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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

JACOB RIMLER and GIOVANNI JONES,

Plaintiffs,

v.

POSTMATES INC.,

Defendant.

CASE NO. CGC-18-567868

DEFENDANT POSTMATES INC.'S SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

ASSIGNED FOR ALL PURPOSES TO:
HON. ANNE-CHRISTINE MASSULLO
DEPARTMENT 304

HEARING:
Date: April 29, 2020
Time: 10:30 a.m.
Dept: 304

Complaint Filed: July 5, 2018
Trial Date: None Set

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I. INTRODUCTION

After this Court continued the hearing on Plaintiffs Jacob Rimler and Giovanni Jones' ("Plaintiffs") motion for preliminary approval of the proposed class settlement (the "Settlement")[1] and denied all motions to intervene, Plaintiffs filed a supplemental brief comprehensively responding to the Court's questions. Nonparties Santana, Altounian, and the LeMaster Objectors asserted further arguments against the Settlement, some of which this Court has already considered and rejected. Postmates submits this brief to respond to those challenges to the parties' fair, arms-length Settlement.

First, the LeMaster Objectors argue that their counsel, Keller Lenkner, should be able to submit an opt-out request for them—and the other approximately 17,000 couriers Keller Lenkner purports to represent—without any written affirmation that over 17,000 couriers do not want to participate in the Settlement. (1/29/2020 LeMaster Supplemental Opposition to Motion for Preliminary Approval ("LeMaster Br.") at 4-8). But "[t]he right to participate, or to opt-out, is an individual one and should not be made by the class representative or the class counsel." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1024, *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338.) That is why courts regularly approve opt-out procedures requiring the individual, not counsel, to submit the opt-out request. In fact, a federal court recently approved such an opt-out procedure over Keller Lenkner's nearly identical objections after being informed of Keller Lenkner's dubious tactics and failure to communicate with clients. (*In re: CenturyLink Sales Practices & Secs. Litig.* (D.Minn. Jan. 24, 2020) No. 17-md-02795-MDJ-KMM, Dkt. 528.) Here, competing declarations submitted by Plaintiffs' counsel and Keller Lenkner demonstrate confusion over which law firm represents which couriers, making it all the more important to ensure that any opt-out request is the product of an individual's *own* informed decision-making, and that couriers are not used as pawns in a law firm's mass opt-out scheme. (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95 [courts evaluating class settlements have a "fiduciary responsibility as guardians of the rights of the absentee class members"].)

Second, Altounian suggests that email notice is inadequate, and that notice should be provided

[1] The Settlement also includes the plaintiffs in *Lee v. Postmates Inc.* (N.D.Cal., filed May 8, 2018) No. 18-cv-03421-JCS ("*Lee*") and *Albert v. Postmates Inc.* (N.D.Cal., filed May 8, 2018) No. 18-cv-07592-JCS ("*Albert*").

via the Postmates App. This ignores that App-based notice would not reach any putative settlement class member who no longer logs onto the Postmates App. Further, clear California precedent endorses email notice in cases like this one, in which the parties' work relationship was predicated on couriers' proficiency with smartphones, an internet-based application, and email.

Third, Altounian and the LeMaster Objectors each argue that the Settlement's release should not cover municipal code claims that were not asserted in the underlying complaints. But it is well-established that class action settlements may release not only claims that *were* brought in a lawsuit, but also those that *could have been* brought on the same factual predicate. And as for the nonparties' assertions that the municipal code claims should be valued at "tens of thousands of dollars" per class member (LeMaster Br. at 12), the Court should dismiss such rank speculation, as none of the nonparties has been able to cite a single case imposing liability under any of the municipal code provisions.

Fourth, the LeMaster Objectors argue that this whole proceeding is barred by Postmates' Fleet Agreement, which contains a class action waiver. (LeMaster Br. at 8-11.) But this Court already rejected that argument when it denied the LeMaster Objectors' motion to intervene. And courts routinely approve class action settlements even where the parties have agreed to a class action waiver. In fact, a federal court recently did so in another case involving Postmates. (*Singer v. Postmates, Inc.* (N.D.Cal. Apr. 25, 2018) No. 4:15-cv-01284-JSW, Dkt. 98.) At any rate, any courier who would prefer to arbitrate than to participate in the Settlement need only opt out.

