

1 GIBSON, DUNN & CRUTCHER LLP
THEANE EVANGELIS, SBN 243570
2 tevangelis@gibsondunn.com
DHANANJAY S. MANTHRIPRAGADA, SBN 254433
3 dmanthripragada@gibsondunn.com
333 South Grand Avenue
4 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
5 Facsimile: 213.229.7520

6 GIBSON, DUNN & CRUTCHER LLP
MICHELE L. MARYOTT, SBN 191993
7 mmaryott@gibsondunn.com
SHAUN A. MATHUR, SBN 311029
8 smathur@gibsondunn.com
3161 Michelson Drive
9 Irvine, CA 92612-4412
Telephone: 949.451.3800
10 Facsimile: 949.451.4220

11 Attorneys for Defendant POSTMATES INC.

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

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

16 Plaintiffs,

17 v.

18 POSTMATES INC.,

19 Defendant.

CASE NO. CGC-18-567868

**DEFENDANT POSTMATES INC.'S
SUPPLEMENTAL STATEMENT 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

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

04/29/2020
Clerk of the Court

BY: ERNALYN BURA
Deputy Clerk

1 The Court’s April 24, 2020 Tentative Order states that the “[c]ounsel should provide, at the
2 hearing or through supplemental briefing, authority allowing a Court to preliminarily approve a
3 settlement that prevents an attorney from opting out of said settlement on behalf of their clients/class
4 members.” (April 24, 2020 Tentative Order at 10.) Accordingly, Postmates submits this supplemental
5 statement to briefly address the Court’s request in advance of the April 29, 2020 hearing.

6 The Court has a fiduciary duty to protect absent settlement class members, and to ensure that
7 each class member has an opportunity to individually determine whether to participate in the
8 settlement. (See *Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81, 94–95.) Here, the Court has
9 a particularly heightened responsibility to protect absent class members in view of a recent tactic being
10 used by certain plaintiffs’ law firms as a way to sidestep class action waivers in arbitration agreements.
11 Under this tactic, plaintiffs’ firms (e.g., Keller Lenkner) use social media to recruit thousands of clients,
12 sit on the claims of those individuals for extended periods, and then file thousands of arbitration
13 demands on those individuals’ behalf—often, without their knowledge that an arbitration demand has
14 even been filed or that the firm purports to represent them at all.

15 Indeed, Keller Lenkner claims to represent over 17,000 couriers who want to commence
16 individual arbitration against Postmates. But hundreds of those individuals never even signed the Fleet
17 Agreement, and hundreds more indisputably have no viable claims. (See, e.g., *Adams v. Postmates*
18 *Inc.* (N.D. Cal. Dec. 11, 2019) No. 4:19-cv-03042-SBA, Dkt. 262-13 [of 5,255 *Adams* claimants, 715
19 never accepted the Fleet Agreement, another 480 performed no work on the Postmates platform, and
20 another 95 released their claims in prior *Singer* settlement]; *Postmates Inc. v. 10,356 Individuals* (C.D.
21 Cal. Apr. 8, 2020) No. 2:20-cv-02783-PSG-JEM, Dkt. 17-27 (of 10,356 additional claimants, 470 never
22 accepted the Fleet Agreement, another 340 completed no work on the platform,, and another 136
23 released their claims in *Singer*).

24 Moreover, there are ongoing disputes about whether Keller even represents many of its
25 purported clients at all. For instance, of the 5,255 *Adams* claimants, 586 appear to represented by other
26 law firms (see *Adams*, Dkt. 262-1 ¶ 32); and of the 10,356 new claimants, 565 appear to represented
27 by another law firm (see *10,356 Individuals*, Dkt. 17-27 ¶ 19). And in this case, there are disputes
28 about whether Keller Lenkner or Plaintiffs’ counsel represent a sampling of just eight people—

1 including named Plaintiff Jacob Rimler. Plaintiffs’ counsel submitted declarations from seven couriers
2 who had never heard of Keller. (See Pltfs. Supp. Br. at 15.) Keller Lenkner then contacted those seven
3 individuals, after which it withdrew its representation of three of them (37.5% or 6,375 if extrapolated
4 to Keller Lenkner’s 17,000 purported clients), and persuaded three more to sign new declarations
5 averring that they recall engaging Keller. (See LeMaster Opp. Br. at 5-6.) As Plaintiffs’ counsel stated
6 in her supplemental reply filed on April 22, 2020, these disputes highlight the need for an opt-out
7 procedure that makes sure each individual settlement class member makes a knowing decision whether
8 to opt out, object, or submit a claim. (See Pltfs. Supp. Reply at 5-6 [“[t]he need for this guardrail
9 against improper opt-outs is highlighted by the ongoing confusion, which has been laid bare before this
10 Court previously and in Keller Lenkner’s latest filing, as to whether certain clients are represented by
11 Keller Lenkner or Lichten & Liss-Riordan”].)

