Street, and chances are that she would hit a vehicle delivering food or passengers or packages for one of the new-economy businesses that she is after.

True to her nickname, Sledgehammer Shannon—bequeathed to her by the American Airlines skycaps she represented in a 2008 tip-skimming case—Liss-Riordan, 47, has been smashing up corporate America through rapid-fire class action lawsuits for a decade and a half (she currently has some 80 suits in motion). Beyond what's visible outside her firm's front door in Boston, her victims include Federal Express, Harvard University, almost every major U.S. airline, and the strip joint Centerfolds. Her newest clients are teachers for testing giant Kaplan, who claim they are being deprived of overtime pay, and stage actors working for studios “owned by people like Danny DeVito and Tim Robbins.” Broadly, she is out to advance the wage-and-hour corner of labor law, basically everything related to compensation for hourly-wage Americans, who, she believes, are faring worse than ever. “I'm not feeling good about the big picture,” she says. “The labor movement has obviously been in sharp decline, which has seriously impacted worker welfare. It's very important to push back against this rollback.”

Over the years, Liss-Riordan's firm, which typically takes one-third of what it wins and charges nothing when it loses, has pulled in more than \$200 million for its class action clients. And in the process, Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader sued General Motors. At a three-day Department of Labor “Future of Work” symposium last December in Washington, D.C., attendees in the hallways were leaping into Liss-Riordan's orbit to take selfies with her. This is not normal for plaintiff's attorneys in the wage-and-hour racket. “She hadn't spoken on a panel,” says the National Employment Law Project's Cathy Ruckelshaus, who was at the conference. “She was just recognized.”

Liss-Riordan's path to legal stardom began with the renowned feminist labor activist and congresswoman Bella Abzug, who hired her soon after she graduated from Harvard. She had no special connections to Abzug, or to anyone else, but simply copied the number of every New York-based women's organization out of the phone book and started dialing. "I loved [Abzug's] big ideas, and her big hats," she reminisces. The office photographs of Abzug marching in union protests moved Liss-Riordan. "It was inspiring to see her have an idea and make it happen," she says. "That's what made me desire law school, so I could do something bigger."

Her progressive leanings, though, had been baked in long before that. The progeny of socialists (her maternal great-grandfather organized unions with Samuel Gompers), Shannon Liss grew up in Meyerland, Texas, the daughter of a Reagan Democrat dad and a liberal mother. At age five she professed that when she married, she would hyphenate her last name "because it was the only way that made any sense." (Her husband and three children all use Liss-Riordan.) She excelled in math and science, starting a math club in high school that wound up being voted "most organized in the country." ("I never knew there was such a contest," she says. "I was just doing my thing.")

In 1992, she left Abzug to stage a conference featuring Anita Hill, fresh from the carnival of the Clarence Thomas harassment hearings. Through this work, she met Gloria Steinem, who introduced her to Rebecca Walker, a Yale student whose treatise on modern-day feminism, "Becoming the Third Wave," had just appeared in Ms. magazine. Over burritos in the Village, the pair hashed out how to turn Walker's ideas into action. First up was Freedom Summer 1992, a cross-country bus tour to register women voters. Hillary Clinton blew them off after committing to meet the bus in Little Rock, which partly explains why Liss-Riordan is now feeling the Bern. Ultimately, though, she yearned to fix the system from within, while Walker wanted to stay outside of it. Laws needed to be changed. People needed to be held accountable. So in 1993, Liss-Riordan headed to Harvard Law School to work on just that.

She opened Lichten & Liss-Riordan, PC, in 2009, breaking off, along with one of her mentors, Harold Lichten, from an established labor-law firm. "I work for her now," laughs Lichten, a messy professor type who, at 18, quit the University of Pennsylvania basketball team rather than get the required crew cut. Clearly, the two bond over heeding their first principles. Liss-Riordan bought a Cambridge pizza joint in 2012 after she won a back-pay lawsuit for the employees, which helped push the restaurant into bankruptcy. After purchasing it, she made most of the employees part-owners and renamed the pizzeria the Just Crust.

The day I shadowed her in Boston, Liss-Riordan was a whirl of motion. At one point, while we were chatting in her office, the reception desk buzzed and she disappeared down an exposed-brick stairwell hung with vintage photos of workers—seamstresses, a 1930s-era stripper. She returned with a redheaded woman in jeans, whom she motioned to sit at the conference table.

