SHANNON LISS-RIORDAN (SBN 310719)
sliss@llrlaw.com
ANNE KRAMER (SBN 315131)
akramer@llrlaw.com
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801

Attorneys for Plaintiffs

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
01/21/2020
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiffs,

v.

POSTMATES, INC.,

Defendant.

Case No. CGC-18-567868

PLAINTIFFS' SUPPLEMENTAL BRIEFING IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Department 304
Hon. Anne-Christine Massullo

Hearing Date: January 31, 2020
Hearing Time: 1:30 p.m.

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. Introduction

Plaintiffs and Postmates have reached a significant $11.5 million class settlement, in which Postmates has agreed to resolve the claims of couriers who used the Postmates application between June 3, 2017, and October 17, 2019. This settlement provides for almost **twice** the recovery as the California portion of the previous settlement in Singer v. Postmates, Inc., Case No. 15-1284 (N.D. Cal.), which covered a six year period and was approved by the federal court.

Although a few objectors have criticized the settlement, it is well within the range of what state and federal courts have regularly approved. The objections, which have been rejected in numerous comparable settlements, are a transparent effort to extract a portion of the attorneys' fees in this case. Most of the other plaintiffs' lawyers who have filed these objections filed copycat cases against Postmates after this case (and others filed by Plaintiffs' counsel) were filed. Plaintiffs' counsel is well-recognized as the leading attorney to wage the misclassification battle against the "gig economy", having begun these cases, having obtained the first (and only) class certification order to date, having brought the first (and only) case to trial, having obtained the first (and only) summary judgment ruling on behalf of plaintiffs applying Dynamex, having litigated Dynamex issues on appeal with a case now pending at the California Supreme Court, and having obtained a host of legal rulings that have advanced the rights of gig economy workers, as well as a number of settlements that have been approved.[1]

[1] 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) (first and only class certification order); Lawson v. GrubHub, Inc., (N.D. Cal. 2018) 302 F.Supp.3d 1071, appeal pending, Ninth Cir. No. 18-15386 (first and only "gig economy" trial); Johnson v. VCG-IS, LLC (San Diego Super. Ct. Sept. 5, 2018) (first and only summary judgment ruling under Dynamex, granting summary judgment to plaintiff strippers on their claim that they have been misclassified under the "ABC" test); Vazquez v. Jan-Pro Franchising Int'l, Inc., (Cal. Supreme Court) Case No. S258191 (appeal pending regarding Dynamex retroactivity).

She is well aware of the state of the law in this area and brought this significant experience to bear in concluding what would be a fair and adequate settlement here.[2]

The question for the Court is not whether other counsel believes that more should have been obtained, or even could have been obtained. The issue is whether the settlement is fair, reasonable, and adequate. As explained below, the settlement reached in this case is based on and is structured in the same way as numerous gig economy settlements that have been approved. See, e.g., O'Connor v. Uber Technologies, Inc. (N.D. Cal. Sept. 13, 2019) 2019 WL 4394401 (granting final approval); Singer v. Postmates, Inc., (N.D. Cal.) Case No. 15-cv-1284 (final approval granted April 25, 2018); Marciano v. DoorDash, Inc., (San Francisco Superior Court) Case No. CGC-15-548101 (final approval granted July 12, 2018); Cotter v. Lyft, Inc., (N.D. Cal.) Case No. 13-cv-4065 (final approval granted March 16, 2017).

It is not surprising, although it is unfortunate, that other plaintiffs' attorneys would want to inject themselves into these cases (and into settlements) by throwing a host of objections against the wall to see what might stick. However, the Court should bring order to this process, recognize the tactics of the objectors for what they are, and allow this settlement to proceed to the notice period and then final approval.[3]

---

[2] Plaintiffs' counsel has been litigating cases under the Massachusetts "ABC" test, which was adopted in Dynamex, for twenty years. She has developed much of the case law under this test and has won a number of ground-breaking victories. See cases cited in footnote 4 of Plaintiffs' Motion for Preliminary Approval (filed October 8, 2019).

[3] Plaintiffs' counsel is well aware of what settlements are not fair. They have objected to patently unfair objections, containing multiple terms that reveal their inadequacy, and have recently won an important appeal denying approval for a settlement that recovered less than 4% of the value of the primary claims in the case, was reversionary, and in which the plaintiffs' counsel would have obtained more than the class members. See Roes, 1-2 v. SFBSC Mgmt., LLC, 944 F.3d 1035 (9th Cir. 2019). None of those issues are present in this case. Plaintiffs would never have agreed to a settlement with such unfair terms. It is ironic that other counsel are second-guessing and criticizing counsel's having reached this settlement, which is eminently fair and adequate, showing that any settlement is vulnerable to objections by opportunistic lawyers.

The Court has requested additional briefing related to a number of these arguments, which Plaintiffs are happy to provide. Answers to the court's inquiry, and further discussion, is provided here. Plaintiffs are also happy to answer any further questions at the preliminary approval hearing.

II. Class Certification for Settlement Purposes

The Court requested declarations from Plaintiffs setting forth the basic material facts about their work for Postmates, whether they worked in each of the municipalities that impose civil penalties that are being released, and whether they received consideration for the release "of their individual claims because that bears on their adequacy." Order at 2. The requested declarations are being filed concurrently with this supplemental briefing. See Declarations of Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and Joshua Albert, filed concurrently.

The Court also requested an explanation of "why it is proper to release class members' local-ordinance claims that [the Plaintiffs] do not themselves possess." Order at 2. As fully discussed infra Section V, class action releases commonly include claims that stem from the same facts as the claims alleged in the complaint., which would include all local ordinances, even for municipalities in which named Plaintiffs have not worked. See, e.g, Cotter v. Lyft, Inc., (N.D. Cal. 2016) 193 F. Supp. 3d 1030, 1038 (in independent contractor misclassification case, approving settlement where recovery was based primarily on potential reimbursement damages but release included other wage claims related to misclassification, noting "What matters is whether the released claims arise from the same facts as those alleged in the lawsuit, and whether the settlement as a whole is reasonable in light of the strength and value of all the claims being released.").