Fifth, as a last-ditch effort to scuttle a fair settlement, the LeMaster Objectors offer a skewed version of proceedings in a case pending in the Northern District of California, *Adams v. Postmates Inc.* (N.D.Cal. Oct. 22, 2019) 414 F.Supp.3d 1246, 1255, advancing a tortured argument that an order compelling parties to *commence* arbitration precludes them from later settling their claims. This is wrong, of course, since an order compelling parties to arbitrate does not require them to *keep* arbitrating until a final arbitration award is rendered, even where they later wish to settle their claims.

The settlement is fair, reasonable, and adequate, and it would provide $11.5 million of relief to individuals who need it, especially during this pandemic. The Court should grant preliminary approval.

II. ARGUMENT

California has a well-established "policy of encouraging settlements" over the risk and expense

of continued litigation. (*Guzman v. Visalia Community Bank* (1999) 71 Cal.App.4th 1370, 1375; see also *O'Hearn v. Hillcrest Gym & Fitness Ctr., Inc.* (2004) 115 Cal.App.4th 491, 498 [noting "the strong policy of the law to encourage settlements"].) Nonparties Santana, Altounian, and the LeMaster Objectors urge the Court to depart from that principle, but none of the arguments they have drummed up is sufficient to override the "presumption of fairness" that attaches to proposed class action settlements. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) The Settlement offers fair relief to couriers, and was reached after significant discovery and an arms-length negotiation before a respected mediator. The objections of 7 putative settlement class members (.0017% of the 411,671-courier potential settlement class) lack merit and provide no reason to deny hundreds of thousands of other couriers immediate relief. The Court should grant preliminary approval of the Settlement.

A. The Individual Opt-Out Requirement Is Fair and Justified

The LeMaster Objectors and Altounian each take aim at the Settlement's opt-out procedure, which requires that an opt-out request come from the person opting out, rather than an attorney or other entity acting unilaterally. (LeMaster Br. at 4-8; Altounian Br. at 3-4.) Deciding whether to participate in a class settlement is an inherently personal decision that "*should not* be made by the class representative or the class counsel," and attorneys may not make "class-wide objection[s] or [attempts] to effect a group-wide exclusion from an existing class." (*Hanlon*, *supra*, 150 F.3d at 1024.)

As explained by Plaintiffs (see Plaintiffs' Supplemental Br. at 13-15), the reason for the individual opt-out provision is simple: Postmates and Plaintiffs have legitimate concerns regarding whether the LeMaster Objectors' counsel, Keller Lenkner, actually represents, let alone intends to have informed communications regarding the Settlement with, each of its *over 17,000* purported clients who allege that they have performed work on the Postmates app (see Nov. 6, 2019 LeMaster Opposition to Preliminary Approval at 6-7). The LeMaster Objectors' supplemental brief and the declarations supporting it, in which Keller Lenkner summarizes the mountains it has moved to simply remind a handful of its purported clients that it represents them, underscores the point. When Plaintiffs' counsel contacted eight of its clients that also appeared on Keller Lenkner's client roster—including Plaintiff Jacob Rimler—none of them had even heard of Keller Lenkner, let alone understood that the firm represented them. (See Plaintiffs' Supplemental Br. at 15.) In the following weeks, Keller Lenkner

managed to contact the eight individuals, after which Keller Lenkner withdrew its representation from three of them (37.5%, or 6,375 if extrapolated out to Keller Lenkner's 17,000 purported clients), and persuaded three more to sign new declarations averring that they now *do* recall engaging Keller Lenkner. (LeMaster Br. at 5-6.) In light of this confusion about who represents whom in a field where numerous plaintiffs' attorneys are in competition to engage large rosters of gig economy workers as clients, it is all the more important to ensure that opt out choices come from individuals, not law firms making mass opt-out decisions on behalf of thousands of individuals who may not even realize or believe that they are represented by counsel, This is especially so in light of the Court's fiduciary duty to "closely scrutinize the qualifications of counsel to assure that all interests, including those of as yet unnamed plaintiffs are adequately represented." (*Cal Park Delivery, Inc. v. United Parcel Servs., Inc.* (1997) Cal.App.4th 1, 12.)