"I was very interested in what you sent me," Liss-Riordan said, plopping down beside her. The woman was a massage therapist at Harvard University's Center for Wellness. "Were you able to do any snooping around to see if there were other pockets [of contractors] around campus with similar setups?" the attorney asked. The woman said not yet. Liss-Riordan followed with a run of questions: How many hours do you work? Thirty a week. Who sets your schedule? Management. Who buys your equipment? They do. Do you pay for your own insurance? Yes. If there was a client you had before that you didn't like, could you say you'd rather not take them again? The woman shook her head: No way. Liss-Riordan glanced through the documents the

woman had slid her. “There is a good argument that you have been misclassified as a contractor,” she said, then suggested they go after sick and holiday pay, and perhaps benefits like free Harvard courses.

“Didn’t you go to Harvard?” the woman inquired timidly. “I read that on your website.” Liss-Riordan responded with a laugh: “I’ve sued Harvard twice before. They gave me two degrees, so I’m not sure they appreciate it.” (She roomed there with YouTube CEO Susan Wojcicki.) The woman asked if she would lose her job. “I’m scared,” she said. “No, no way,” Liss-Riordan retorted. “It’s scary, but you are doing the right thing. Actually, that it’s Harvard protects you. They know they can’t get away with misbehaving.”

Over the years, Liss-Riordan has sought employee status for truck drivers, call-center workers, home cleaners, even exotic dancers. “It’s just the next logical extension to take it into these on-demand jobs, where it’s pretty clear these low-wage workers are not running their own businesses,” says the National Employment Law Project’s Ruckelshaus, who has worked with Liss-Riordan on several cases. A lawyer defending one of Liss-Riordan’s suits spins her MO in another way: “She’s found this tiny niche, and now she’s just exploiting the hell out of it.”

Indeed, her power-to-the-worker rhetoric flies in the face of many of Silicon Valley’s prized principles and has earned her some well-funded enemies. The very labor laws she defends, says veteran VC Len Baker of Sutter Hill Ventures, are “encrusted with so much crap they just really bog us down.” Sam Altman, who heads the prolific startup hatchery Y Combinator, believes that “individual flexibility and freedom” should trump current laws that tie employees to employer. “I definitely think it’s bad to make everyone de facto full-time employees,” he says. The whole point of the on-demand economy, maintains Eric Goldman, director of the High Tech Law Institute at the Santa Clara University School of Law, “is to allow more granular ways of people providing their services.” This new, frictionless, seamless way of parsing tasks and connecting available labor to paying work, says Baker, is “just much more efficient economically.”

To all this, Liss-Riordan simply responds: Bogus. She finds the cult of contract labor “really kind of scary, a great loophole” that’s allowing corporations to screw the little guys. In her view, companies like Uber blatantly skirt minimum-wage and overtime-pay rules, which have been in place since the New Deal. By classifying drivers as contractors, Uber can fire them at will, have them run down their own cars and tires while avoiding having to reimburse them the IRS-mandated 57.5 cents (now 54) per mile for wear and tear, and sidestep mandates for workers’ compensation and health insurance. The legal framework behind this “might be one of the sharpest attacks on workers we’ve seen in a long time,” Liss-Riordan says. “The rhetoric is, ‘But oh, this is good for the worker—be this on-demand worker, and you’ll have this freedom.’ But they are not their own bosses. Technology has created more extreme ways that employers can take advantage of workers. They are tethered to their phone. There are constant ratings, surge incentives, and data tracking their behavior at times, with more pull than a human manager would have.”

Silicon Valley, naturally, would like to come up with another way to get around this existential divide. “The best thing would be a new categorization” for gig-economy workers, says Altman, “because these people really lie somewhere between traditional notions of contractor and employee.” But Liss-Riordan has a standard retort for this third-category concept: “Why is there this call for dismantling these protections that have been fought for over decades in order to

help a \$50 billion company get richer, while the drivers are making less and less and paying Uber's business expenses?" To her, the notion that flexibility is incompatible with full-time employment is a cop-out. "Plenty of companies let workers set their own schedules," she says. "If it costs Uber more to make everyone employees, they should just take a bigger cut and at least be transparent about all this."