The Court asked the Plaintiffs to disclose whether they received any consideration for the release of their individual claims that bears on their adequacy to serve as class representatives. As their declarations attest, the service awards are the only consideration they

would receive in exchange for their execution of a general release. See Declaration of Jacob Rimler ¶ 9; Declaration of Giovanni Jones ¶ 8; Declaration of Dora Lee ¶ 8; Declaration of Kellyn Timmerman ¶ 9; Declaration of Joshua Albert ¶ 8. The service awards being requested as part of this settlement, in addition to recognition for Plaintiffs' efforts throughout this litigation, are partially in consideration for the general release the Plaintiffs are executing as part of this settlement. California courts routinely find that such awards can serve as consideration for a general release. See, e.g., Wilson v. Tesla, Inc., (N.D. Cal. July 8, 2019) 2019 WL 2929988, at *15 (awarding service award where plaintiffs executed a general release, which was not required of other class members), Bennett v. SimplexGinnell LP (N.D. Cal. Sept. 3, 2015) 2015 WL 12932332, at *8 (same), Jefferson v. Chase Home Finance (N.D. Cal. Feb. 23, 2009) 2009 WL 10702540, at *3, (awarding service award "as an incentive award and in exchange for a general release of all claims [Plaintiff] may have against [Defendant]"); Eddings v. Health Net, Inc., (C.D. Cal. June 13, 2013) 2013 WL 3013867, at *7 (approving service award where plaintiff executed a general release). Courts routinely recognize that class action cases would never be brought without lead plaintiffs, and service awards are a necessary incentive for them to do so.

III. Reasonableness of the Settlement Consideration

A. Maximum Value of the Settlement

The Court stated that it believes that Plaintiffs are required to provide full valuation of all released claims and an explanation of how they valued the claims, and it invited Plaintiffs to provide argument if Plaintiffs do not agree that such an explanation is required. Order at 2. Plaintiffs do not believe that the law requires settling parties to estimate the maximum value of all released claims. As the Court of Appeal recognized in Villacres v. ABM Industries, Inc., (Cal. Ct. App. 2010), 189 Cal. App. 4th 562, 586:

> [A] clause providing for the release of claims may refer to all claims raised in the pending action, *or* it may refer to all claims, both potential and actual, that *may have been raised* in the pending action with respect to the matter in controversy... [A] court may release not only those claims alleged in the

> complaint and before the court, but also claims which *could have been alleged* by reason of or in connection with any matter or fact set forth or referred to in' the complaint. ... And it has been held that even when the court does not have power to adjudicate a claim, it may still approve release of that claim as a condition of settlement of [an] action [before it].

Id. (internal citations and quotations omitted); see also Williams v. Boeing Co. (9th Cir. 2008) 517 F.3d 1120, 1134 (release could properly bar "subsequent claims relying upon a legal theory different from that relied upon in the class action complaint, but depending upon the same set of facts"). Moreover, Plaintiffs have not located any case law requiring valuation of *every* released claim. But see Lane v. Facebook, Inc., (9th Cir. 2012) 696 F.3d 811, 823 (holding that "the district court acted properly in evaluating the strength of the plaintiffs' *case* in its entirety rather than on a claim-by-claim basis") (emphasis in original); In re Oracle Sec. Litig., 829 F. Supp. 1176, 1182 (N.D. Cal. 1993) ("settlement approval does not require aggregate damages to be determined with mathematical precision"); In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Products Liab. Litig., 2013 WL 3224585, *7 (C.D. Cal. June 17, 2013) ("Because absolute precision is impossible, 'ballpark valuations' are [] permissible, especially when reached after mediated negotiation among noncollusive parties.").

Here, in the Declaration of Shannon Liss-Riordan filed with their Motion, Plaintiffs have already provided their counsel's valuation of the expense reimbursement, minimum wage, and overtime claims, along with their best estimates of the released claims related to itemized wage statements, meal and rest breaks, one-in-seven day's rest, unlawful terms, sick leave, reporting time, accurate records, and unfair/unlawful business practices. Courts have approved a number of gig economy misclassification settlements reached by Plaintiffs' counsel in which Plaintiffs' counsel similarly provided valuation for only those claims she believed to be valuable. See, e.g., O'Connor v. Uber Technologies, Inc., Case Nos. 13-cv-3826; 15-cv-262 (N.D. Cal.); Singer v. Postmates, Inc., (N.D. Cal.) Case No. 15-cv-1284; see also Marciano v. DoorDash, Inc., (San Francisco Superior Court) Case No. CGC-15-548101; Cotter v. Lyft, Inc., (N.D. Cal.) Case No. 13-cv-4065.

Moreover, it is impracticable for Plaintiffs to estimate a maximum value for each of the released claims that Plaintiffs have properly valued as worthless. For example, because couriers can log on and off the Postmates app whenever they wish, without reporting to Postmates, claims for meal break violations (Labor Code § 512) and violations of the prohibition against seven consecutive days of work (Labor Code §§ 551, 552) appear to have no value at all. Providing a maximum value of claims is equally, if not more challenging, when considering those claims Plaintiffs are likely unable to certify on a class-wide basis. For example, there is at least some evidence that couriers may not only log on and off whenever they wish, but may also leave the Postmates app while engaging in personal or work-related activities unrelated to any Postmates delivery. If true, this creates a substantial risk that identifying a class for meal and rest breaks, sick leave violations, and even overtime and minimum wage are unascertainable. See Yucesoy v. Uber Techs., Inc., Case No. 15-cv-262-EMC, 2015 WL 6955140, at *3 (N.D. Cal. Nov. 10, 2015); Yucesoy v. Uber Techs., Inc., Case No. 15-cv-262-EMC, 2016 WL 493189, at *5-6 (N.D. Cal. Feb. 9, 2016) (dismissing overtime and minimum wage claims under the Massachusetts "ABC" test due to difficulties in alleging facts to show why waiting time is compensable for driver who could log on and off of app at will). Finally, of course, if any couriers preferred not to release these claims in this settlement because they would like to pursue them on an individual basis, they are free to do so by opting out of the settlement. The notice makes clear that they have the right to do that.

B. The Settlement Discount

The Court asked for justification for the $250,000 PAGA allocation.[4] As discussed in

[4] Courts have routinely approved minimal – and far smaller – allocations for PAGA penalties when they are reached together with class settlements. See, e.g., del Toro Lopez v. Uber Techs., Inc., (N.D. Cal. Nov. 14, 2018) 2018 WL 5982506, *8 (approving $50,000 PAGA payment from $10 million fund); Ahmed v. Beverly Health & Rehab. Servs., Inc., 2018 WL 746393, *10 (E.D. Cal. Feb. 7, 2018) (approving $4,500 PAGA payment from $450,000 fund); Martin v. Legacy Supply Chain Servs. II, Inc., 2018 WL 828131, *2 (S.D. Cal. Feb. 12, 2018) (approving $10,000 PAGA payment from $625,000 fund).