The nonparties insist that the Settlement's opt-out procedure "interfere[s] with Objectors' right to counsel," but that is wrong. (LeMaster Br. at 4.) Nothing in the Settlement prevents Keller Lenkner, or *any* law firm representing *any* courier, from advising its clients on the desirability of participating in the Settlement. It simply prohibits attorneys from making unilateral decisions to opt out thousands of people without obtaining their informed, individual consent, as is required by California's Rules of Professional Conduct. (Rules of Prof. Conduct, Rule 1.4.1 [attorneys must "promptly communicate" all settlement offers]; *Id.*, Rule 1.2 ["A lawyer shall abide by a client's decision whether to settle a matter."].) Keller Lenkner has been disqualified in other proceedings for violating the Rules of Professional Conduct, so it is not unreasonable for the parties to harbor concerns over the firm's ability to obtain consent from all of its purported clients. (See *Diva Limousine, Ltd. v. Uber Techs., Inc.* (N.D.Cal. Jan. 9, 2019) 2019 WL 144589.) Further, if any individual decides to opt out, pursuant to the advice of counsel or otherwise, the process is straightforward and can be done from a smartphone—which is necessary to use the Postmates platform in the first place. (See Plaintiffs' Supplemental Br. at 16 ["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."].)

An individual opt-out requirement like the one the Parties have agreed to here is not unusual. In fact, the district court in *CenturyLink*—another class action settlement that Keller Lenkner has tried

to undercut—recently granted preliminary approval when presented with an almost identical opt-out procedure, and after facing almost identical objections to it from Keller Lenkner. After the parties in *CenturyLink* put their concerns regarding Keller Lenkner's purported mass representation of class members on full display,[2] the district court granted preliminary approval of a settlement agreement that required objections and exclusion requests to be "signed by the Settlement Class Member" instead of by an attorney purporting to act on her behalf. (*CenturyLink*, *supra*, Dkt. 528 ¶¶ 4, 6.) And many other courts have approved settlements requiring individuals—not lawyers—to opt out. (See *O'Connor v. Uber Technologies, Inc.* (N.D.Cal. Aug. 2018) Nos. 13-cv-3826, 15-cv-262, Dkt. 916.01 ¶ 182 [settlement agreement required opt-outs to be submitted by the person opting out, "even if the Settlement Class Member is represented by counsel"]; *Bellows v. NCO Fin. Sys., Inc.* (S.D.Cal. July 13, 2009) 2009 WL 10725741, at *1 [attorney effort to opt 62 clients out of settlement was invalid where agreement required that an opt-out "be signed by the Class Member"]; *Camp v. Maplebear, Inc. d/b/a Instacart* (Los Angeles Super. Ct. Jan. 12, 2018) No. BC652216 [opt-out on behalf of class members was invalid where settlement required opt-out to be signed "by an individual class member"].)

The individual opt-out requirement here is no different, and should be approved as a reasonable measure to ensure that opt-out decisions are made by the people who are supposed to make them.

B. Email Is the Most Effective Manner of Providing Notice

Altounian next argues that instead of email notice, class notice should be provided via "the Postmates app which . . . acted as the primary or sole communication tool between Postmates and its drivers." (Altounian Br. at 5.) The key flaw in Altounian's argument is demonstrated by its verb tense: as Altounian notes, the Postmates App "act*ed*" as the primary communication tool between couriers and Postmates—but only when couriers were actively using the App. The Settlement here, though, covers all individuals who performed work on the App between June 3, 2017, and October 17, 2019, even if they are no longer active on the platform. (Settlement Agreement ¶ 2.36.) Many no longer use

[2] For example, in a declaration supporting the settlement, nationally renowned ethics professor Nancy Moore opined that Keller Lenkner has "engaged in numerous violations of [its] professional responsibilities," and "breached its fiduciary duties to its clients by pursuing a mass arbitration approach without disclosing the risks of doing so." (*CenturyLink*, *supra*, Dkt. 510 at 4, 18.) And in completely separate proceedings, Professor Richard Zitrin has opined that Keller Lenkner's retention agreement includes an "inappropriately overbroad" power of attorney clause. (*Abernathy v. DoorDash, Inc.* (N.D.Cal. Jan. 16, 2020) No. 3:19-cv-07545, Dkt. 157-1 at 9-11.)

the Postmates App to obtain work, and therefore have no occasion to log onto the App. Those individuals would receive no notice of the Settlement under Altounian's app-based notice proposal.