Back in December, in U.S. District Court Judge Edward M. Chen's domain high above the city, Liss-Riordan strenuously objected to Uber's move of emailing every driver a new contract, which had to be signed for drivers to continue working. Buried within the fine print was a clause that rendered signers ineligible to join any future class action lawsuits, instead mandating arbitration to resolve grievances. Liss-Riordan finds it infuriating, if somewhat vindicating, that companies have turned to such clauses as a way of dodging responsibility. "They didn't even deign to talk to class counsel before sending out a communication to my clients," she said to the judge. "I would urge the court to consider the arguments that Uber should not be able to curtail liability. Not on the 14th page of an email on an iPhone." Judge Chen ruled in her favor, overriding Uber's arbitration agreement and allowing drivers to file suit as a class.

Arbitration clauses like the one Judge Chen struck down are increasingly being used by companies as a legal end-around. The Supreme Court has strengthened the power of these clauses in recent years, on the grounds that individual mediations are a more efficient means of resolving disputes. But to Liss-Riordan, the shift serves only to protect big business: "I just think it's reprehensible that the Supreme Court has allowed all these companies that are blatantly breaking the law to protect themselves."

It was Uber's arbitration clause that ultimately sent Liss-Riordan's suit careening to a settlement. When the U.S. Court of Appeals for the Ninth Circuit, on April 5, agreed to hear Uber's appeal, "it was not a good sign at all," she says. If Judge Chen's decision to override the arbitration agreement was reversed by the Ninth Circuit, her clients could be left high and dry. "Uber made it known they would appeal this all the way to the Supreme Court if they could," she says. And given the deadlocked state of the court at the moment, the odds of a 4-4 decision leaving the lower court's ruling in place seemed too risky. "There's just a lot of uncertainty," she says.

During our meeting at the Westin, I asked Liss-Riordan if she viewed her lawsuits as primarily having a policing function on bad-acting companies like Uber, or if she believed that she had a shot at challenging the constitutionality of arbitration clauses. She was circumspect. "There are so many ways that companies can evade the laws," she said. "If you chase them in litigation, they can just keep changing the arbitration clause a little bit. For them, they are like this magic bullet."

Using lawsuits, Liss-Riordan is trying to combat these corporate shenanigans by bringing old-fashioned collective bargaining to the new economy. And increasingly, other jurisdictions are taking a similar approach. Seattle just passed a law allowing Uber drivers to organize, and new legislation aimed at enabling gig workers to bargain collectively was recently introduced before the California legislature. (The bill was pulled before a final vote.) The Teamsters are now reportedly attempting to create an independent drivers' "association" akin to a union. "Lawsuits like hers are already having an impact," says Arun Sundararajan, professor at the New York University Stern School of Business and the author of *The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism*. The fundamental benefit of these

lawsuits, he says, is in “getting us on a path toward a better solution to funding our social safety net.”

Liss-Riordan is never one to relent unless forced. Says her partner Lichten, admiringly, “She’s like a pit bull with a Chihuahua in her mouth.” Among the concessions Uber had to make to reach the April settlement was forgoing its practice of firing drivers without cause. “That’s a pretty big deal,” says Santa Clara University law professor Goldman. What’s more, drivers will no longer be deactivated for a low rate of pickups, will receive a warning before losing their job, and can contest a termination before a panel of their peers. An even bigger deal, Liss-Riordan says, was convincing the judges in both her Uber and Lyft cases to deny summary judgment. What this means is that companies will not be able to do away with lawsuits of this nature quickly and painlessly. “They were saying that any company that finds itself with a lawsuit for misclassification can find itself in front of a jury. And that’s big,” she says. “It’s a big price to put an end to the case, and it will continue to give companies pause before they play fast and loose with these rules.”

There is evidence of this already. On-demand players such as Instacart, Shyp, Zirtual, and Honor have recently shifted course, reclassifying some of their workers as employees. “Everyone who wants to be Uber of the next thing—they’ve been watching these battles,” Liss-Riordan says. And, she is quick to point out, Uber may be paying \$100 million to make this suit go away, but it hasn’t gotten the employment-classification monkey off its back. “No court has decided here whether these drivers are employees or independent contractors,” she says. At multiple times during our phone conversation in April, Liss-Riordan returned to her favorite point: “This was a settlement. Nothing has been decided.”

Before hanging up, I pushed her on my last question: What is your next chess move against Uber? Is this fight over? She hemmed and hawed over what to reveal publicly, before finally relenting. “Oh, OK,” she said, grinning audibly on the other end of the line. “You can say I’m not done with this company.”

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