Plaintiffs' earlier briefing, Plaintiffs have calculated the maximum theoretical recovery penalty on the expense reimbursement PAGA claim as approximately $274 million. See Mot. for Prelim. Settlement Approval at p. 12 (October 8, 2019). As explained in the accompanying Declaration of Shannon Liss-Riordan, this number was calculated by multiplying the penalty for the initial PAGA pay period violation under §2699(f)(2) (which is $100) by the number of couriers who worked during the PAGA period (to represent the initial pay period violation). Counsel then added multiplied the penalty for subsequent violations ($200) by the remaining number of PAGA pay periods. See Liss-Riordan Decl. ¶ 2.

Plaintiffs respectfully submit that when PAGA claims are settled in conjunction with class settlements, it is not necessary for the Court to compare the PAGA allocation to the maximum PAGA penalty. This is because "in evaluating the adequacy of a settlement of a PAGA claim, courts may employ a sliding scale, taking into account the value of the settlement as a whole. Thus, where a settlement for a [] class is robust, the statutory purposes of PAGA may be fulfilled even with a relatively small award on the PAGA claim itself..." Viceral v. Mistras Grp., Inc., (N.D. Cal. Oct. 11, 2016) 2016 WL 5907869, at *9. In Viceral, in light of the fact that PAGA claims were being settled as part of a class action settlement, the court approved a settlement of less than 1% of the verdict value of the PAGA claims. And in Price v. Uber Techs., which was a *PAGA-only case* in which the court was evaluating the settlement amount against the maximum PAGA penalty, the court approved a $7.75 million settlement where the PAGA penalties were valued at over $3 billion. Price v. Uber Techs., Inc., (Los Angeles Super. Ct.) Case No. BC554512. Similarly, earlier this month the court approved a $15 million PAGA-only settlement where the plaintiffs' counsel had estimated the PAGA penalties to be *at least* $7.6 billion (representing approximately 0.2% of the PAGA penalties). Turrieta v. Lyft. Inc. (Los Angeles Super. Ct.) Case No. BC714153.

Moreover, the post-Dynamex legal landscape has been constantly evolving since April 30, 2018, as courts, workers, and companies grapple to understand the contours of the decision's implications. What is clear, however, is that gig economy companies (including

Postmates) are aggressively seeking to challenge Assembly Bill 5, which states that it codified Dynamex and went into effect on January 1, 2020. Gig economy companies have been engaging in significant efforts for months in an effort to present an alternative to A.B. 5 through a ballot initiative. See, e.g., *Uber, Lyft, DoorDash launch a $90-million fight against California labor law*, LOS ANGELES TIMES, Oct. 29, 2019, available at https://www.latimes.com/california/story/2019-10-29/uber-lyft-doordash-fight-california-labor-law-ab5. And, just two days prior to A.B. 5's effective date, Postmates joined Uber in filing a federal lawsuit seeking an injunction against the law. Olson v. State of California, Case No. 19-cv-10956 (C.D. Cal.). Thus, given this continued uncertainty as to Dynamex's application to gig workers and based on their counsel's extensive experience litigating under the Massachusetts "ABC" test, Plaintiffs believe there is a real risk that they may not prevail in the case (even if they could somehow overcome the obstacle of the arbitration clause). See, e.g., Lawson v. GrubHub (N.D. Cal.) 15-cv-5128 (in the first-of-its-kind trial as to employee status of a gig economy worker, court found plaintiff was properly classified as an independent contractor), appeal pending Ninth Cir. No. 18-15386. In ruling on a motion for preliminary approval, a court is not required to second-guess the amount of the compromise reached in this case, and the question is not whether the Court – or proposed objectors – would have agreed to it. Rather, the question is whether the settlement is fair, reasonable, and adequate in light of the views of extremely experienced counsel who have aggressively litigated these cases for years.

The Court also asked Plaintiffs for an evaluation of the factors to be considered in determining the ultimate civil penalty amount under PAGA. Under Cal. Lab. Code § 2699(e)(2), "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." In Fleming v. Covidien Inc. (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *3-4, the court reduced the PAGA penalty from $2.8 million to $500,000 after finding that the defendants were not aware prior to the lawsuit that the wage statements were not in compliance with the law and

moved promptly to correct the violation when notified. Here, Plaintiffs cannot predict how the Court would rule, but submit that there is a significant likelihood the Court could drastically reduce the PAGA penalties in light of ongoing uncertainty around the application of Dynamex to gig economy workers, as they anticipate that Postmates would argue that this legal uncertainty meant that punitive penalties are unwarranted. See also Stuart v. Radioshack Corp., (N.D. Cal. Aug. 9, 2010), 2010 WL 3155645, at *4 (approving a $50,000 PAGA payment when the damages were calculated as $3.2 million the Plaintiffs, noting that "[w]hile Plaintiffs could arguably get more than $3.2 million because they are entitled to penalties under the PAGA, it is not clear that they could get a significant additional amount because the PAGA provides that in any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").

C. Investigation and Discovery

In the accompanying Declaration of Shannon Liss-Riordan, Attorney Liss-Riordan discloses the nature of the discovery that was received in advance of the Rimler, Lee, and Albert actions, as well as the discovery that was produced in the Albert case before it was stayed and in the Singer case that was settled in 2017. While the parties do not believe it is necessary for the data to be filed with the Court, see, e.g., Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal. App. 4th 399, 409, if the Court would like to review the data provided to Plaintiffs in advance of mediation, Plaintiffs would be happy to file this data under seal.

D. Dispute Resolution Fund

The Court asked for a justification of setting aside $250,000 as a Dispute Resolution Fund, which is separate from the $450,000 set aside for claims administration. The $450,000 set aside for claims administration is an administrative fund that will cover the settlement administrator's costs for distributing notices and checks, maintaining databases of class members, tracking the submission of claim forms, opt-outs and objections, answering class

member questions, and the like. None of the $450,000 claims administration costs will be disbursed to the class. By contrast, the Dispute Resolution Fund is designed to provide a separate allocation of funds that can be disbursed to class members mistakenly excluded from the class.[5]

IV. Notice

A. LWDA

The Court asked counsel to attest to compliance with Cal. Lab. Code § 2699(l)(2), which requires a proposed PAGA settlement to be submitted to the LWDA. Such a notice is typically provided to the LWDA *after* a court grants preliminary approval of the class action settlement, so that the LWDA has an opportunity to weigh in prior to the *final* approval hearing. See Liss-Riordan Decl. ¶ 4. However, in compliance with the Court's request, Plaintiffs' counsel filed the proposed settlement agreement (as modified in compliance with the Court's November 25, 2019, Order) with the LWDA. See Liss-Riordan Decl. ¶ 5.