Email notice, in contrast, is best suited to providing actual notice here, since (1) couriers who used the Postmates App were required to register for it with an email address, and (2) the work couriers performed through the Postmates App necessarily required them to own—and know how to use—an internet-connected smartphone. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 56 [email notice is appropriate where "the class members conducted business with defendant over the Internet, and can be assumed to know how to navigate" the internet].)

Nor does Altounian cite a single case suggesting that email notice is inappropriate in a case like this one. Instead, Altounian cites generalized data about email notice in class actions across all contexts. (*Id.*) In the Internet-driven gig economy context, though, examples abound of robust claim rates in cases involving emailed notice. (See, e.g., *O'Connor v. Uber Techs, Inc.* (N.D.Cal. Sept. 13, 2019) 2019 WL 4394401, at *3 [claim rate of 67.3%]; *Cotter v. Lyft, Inc.*, (N.D.Cal. Mar. 16, 2017) 2017 WL 1033527, at *5 [claim rate of 46% with nearly a month left to submit claims]; *Marciano v. DoorDash, Inc.* (S.F. Sup. Ct. July 12, 2018) No. CGC-15-548102 [claim rate of 46%].)

Email notice is appropriate and superior to the app-based notice Altounian suggests.

C. The Settlement May Release Municipal Code Claims

Altounian and the LeMaster Objectors also attack the scope of the parties' release, arguing that the municipal code claims released by the settlement are undervalued. (LeMaster Br. at 11-12; Altounian Br. at 6.) But a class action settlement may release not only claims that *were* brought in an action, but also any and all claims that *could have been* brought based on the factual predicate underlying the case. "Where a particular type of relief potentially available to the class members is compromised in the settlement process, it is mainly irrelevant whether or not that relief was specifically requested in the complaint. The breadth of negotiations is not necessarily strictly confined by the pleadings." (*Officers for Justice v. Civil Servs. Comm'n* (9th Cir. 1982) 688 F.2d 615, 632.)

Here, the factual predicate of Plaintiffs' claims is summarized in the class definition: Plaintiffs' claims arise from their status as "individuals classified by Postmates as individual contractor couriers who entered into an agreement to use or used the Postmates platform as an independent contractor

courier in California" between June 3, 2017, and October 17, 2019. (Settlement Agreement ¶ 2.36.) On this factual predicate, Plaintiffs have standing to bring claims for misclassification based on any municipal code within California. (See *Cotter*, *supra*, 193 F.Supp.3d at 1038 [class settlement may "release[] claims the plaintiff did not originally bring. 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"].)

Further, Altounian's and the LeMaster Objectors' attacks on the valuation of their hypothetical municipal code claims are pure speculation. Both make outlandish claims about the value of the claims. (See LeMaster Br. at 12 [valuing claims at "tens of thousands of dollars"]; Altounian Br. at 6 [estimating municipal code claims to be "the *greatest* source of recovery" in the case].) But neither cites a single case or decision imposing *any* liability whatsoever under *any* municipal code. Their valuations are therefore untethered from any plausible benchmark, and in the absence of any precedent applying municipal code provisions in practice, Plaintiffs' low valuation of those claims is justified. (See *Officers for Justice*, *supra*, 688 F.2d at 615 [dismissing as conjecture "unfounded predictions of much larger awards had the case been fully tried on the merits"].)

D. The Class Action Waiver Does Not Affect Preliminary Approval

The LeMaster Objectors also argue—for the second time—that the Settlement Agreement violates the Fleet Agreement's Class Action Waiver and their rights to individually arbitrate disputes with Postmates. (LeMaster Br. at 9; see also 11/6/2019 LeMaster Objections at 9-12 [making the same arguments prior to this Court's November 26 Order re Preliminary Approval].) But under well-established law, a class action does not exist until final approval is granted. (See *Standard Fire Ins. Co. v. Knowles* (2013) 568 U.S. 588, 593 ["a proposed class action cannot legally bind members of the proposed class before the class is certified"].) And since the LeMaster Objectors will be able to opt out of the Settlement *before* any rights are released, there is no danger to their rights to arbitrate that overrides California's policy in favor of class action settlements. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607.)