12 Thus, to ensure that settlement class members are not opted out without their knowledge by
13 plaintiffs’ firms employing questionable tactics, the parties agreed to an opt out procedure designed to
14 ensure that no individual is opted out (and thus deprived of the benefits of the settlement) without their
15 knowledge and express consent.

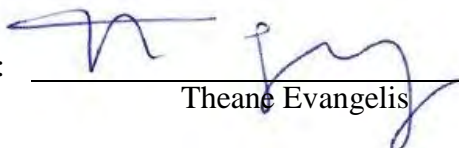
16 As explained in prior briefing, Judge Chen approved these procedures in a similar gig-economy
17 class action settlement. (See *O’Connor v. Uber Techs., Inc.* (N.D. Cal. Sept. 13, 2019) No. 3:13-cv-
18 03826-EMC, Dkt. Nos. 916-1, 930, 964.) And the District Court for the District of Minnesota recently
19 approved similar procedures in another case in which Keller Lenkner sought to scuttle the settlement,
20 using similar tactics at issue here. In fact, in response to arguments that Keller Lenkner had failed to
21 apprise its clients of the pending settlement, the Court granted preliminary approval of the settlement,
22 and stated that all objections must “be verified by an accompanying declaration submitted under
23 penalty of perjury or a sworn affidavit regarding the facts supporting the objector’s status as a member
24 of the Settlement Class,” and that all “[o]bjections must be personally signed in ink by the objecting
25 Settlement Class Member to be valid.” (*In re: CenturyLink Sales Practices & Sec. Litig.* (D. Minn.
26 Jan. 24, 2020) No. 0:17-md-02795, Dkt. 528 at 4.) The order similarly states that all opt-out requests
27 must be “signed by the Settlement Class Member,” and that “Settlement Class Members who are opting
28 out must each separately and individually comply with the [opt-out] requirements.” (*Id.* at 5; see also

1 *Abernathy v. DoorDash, Inc.* (N.D. Cal. Feb. 10, 2020) 2020 WL 619785, at *2 [noting that Keller
2 Lenkner failed to obtain valid declarations from 869 purported clients pursuant to court order].)

3 Apart from the cases adopting this procedure (which counsel understands is common in class
4 actions), Postmates is not aware of any authority expressly authorizing or prohibiting it. That is
5 unsurprising. The issues raised by Keller Lenkner’s tactics are new, and so there has been no need for
6 Courts—until only recently—to assess whether extra precautions are needed to protect the interests of
7 absent class members. But the Courts that have assessed these issues have approved settlements with
8 similar opt-out procedures. And doing so here would be consistent with the general principle that the
9 decision to opt out is a personal one, not one that can be made en masse by zealous plaintiffs’ counsel
10 seeking to scuttle a settlement without considering the interests of its “clients.” The opt-out procedure
11 does not prevent counsel from advising their clients on whether opting out is in their best interest; it
12 imply a safeguard to protect against abuses by certain plaintiffs' counsel. Thus, it should be approved.

13
14 DATED: April 28, 2019

15 GIBSON, DUNN & CRUTCHER LLP
16 THEANE EVANGELIS
17 DHANANJAY S. MANTHRIPRAGADA
18 MICHELE L. MARYOTT
19 SHAUN A. MATHUR

20 By: 
Theane Evangelis
21 Attorneys for Defendant POSTMATES INC.

1 **PROOF OF SERVICE**

2 I, Marjorie Peck, declare as follows:

3 I am employed in the County of Orange, State of California, I am over the age of eighteen
4 years and am not a party to this action; my business address is 3161 Michelson Drive, Irvine, CA
92612, in said County and State. On April 28, 2020, I served the following document(s):

5 **DEFENDANT POSTMATES INC.'S SUPPLEMENTAL STATEMENT IN**
6 **SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF**
CLASS ACTION SETTLEMENT`

7 on the parties stated below, by the following means of service:

8 Shannon Liss-Riordan Tel.: (617) 994-5800
9 Anne Kramer Fax: (617) 994-5801
10 LICHTEN & LISS-RIORDAN, P.C. sliss@llrlaw.com
729 Boylston Street, Suite 2000
Boston, MA 02116

- 11 **BY ELECTRONIC SERVICE:** By electronically serving a true and correct copy through
12 FILE&SERVEXPRESS or other electronic court filing system to the email address(es) set both above.
13 I am employed in the office of Theane Evangelis, a member of the bar of this court, and that the foregoing
14 document(s) was(were) printed on recycled paper.
15 (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

16 Executed on April 28, 2020.

17 
Marjorie Peck

18 103900779.2