B. Process

Plaintiffs respond to the Court's inquiries regarding the notice process below.

i. Method of notice

The parties agreed to the have the Settlement Administrator distribute notice using the email addresses couriers use to the sign up on the Postmates App. Because these are the email addresses that couriers use to perform work on the Postmates App, email is the optimal means of distributing notice of the settlement. Moreover, email is the commonly used method of providing notice in gig economy settlements, and it generally successfully reaches almost 100% of the class. In the Singer v. Postmates, Inc., settlement, for example, only 3,313 of the 264,294

[5] Moreover, uncashed checks can also be used to resolve unanticipated issues that arise before the residual distribution. In the experience of Plaintiffs' counsel, who has administrated numerous similar settlements, the $250,000 set aside as a Dispute Resolution Fund (together with the ability to use uncashed checks) is an appropriate amount for a settlement of this size and should be adequate to serve its purpose. See Liss-Riordan Decl. ¶ 7.

notices sent by email (or approximately 1%) were undeliverable. See Singer v. Postmates, Inc., (N.D. Cal.) Case No. 15-cv-1284, Dkt. 92-1 (attached as Ex. E to Decl. of Shannon Liss-Riordan); see also Marciano v. DoorDash, Inc., (San Francisco Superior Court) Case No. CGC-15-548101 (306 of 33,695, or less than 1%, of emailed notices undeliverable) (Decl. of Settlement Administrator attached as Ex. F to Liss-Riordan Decl.); Cotter v. Lyft, Inc., (N.D. Cal.) Case No. 13-cv-4065, Dkt. 271-1 at 2-3 (attached as Ex. G to Liss-Riordan Decl.) (4,190 of 202,030, or 2%, of emailed notices undeliverable). There is no reason to deviate from emailed notice, given the highly successful use of this method in prior gig economy settlements.

California courts have permitted notice to issue through email for well over a decade. See, e.g., Chavez v. Netflix, Inc. (2008) 162 Cal. App. 4th 43, 56. As online communications become the norm, distributing notice via email is the most effective means of ensuring that class members receive actual notice of the settlement and their opportunity to opt-out and object. Indeed, "using the capability of the Internet" is a "sensible and efficient way of providing notice"—especially where "the class members conducted business with defendant over the Internet, and can be assumed to know how to navigate" the Internet in a manner that will promote actual notice. Id. at 58.

The parties decided to distribute notice to class members via postal mail only if their emails are returned undeliverable. Undeliverable notices are typically received almost immediately after an email is sent, meaning the Settlement Administrator could immediately begin to locate mailing information for these particular individuals.

The parties decided to not provide notice via the Postmates App for several reasons. First, not all settlement class members who continue to use the App may use it between the date notice issues and the Exclusion/Objection Deadline. Many couriers use the App intermittently. And settlement class members who no longer use the App would not receive notice because they no longer access the App to perform work on Postmates' platform. But in today's world, people are constantly on their phones and receiving emails. As noted above, there is a greater likelihood that email notice is optimal because the email addresses to which notices will be sent

are the same email addresses that couriers used to sign up for and use the App. Finally, notice via the Postmates App may confuse settlement class members as it will appear to be a communication from Postmates and not from the settlement administrator or the Court. The parties agreed that notice would only be issued by the settlement administrator.

ii. Exclusion/Objection Deadline

As the Court notes, the Exclusion/Objection Deadline is defined in the agreement as 60 days after the Mailed Notice Date. Paragraph 2.20 of the settlement agreement previously submitted to the Court defined "Mailed Notice Date" as the date of the initial distribution of the Notice to Settlement Class Members. In an effort to provide further clarity as this initial distribution is being done via email (with mailed notices to follow to any Class Member whose email was undeliverable), the parties have revised this term throughout the Settlement Agreement from "Mailed Notice Date" to "Notice Distribution Date". The parties have also corrected the discrepancy between paragraphs 3.1 and 6.2 and revised paragraph 6.2 to reflect that the Notice Distribution Date is twenty (20) days after the entry of the Preliminary Approval Order, not thirty (30) days.

The "initial distribution" refers to distribution by electronic mail. The parties have modified Paragraph 6.5 of the settlement agreement to require prompt mailing of notices if an emailed notice is returned as undeliverable and to provide that individuals receiving their notice by mail will have the same 60 days to participate in (by submitting a claim for or objecting) or opt-out of the settlement.

iii. Non-wages and Form 1099

The Court expressed concerns about the fact that all payments under the settlement will be excluded from IRS reporting requirements. However, the payments are not being excluded from IRS reporting requirements; rather, the payments will be reported via IRS Form 1099. The reason for this is that Postmates uses 1099s to pay its couriers. As part of this settlement, Postmates has not agreed to make a change to its classification for couriers for wage purposes or tax purposes. Thus, there is no reason that settlement payments would need to be made with W-

2 forms issued. Indeed, in the numerous gig economy misclassification settlements in which Plaintiffs' counsel has been involved, the settlement payment has always been issued with 1099 forms. See Liss-Riordan Decl. ¶ 6.[6]

iv. Opt outs

The Court inquired into why the Settlement Agreement does not permit counsel opt out on behalf of their clients, either individually or as a group, or to assist with submitting an opt out. The Court's concerns appear to stem from the arguments advanced by several proposed interveners in this case, who contend that the opt-out procedure interferes with an individual's right to use their counsel of choice and is too onerous. But as discussed below, the opt-out process is specifically designed to protect each class member's ability to individually choose whether to participate in the settlement, and to prevent class members from being opted out of the settlement without their knowledge or informed consent by a lawyer who may or may not actually represent them. See Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1024 ("The right to participate, or to opt-out, is an individual one and should not be made by the class representative or the class counsel.").

Moreover, nothing about the Settlement's opt-out procedure prevents counsel (a) from reviewing the Settlement with the client, and (b) from advising the client on whether participating in or opting out of the Settlement is in the client's (as opposed to counsel's) best interest. See Settlement Agreement ¶ 7.1. Thus, to opt out, all a Settlement Class Member must do is (a) sign the request and (b) mail or email the request to the Settlement Administrator. All this can be done using a smartphone, which each Settlement Class Member necessarily has and uses, as it is required to use the Postmates app.