Instead, the Settlement Agreement is simply an offer to couriers to waive the arbitration requirement, which they are then free to accept or reject as they see fit. Once the Court enters a

preliminary approval order, each courier within the Settlement Class who agreed to arbitrate will receive a written notice (*i.e.*, an offer to modify their arbitration agreement) explaining that they may (i) accept Postmates' offer to modify and participate in the class settlement by choosing not to opt out, *or* (ii) reject Postmates' offer by timely submitting a written opt-out request. (Proposed Notice at 2.) Thus, if LeMaster or any other courier does not wish to participate in the Settlement, she may reject Postmates' offer to modify her arbitration agreement by submitting an opt-out request—and therefore continue to be bound by her individual arbitration agreement.

To be sure, the Settlement would release the claims of couriers who are sent written notice but do not submit a claim for payment or an opt-out request. Citing this, the LeMaster Objectors argue that the arbitration agreements may not be modified through "silence or inaction," and thus the proposed settlement may not resolve or release the claims of individuals who fail to opt out. (LeMaster Br. at 8.) But an offeree's silence or inaction *is* acceptance where the "offeror has given the offeree reason to believe acceptance may be manifested by inaction." (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1387; see also *In re W. Asbestos Co*. (N.D.Cal. 2009) 416 B.R. 670, 700 ["silence or inaction operates as an acceptance where the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction."]; Restatement (Second) of Contracts § 69(1)(b) ["Where an offeree fails to reply to an offer, his silence and inaction operates as an acceptance . . . [w]here the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction."].) Here, the notice will inform each courier in the putative settlement class that choosing not to opt out will result in acceptance of Postmates' offer to modify their arbitration agreement and to be bound by the Settlement. Thus, a courier who is sent the notice and elects not to opt out would accept Postmates' offer and would agree to be bound by the settlement.[3]

Moreover, the Fleet Agreement's Mutual Arbitration Provision sets forth the manner in which disputes between the two contracting parties (Postmates and each individual courier)—and *only* the contracting parties—shall be resolved. Contrary to the LeMaster Objectors' suggestion that the Class Action Waiver broadly "prohibits either party from even participating in a class proceeding" with *anyone* (LeMaster Br. at 8), the Class Action Waiver does not prohibit the contracting parties from

[3] Postmates can work with Plaintiffs to adjust the Notice language to make this clearer, if needed.

participating in a class action with nonparties to the contract. That would make no sense. Postmates has no authority to prohibit a courier from participating in a class action against any other entity, and no courier has authority to prohibit Postmates from participating in a class action against any other entity, courier, or individual who is not a party to that courier's contract with Postmates. The Class Action Waiver simply dictates the manner in which the two contracting parties shall resolve disputes *between them*, regardless of how they resolve disputes with others. Each contract stands on its own, and each courier can independently decide whether to enforce or waive its arbitration agreement.

Nor do the LeMaster Objectors' cases help them. They cite *In re Piper Funds, Inc., Institutional Gov't Income Portfolio Litig.* (8th Cir. 1995) 71 F.3d 298, for the proposition that when "a proposed class settlement [] includes couriers with default rights to arbitration," they must "be excluded from the class definition at the outset." (LeMaster Br. at 9.) But the Court there departed from "the usual practice of not allowing class members to opt out until after the formal Rule 23(c)(2) notice to the class," which typically "helps the court ensure that class members make informed decisions whether to opt out," because its order would have indefinitely prohibited the objector from arbitrating. (*Piper Funds*, *supra*, 71 F.3d at 304.) Here, though, couriers wishing to arbitrate need only opt out. Moreover, the court in *Piper Funds* permitted an early opt-out only after the objector made an "unrefuted" evidentiary showing that it was "represented by separate counsel," had a valid "contractual right to arbitrate," and "elected irrevocably" to opt out—a showing Keller Lenkner has not made for any of its purported clients (let alone for all 17,000 it claims to represent). (*Ibid.*; see also *In re CenturyLink Sales Practices & Secs. Litig.* (D.Minn. Feb. 21, 2020) 2020 WL 869980, at *7 [rejecting Keller Lenkner's argument because "*Piper Funds* does not stand for the proposition that class members can choose to remain in a class and reap the benefits of a settlement, while simultaneously pursuing arbitration against the same defendant for the same claims, particularly when those class members have offered no evidence whatsoever that they have a right to arbitrate their claims"].)