Indeed, these very opt-out procedures were recently approved by Judge Chen in O'Connor v. Uber Technologies, Inc. (N.D. Cal. Sept. 13, 2019) 2019 WL 4394401. Judge Chen approved a settlement agreement which similarly required that opt-out requests be

[6] Additionally, the law applicable to questions of employee status under the California Labor Code differs from the federal tax standard, which has not been raised in this case.

submitted by the settlement class member, even if the class member was represented by counsel. O'Connor v. Uber Technologies, Inc., Case Nos. 13-cv-3826; 15-cv-262 (N.D. Cal.), Dkt. 916.01 ¶ 182. Other courts have approved similar provisions. For instance, in Bellows v. NCO Financial Systems, Inc., (S.D. Cal. July 13, 2009) 2009 WL 10725741, the settlement agreement provided that "[t]o be effective, the written request for exclusion must be signed by the Class Member and state: the Class Member's full name, address, and telephone number." Id. at *1. The court granted preliminary approval, and an attorney sought to opt-out 62 class members by submitting a letter on the class members' behalf requesting that all 62 individuals be excluded from the class. Id. at *1. The court rejected the letter because it was in clear violation of the settlement agreement's requirement (which the court had approved) that requests for exclusion be signed personally by the class member. Id. at *2. The court also noted that the attorney had not discussed or conferred with any of his clients about opting out of the settlement, id, *which is the very concern the parties seek to mitigate here* by requiring class members to sign opt-out forms themselves. And in Camp v. Maplebear, Inc. d/b/a Instacart, (Los Angeles Super. Ct. Jan. 12, 2018) Case No. BC 652216, the court found that, in light of settlement agreement's requirement that each class member submit an opt-out personally, a class representative in a second case against the same defendant could not submit an opt-out on behalf of class members in that case.

The parties here thus included the requirement that class members opt-out personally in order to ensure that the class members themselves – not their counsel – have an opportunity to review the benefits of the settlement in order to decide for themselves whether or not to participate in the settlement. Allowing class members' counsel to opt-out on class members' behalf risks a circumstance in which counsel submit hundreds or thousands of opt-out forms simply in order to derail this settlement, without even ensuring that each class member has knowingly chosen to be excluded from the settlement.

While these procedures may not be necessary in every case, they are necessary here, as certain proposed interveners' counsel (namely Keller Lenkner) seemingly seek to deprive their

own clients of the opportunity to make this decision individually. The parties are genuinely concerned that Keller Lenkner does not, in fact, have an attorney-client relationship with each of its purported clients. As explained in Plaintiffs' earlier briefing, Keller Lenker claimed to represent Jacob Rimler, the named plaintiff in this case, notwithstanding that he has no recollection of ever agreeing to be represented by Keller Lenkner. See Decl. of Jacob Rimler in Support of Plaintiffs' Opposition to Non-Party LeMaster Objectors' Motion to Intervene (filed November 6, 2019); see also Decl. of Theane Evangelis in Support of Defendant Postmates, Inc.'s Opposition to the LeMaster Objectors' Application for Leave to Intervene (filed November 6, 2019) ("Evangelis Decl.") ¶ 6. Plaintiffs are now submitting declarations from an additional 7 couriers whom Keller Lenker claims to represent, in which these couriers attest that they do not believe they are represented by Keller Lenkner. See Declarations of Paul Bodner, Amanda Boyett, Michael Clark, Gian Claudio, Andrew Harris, Sharawn Laws, and Steven Turner. Thus, it is not at all clear that Keller Lenkner even represents many of the couriers it claims to represent and would ostensibly be seeking to opt out of the settlement, and it is entirely appropriate that the settlement agreement require class members to personally execute their opt-out requests to ensure that class members are able to make such an important decision on their own, rather than allowing a lawyer who may not even represent the class member to do so.

Additionally, because so many plaintiffs' law firms are currently soliciting gig economy workers to bring individual arbitration cases, many of these workers are confused about what lawyers claim to be representing them and who is sending these solicitations. It has been the undersigned counsel's experience that many of the firm's clients have unknowingly clicked on solicitation emails from other firms, thinking they were responding to a communication from this firm. Then, when another firm claims to be representing these workers, the workers are surprised to hear that another firm believes it represents them. By requiring class members to take action to opt themselves out of the settlement, the settlement ensures that class members are making a knowing choice not to participate in the settlement.

The Court also inquired as to how class members can opt out by email. Class members **do not** need to download a form, print it, sign it, and attach it to an email. They can simply opt-out in the body of an email. The parties have chosen to allow opt-outs via mail and email, but not via submission of an opt-out form on an online portal, in order to simplify the claims submission process and ensure that class members do not inadvertently submit a claim form when they intended to opt out and do not inadvertently opt out when they intended to submit a claim form.[7]

The parties have modified Paragraph 7.5 as ordered by the Court to reflect that the Court, not the Settlement Administrator, will decide whether a contested opt-out is valid.

v. Objections

As ordered by the Court, the parties have modified Paragraphs 8.1, 8.2, and 8.4 of the settlement agreement to reflect that objectors are not required to file objections with the Court, and that the parties will ensure that any objections submitted to the Settlement Administrator are filed with the Court. Pursuant to the Court's direction, the parties have also eliminated the requirement of a notice to intent to appear at the final approval hearing in Paragraph 8.4, the requirement of supporting papers in Paragraph 8.2, and the requirement for a legal basis for the objection in Paragraph 8.3.

The parties share the same concerns about allowing counsel to object on behalf of their clients as allowing counsel to opt-out, as discussed above. While counsel can write the objection, a class member needs to affirm that it is their objection.

The sentence in Paragraph 8.7 providing that "It shall be Settlement Class Counsel's sole responsibility to respond" to any objections made with respect to Counsel's award and Plaintiffs' service awards is intended to mean that Postmates shall not be required to respond to

[7] In Plaintiffs' counsel's experience, opt-out forms are often confusing for class members. Some class members have submitted them when they intended to submit a claim form, even when the form clearly stated that it should be used only for opting out. Requiring class members to state for themselves that they intend to opt-out will ensure that this is what they actually intend.

objections related to the requested attorneys' fees and service awards. In the experience of Plaintiffs' counsel, it is the responsibility of class action plaintiffs' counsel, not defendants, to respond to these types of objections. This makes good sense, as defense counsel is not in a position to know the amount of effort expended by plaintiffs' counsel, nor are they necessarily in a position to fully appreciate the contributions made by each Plaintiff.

vi. Exclusion of an Individual

The parties have modified the requirement in Paragraph 6.11 that an individual notify the Settlement Administrator that they have been excluded from the class list within "a reasonable amount of time" to require that an individual notify the Administrator within thirty (30) days after distribution of the Class Notice. The parties have added language to the paragraph clarifying that an individual can notify the Administrator via mail, email, or telephone. These individuals must still submit a Claim Form, Objection, or Opt-out by the deadline. It would be logistically quite difficult for each individual to have a separate deadline.

The Court posed a hypothetical in which a mistakenly excluded individual submits a Claim Form after the Dispute Resolution Fund has been exhausted. Plaintiffs' counsel has never encountered a circumstance in which an individual who was mistakenly excluded was unable to be paid. As long as such an individual made themselves known prior to final disbursement, funds remaining from uncashed checks could also be used as a source of payment. See Liss-Riordan Decl. ¶ 7. If such a situation were to occur, however, the parties agree that the individual would be permitted to opt-out of the settlement.

vii. Claim Form

The Court indicated that the term "Bar Date" – the deadline by which to submit a claim form – is not defined in the Settlement Agreement. The parties respectfully direct the Court's attention to Paragraphs 2.3 and 2.20, which define "Bar Date". The parties have modified this Paragraph to clarify that, like the Exclusion/Opt-out Deadline, the Bar Date is sixty (60) days after the Notice Distribution Date. Notwithstanding the formal "Bar Date", the parties will allow claims to be submitted as long as is feasible prior to distribution.

In response to the Court's inquiry regarding submission of the Claim Form, the Form may be submitted via mail, email, or online portal. The parties have revised Paragraph 5.3 to clarify this point.

viii. Reminders

As the Court notes, Paragraph 6.7 calls for reminders to be sent to the settlement class. The parties have modified the language of Paragraph 6.7 to clarify that these reminders will be sent to Settlement Class Members who have not yet submitted a Claim Form, an Objection, or an Opt-out Form. The parties have also clarified that these notices will be sent via email to Settlement Class Members whose initial emails were not undeliverable and shall be sent via mail to Settlement Class Members who received a Notice Form via mail pursuant to Paragraph 6.5.

The parties will determine when to issue these reminders but anticipate that the reminders will be sent approximately 20 and 40 days into the 60-day claims period. Pursuant to the agreement, the parties will agree to any further reminders that may be reasonably necessary to assure adequate opportunity for class members to participate in the settlement. The reminders will contain the same information as the Settlement Class Notice.

ix. Settlement Share Disputes

The parties have modified the Notice to explain that Class Members can dispute the information upon which their share of the Settlement will be calculated through a letter sent via U.S. email or an email. The parties will evaluate the documentation provided by the Class Member on a case-by-case basis.

C. Substance

i. Language of Notice

The Postmates App, which couriers are required to use in order to work for Postmates, is available in English and Spanish. However, as Postmates has informed Plaintiffs that 99% of couriers nationwide use the English version of the App, the parties believe English language notice is appropriate in this case. While the parties are not opposed to issuing notice in Spanish

if the Court believes that Spanish language notice is required, this would likely incur substantial additional settlement administration costs.

ii. As directed by the Court, the parties have made the following revisions to the Notice:

a. Notice Summary Paragraph: The parties have modified the summary paragraph to provide the estimated total of the $11,500,000 that will be available for distribution to the settlement class.

b. Page 1-2: The parties have modified the summary of the recipient's options as directed.

c. Section 2: The parties have modified this Section to include a brief discussion of the Lee and Albert actions.

d. Page 3, third paragraph: The parties have added the word "preliminarily" in references to approval of the class representatives and class counsel.

e. Section 3: The parties have modified this section to add that the settlement amount includes a Dispute Resolution Fund of $250,000, and that the Administration Costs are capped at $450,000, rather than "estimated" at $450,000.

f. Section 4: The parties have modified the language in this section to clarify that a class member is participating in the settlement either by submitting a timely claim form or by objecting. The parties have modified the language regarding the release as directed by the Court.

g. Section 5: The parties have modified the notice form to disclose (1) the estimated net settlement amount available for distribution to class members; (2) that certain factors may impact each class member's settlement payment (e.g. the number of claims submitted, the number of class members who opt-out, the amount of attorneys' fees and service awards ultimately awarded); (3) the estimated delivery miles for that class member; (4) whether the class

member can expect to have his or her points doubled; and (5) a notification that the class member can contest the number of miles and/or whether their points should be doubled. The parties are unable to comply with the Court's request to add information as to the class member's estimated recovery per mile, because this amount will inevitably depend on the factors listed in (3) supra.[8]

h. Section 6: The parties have modified the language to explain how to notify the Settlement Administrator of any change of address or request a replacement check. The section has also been modified to explain the procedure to dispute the delivery miles. The section has also been modified to state that payment will be distributed approximately 30 days after the settlement becomes final.

i. Section 7: The parties have modified this section to explain how to opt-out via email. The parties have also added an explanation that individuals who opt out will still be releasing their claims under PAGA.

j. Section 8: The parties have modified this section to explain that individuals who opt out can still object to the PAGA component of the settlement. The parties have clarified that an individual submitting an objection does not need to include their dates of service with Postmates. The parties have clarified that an individual can submit an objection and also submit a claim form.

k. Section 9: The parties have modified this section to note that the Court will consider Class Counsel's request for attorneys' fees and Plaintiffs' service awards at the final approval hearing, in addition to considering whether the settlement is fair, reasonable, and adequate. The parties have clarified that

[8] While the Court also ordered that the Notice be modified to disclose that employer-side payroll taxes will be deducted from the settlement amount, such taxes will not be deducted, because the payments will be made via Form 1099.

individuals can check the settlement website to learn whether the final approval hearing has been rescheduled and have deleted the sentence providing that the Court will hear from individuals who made a timely request to speak at the final approval hearing.

l. Section 10: The parties have added a reference to the settlement website to this section. The parties will ensure that the settlement website contains all documents ordered by the Court. The parties have also added a paragraph directing the reader to the Court's website and explaining how to use the website.

V. Allocation of Funds

A. Allocation Based on Mileage

For the reasons explained on pages 10-11 of Plaintiffs' Motion, Plaintiffs believe that calculating each individual's allocation based on mileage is the most appropriate way to allocate the settlement because gig workers have generally not been successful in advancing class claims alleging minimum wage and overtime violations. Courts have consistently endorsed allocation based on mileage approach in similar cases involving "gig economy" delivery workers. See, e.g., Cotter v. Lyft, Inc. (N.D. Cal. 2016) 176 F. Supp. 3d 930, 939 (approving settlement where "plaintiffs' counsel assigned a minimal value … to the other 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).