Ultimately, the LeMaster Objectors do not cite a single case holding that a party breaches its individual arbitration agreement with one party by entering into a class settlement to resolve the claims of other parties. On the contrary, courts regularly approve class settlements where class members were bound by agreements "that explicitly required arbitration on an individual basis." (*Lee v. JPMorgan*

Chase & Co. (C.D.Cal. Nov. 24, 2014) 2014 WL 12580237, at *1, 7-9; see also *Wilson v. Tesla, Inc.* (N.D.Cal. July 8, 2019) 2019 WL 2929988, at *7; *In re TracFone Unlimited Serv. Plan Litig.* (N.D.Cal. 2015) 112 F.Supp.3d 993, 999; *Marciano v. DoorDash Inc.* (S.F. Super. Ct. July 12, 2018) No. CGC-15-548101; *Cotter*, *supra*, 193 F. Supp. 3d at 1030.) In fact, a court recently approved a class settlement in a case involving Postmates that included couriers bound to arbitrate. (*Singer v. Postmates, Inc.* (N.D.Cal. Apr. 25, 2018) No. 4:15-cv-01284-JSW, Dkt. 98.)

This Court should follow the weight of authority permitting class settlements where parties bound to arbitration will have an opportunity to opt out of the class action settlement.

E. *Adams* Is Irrelevant to the Settlement

Finally, the LeMaster Objectors' suggestion that the Settlement violates the district court's order in *Adams* (LeMaster Br. at 10) is misleading and baseless. In *Adams*, the Court granted in part the parties' cross-motions to compel arbitration of approximately 5,000 purported Keller Lenkner clients' claims, but expressly "decline[d] to enter an order compelling Postmates to pay outstanding and future arbitration fees." (*Adams v. Postmates Inc.* (N.D.Cal. Oct. 22, 2019) 414 F.Supp.3d 1246, 1255.) Nonetheless, until recently, Keller Lenkner refused to commence any arbitrations until all arbitration fees were paid. (*See Adams*, *supra*, No. 19-3042 SBA, Dkt. 262 at 6.) When Postmates suggested arbitrating on a rolling basis, Keller Lenkner sought a contempt order on the ground that Postmates violated the Court's order compelling arbitration by not paying all filing fees—even though the Court explicitly declined to order Postmates to pay filing fees. (See *id.*) The *Adams* Court has yet to rule on Keller Lenkner's contempt motion, and in December Keller Lenkner agreed to arbitrate on a rolling basis, and Postmates promptly paid fees for and commenced 50 arbitrations. (*Id.*)

Regardless of the LeMaster Objectors' inaccurate depiction of *Adams*, it is irrelevant here. The *Adams* order did not—and cannot possibly be construed to—require the parties to arbitrate their disputes all the way through to a final arbitration award by precluding the parties from ever settling or otherwise resolving their disputes outside of arbitration. Instead, it compelled them to *commence* arbitrations, which they since have done.

III. CONCLUSION

The Court should grant the motion for preliminary approval.

DATED: April 22, 2020

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PROOF OF SERVICE

I, Thomas Cochrane, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071, in said County and State. On April 22, 2020, I served the following document(s):

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☑ **BY UNITED STATES MAIL**: I caused a true copy in a sealed envelope or package addressed to the persons as indicated above, on the above-mentioned date, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is

deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration.

☑ **BY ELECTRONIC SERVICE**: By causing a true and correct copy to be electronically served through FILE&SERVEXPRESS or other electronic court filing system to the email address(es) set both above.

☑ I am employed in the office of Theane Evangelis, a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 22, 2020.

Thomas Cochrane