Postmates couriers are not compensated for their time traveling to a pickup location, and Plaintiffs expect Postmates would argue that time couriers spend traveling to a pickup location is not compensable. Moreover, there would have been challenges in achieving class certification for these claims because many couriers do not have overtime or minimum wage

claims. For example, FLSA claims brought on behalf of Uber drivers have not been successful. See Razak v. Uber Techs., Inc., 2018 WL 1744467, *1 (E.D. Pa. Apr. 11, 2018), appeal pending Third Cir. No. 18-1944. See also Yucesoy v. Uber Techs., Inc., 2016 WL 493189, *6 (N.D. Cal. Feb. 9, 2016). Thus, Plaintiffs consider the mileage expense damages the best measure of the value of couriers' claims and believe it is the appropriate way to allocate the settlement. Moreover, as explained above, Plaintiffs are not able to calculate potential damages (or allocation) for claims such as meal-and-rest break and sick leave violations because couriers can take breaks whenever they wish. Allocating the settlement based on overtime would similarly not be feasible as the data provided by Postmates indicates that only a relatively small portion of couriers even worked overtime.

B. Class Members Who Worked Pre- and Post-Dynamex

The Court also inquired as to whether class members who worked for Postmates after Dynamex have stronger claims than those who worked prior to Dynamex. Although Postmates does not agree, Plaintiffs' position is that (as numerous courts have recognized) the Dynamex "ABC" test is retroactive. See Gonzales v. San Gabriel Transit, Inc. (2019) 40 Cal. 5th 1131, 1156; Garcia v. Border Transportation Group, LLC (2018) 28 Cal. App. 5th 558, 572 n. 12; Valadez c. CSX Intermodal Terminals, Inc. (N.D. Cal. Mar. 15, 2019) 2019 WL 1975460, at *5; Johnson v. VCG-IS, LLC (Super Ct. Cal. July 18, 2018) Case No. 30-2015-00802813-CU-CR-CXC, Ruling on Motion in Limine, at *1–2. Additionally, though Plaintiffs do not agree, Postmates has and would continue to argue that Dynamex does not apply to claims for expense reimbursement under Section 2802 of the Labor Code, and Postmates is actively challenging A.B. 5's application to gig economy companies. Thus, there is no difference in the strength of the claims of couriers who worked pre- and post-Dynamex and there should be no difference in the recovery of couriers who worked pre- and post-Dynamex.

C. Doubled Points for Certain Class Members

The Court also indicated that it believed the parties' proposal to double the points of class members who opted out of arbitration, initiated arbitration, or demonstrated an interest in

writing to initiate arbitration prior to October 17, 2019, was vague. The parties hereby clarify that they would consider a class member to fit this criteria if the class member either (1) provided Postmates with a valid request to opt out of its arbitration provision; (2) filed a demand for arbitration with the American Arbitration Association against Postmates challenging their classification (whether represented by counsel or acting *pro se*); or (3) retained an attorney to represent them in filing a demand for arbitration against Postmates challenging their classification, even if the demand has not been filed.

The settlement awards these class members double points in recognition of the fact that these class members do not face the same risks as the rest of the class in bringing their claims. Courts have routinely recognized that the risk of enforcement of an arbitration agreement and concomitant loss of the ability to bring class claims[9], and here, the allocation formula simply accounts for the fact that these couriers who opted out of the arbitration clause or who intended to pursue individual arbitrations did not face that particular risk. "[A]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." In re Zynga Inc. Sec. Litig. (N.D. Cal. Oct. 27, 2015) 2015 WL 6471171, *12. Thus, "[i]t is reasonable to allocate [] settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits." Destefano v. Zynga, Inc. (N.D. Cal. Feb. 11, 2016) 2016 WL 537946, *14. Here, the doubling of points for class members who opted out of arbitration and who intended to pursue their claims individually in arbitration does just that by taking into account the relative strength of these courier's claims. See In re Sprint Corp. ERISA Litig. (D. Kan. 2006) 443 F. Supp. 2d 1249, 1262 ("A reasonable

[9] See, e.g., Ontiveros v. Zamora (E.D. Cal. 2014) 303 F.R.D. 356, 369-370 (granting final settlement approval and finding that defendant's appeal of order denying motion to compel arbitration "introduced risk to the litigation because an opinion from the Ninth Circuit in defendant's favor could have impaired plaintiffs' ability to proceed as a class"); Deatrick v. Securitas Security Servs. USA, Inc. (N.D. Cal. Apr. 7, 2016) 2016 WL 1394275, at *5 (granting preliminary settlement approval and finding that one of the "risks to pursuing further litigation rather than settling" was that defendant "could successfully enforce [its] class action waiver and arbitration clauses").

[allocation] plan may consider the relative strength and values of different categories of claims"); In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig. (C.D. Cal. 2014) 295 F.R.D. 438, 458 ("[T]he district court's determination concerning the fairness and adequacy of a proposed settlement is nothing more than an amalgam of delicate balancing, gross approximations and rough justice"); Custom LED, LLC v. eBay, Inc. (N.D. Cal., June 24, 2014, No. 12-CV-00350-JST) 2014 WL 2916871, at *7 (finding allocation plan that provided for different recoveries was not arbitrary because it was based on the relative strength of the class members' claims).

D. Expected Recovery

The Court asked Plaintiffs to calculate, assuming a 100% claim rate, the number of class members expected to receive an individual payment of at least $50 and the number expected to receive at least $100. The most recent data available to Postmates indicates that there are 411,671 potential settlement class members who completed at least one delivery in California between June 3, 2017 and October 17, 2019. Of those potential settlement class members, and subject to the assumption requested by the Court, 16,675 would receive at least $50 (but less than $100), and 13,436 would receive at least $100.[10] To place these figures in context, the data also indicates that over 82% of couriers drove less than 500 estimated miles, and over 90% of couriers drove less than 1,000 estimated miles. Of the couriers who drove at least 500 estimated miles, approximately 42% would receive at least $50 and approximately 19% would receive at least $100. And of the couriers who drove at least 1,000 estimated miles, approximately 77% would receive at least $50 and approximately 34% would receive at least $100.

[10] The settlement agreement provides that every settlement class member who timely submits a valid claim form will receive a minimum of $10 (Paragraph 5.4), and that individuals who opted out of arbitration, initiated arbitration, or demonstrated in writing an interest in initiating an arbitration demand against Postmates before October 17, 2019, will have their estimated miles doubled (Paragraph 5.7). To avoid confusion and complicated calculations that the settlement administrator is in the best position to address after claims are made, the figures provided above do not account for these provisions.

VI. Release of Claims

The Court asked for a justification of the broad release of class members' claims. As noted in the cases cited above in Section II.A., it is commonplace in class action litigation for claims to be released beyond those asserted in the complaint, so long as they are tied to the same basic factual predicate. Every claim contemplated by the settlement arises from a single theory of injury: that Postmates has allegedly violated wage and hour law by misclassifying couriers as independent contractors. Similar releases have been routinely approved, in recognition of the fact that settlement of these claims is not feasible without providing defendants relief from the potential for repeated claims alleging slight variations on the claims asserted under the same statutory scheme (e.g., the California Labor Code or New York Labor Law) but arising from the ***same facts and legal theory*** (alleged independent contractor misclassification). See, e.g Cotter, (N.D. Cal. 2016) 193 F. Supp. 3d at 1038; see also Howard v. America Online Inc., (9th Cir. 2000) 208 F.3d 741, 747 (enforcing release that "bar[red] claims that '***ar[o]se out of or [we]re related to the matters referred to' in the complaint***") (emphasis added); Greko v. Diesel U.S.A., Inc., (N.D. Cal. Apr. 26, 2013) 2013 WL 1789602, *6 (approving release of claims "arising from, or related to, the same facts alleged in or that ***reasonably could have been included***" in the complaint) (emphasis added); Bond v. Ferguson Enterprises, Inc., (E.D. Cal. June 30, 2011) 2011 WL 2648879, *3 (approving release of "All claims, demands, rights, liabilities, and causes of action, whether brought directly, representatively, or in any capacity, that were or ***could have been*** asserted in the Lawsuit based upon the facts alleged therein") (emphasis added).

The Court also asked Plaintiffs to justify the use of the service award as consideration for the general release. As explained above in Section I, courts commonly find that such service awards are appropriate consideration for a general release.

The parties have modified the Settlement Agreement and Notice to clarify that only those class members who submit a valid claim are releasing their FLSA claims.

Finally, the Court asked Plaintiffs to justify the inclusion in the release of claims asserted in the Lee and Albert complaints, as well as the claims in the original Rimler complaint. The inclusion of these claims is appropriate because the Lee and Albert complaints, like the Rimler complaint, are premised on Postmates' classification of its couriers as independent contractors. Courts have found that so long as settlement class members are apprised of the claims that they are releasing, there is nothing wrong with releasing claims pending in another parallel action. See Trombley v. Nat'l City Bank (D.D.C. 2011) 826 F. Supp. 2d 179, 202 case dismissed, 2012 WL 556319 (D.C. Cir. Feb. 13, 2012) (nothing improper about releasing the claims of an overlapping class where "the expansive reach of the releases could not have been clearer" and observing that there is "no requirement that the Class be specifically apprised of all pending actions covered by the releases, as long as the releases themselves were reasonably clear"); see also Wal-Mart Stores, Inc. v. Visa USA, Inc. (2d Cir. 2005) 396 F.3d 96, 106 ("Broad class action settlements are common, since defendants and their cohorts would otherwise face nearly limitless liability from related lawsuits in jurisdictions throughout the country.") (citations and internal quotation marks omitted).

VII. Miscellaneous Issues

- **Class Definition:** The parties have modified the class definition in Paragraph 2.36 such that "Settlement Class" means any and all individuals who entered into an agreement with Postmates to use the Postmates platform as an independent contractor to offer delivery services to customers, and used the Postmates platform as an independent contractor courier to accept or complete at least one delivery in California during the Settlement Period.
- **Second Amended Complaint**: The parties are concurrently filing a stipulation to file the Second Amended Complaint in this matter.

- **Other Litigation Against Postmates**: The parties have modified the Settlement Agreement so that it no longer preliminarily or permanently enjoins Settlement Class Members from initiating litigation against Postmates.
- **Amendments or Modifications to Settlement**: The parties have modified Paragraph 3.8.15 to provide that the Court must approve any revisions to the settlement agreement after final approval.
- **Paragraph 4.5**: The parties have modified Paragraph 4.5 to delete the sentence identified by the Court.
- **Paragraph 6.10**: The parties have modified Paragraph 6.10 to require the Settlement Administrator to provide receipt of valid Claim Forms and Objections to the Court.
- **Release as to Settlement Administration**: Paragraph 10.6 provides that class members shall not have any claims against the Plaintiffs, Class Counsel, the Settlement Administrator, or Postmates or its counsel relating to distributions made in accordance with the Settlement Agreement. This provision is eminently appropriate, as any distributions made under the Settlement Agreement will be made pursuant to the Court's final approval order. It would not be proper to allow a Settlement Class Member to pursue a claim against any party or counsel that was acting in compliance with the Court's order.
- **Selection of Settlement Administrator**: Plaintiffs have selected Simpluris as the settlement administrator. As ordered by the Court, a Declaration from Michael Sutherland, Chief Executive Officer of Simpluris, is being filed concurrently with this brief confirming Simpluris' ability to administer the settlement and explaining how it will protect sensitive personal information.
- **Settlement Website**: The settlement website will be available to class members beginning on the Initial Distribution Date. "Content-neutral" means that none of the

language in the website will contain any suggestion or implication as to the validity of the claims or defenses asserted in this case.

- **Objection Without Statement of Intent to Appear**: The Court ordered that no separate notice of intent to appear at the final approval hearing should be required. See Order re Motion for Preliminary Approval, Nov. 25, 2019, at p.4. Accordingly, in compliance with the Court's order, the parties have modified Paragraph 8.4 so that no such notice need be filed. Pursuant to Paragraph 8.3, however, the parties continue to believe that objectors should be required to state whether or not they intend to appear at the final approval hearing, so that the parties can ensure they will be in the best position to adequately address the arguments advanced by any objectors at the hearing. As the Court has ordered that a separate notice of appearance need not be filed, the only way for the parties to know who will be appearing at the final approval hearing is to require that, in order to be valid, an objection must contain a statement as to whether the person intends to appear.

VIII. Conclusion

For the reasons described herein and in Plaintiffs' Motion for Preliminary Approval, the Court should find that the proposed settlement is fair, reasonable, and adequate, and that it provides meaningful relief to the settlement class. The Court should grant preliminary approval, allow the notice to be issued to the class, and schedule a date for a final approval hearing.

Dated: January 15, 2020

Respectfully submitted,

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

By their attorneys,

By: _____

Shannon Liss-Riordan, SBN 310719
Anne Kramer, SBN 315131
LICHTEN & LISS-RIORDAN, P.C.