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8 *Giovanni Jones, in their capacity as Private*
Attorney General Representatives

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

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

15 Plaintiffs,

16 v.

17 POSTMATES, INC.,

18 Defendant.

Case No. CGC-18-567868

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

Department 303
Hon. Suzanne R. Bolanos

Hearing Date: July 21, 2021
Hearing Time: 2:00 pm

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

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

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

6 2. Pursuant to the Court's tentative ruling issued on July 20, 2021, the parties have
7 revised the Settlement Agreement as suggested by the Court in footnote 2 of its tentative ruling.

8 3. Attached hereto as **Exhibit 1** is the newly revised Settlement Agreement.

9 4. Attached hereto as **Exhibit 2** is a version of the same document reflecting the
10 revisions that were made to the Settlement Agreement.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct.

13 Executed on July 21, 2021, in Boston, Massachusetts.

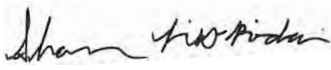
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15
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17 By: 
18 _____
19 Shannon Liss-Riordan
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EXHIBIT 1

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

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Attorney for Defendant Postmates Inc.

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

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

18 Plaintiffs,

19 v.

20 POSTMATES INC.,

21 Defendant.
22

CASE NO. CGC-18-567868

**THIRD AMENDED CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

23
24 This Third Amended Class Action Settlement Agreement and Release, including Exhibits A
25 through C hereto (“Settlement Agreement” or “Agreement”), is made and entered into by,
26 between, and among Plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and
27 Joshua Albert (“the *Rimler* Plaintiffs”), Plaintiffs Melanie Anne Winns, Ralph John Hickey, Jr.,
28 Steven Alvarado, and Kristie Logan (“the *Winns* Plaintiffs”), Plaintiff Shericka Vincent (“Plaintiff

1 Vincent”), and Plaintiff Wendy Santana (“Plaintiff Santana”) on behalf of themselves and the
2 Settlement Class, as defined below, on the one hand, and Defendant Postmates Inc.¹ (“Defendant” or
3 “Postmates”) on the other hand.

4 Plaintiffs and Defendant (collectively, the “Parties”) enter into this Agreement to effect a full
5 and final settlement and preclusive judgment resolving all claims brought or that could have been
6 brought against Postmates in *Rimler v. Postmates, Inc.*, Case No. CGC-18-567868, in the Superior
7 Court of California, San Francisco County, and the related appeal docketed at No. A156450 in the
8 California Court of Appeal, First Appellate District, including as amended pursuant to this
9 Agreement (taken together, the case shall be referred to as “the Action”), and all claims based on or
10 reasonably related thereto. This Agreement is intended to fully and finally compromise, resolve,
11 discharge, and settle the Released Claims, as defined and on the terms set forth below, and to the full
12 extent reflected herein, subject to the approval of the Court.

13 **I. RECITALS**

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

15 1.1 WHEREAS, on July 5, 2018, Plaintiff Jacob Rimler filed a California Private
16 Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, representative action complaint in the
17 Superior Court of California, San Francisco County (Case No. CGC-18-567868), asserting on behalf
18 of himself and all couriers classified by Postmates as independent contractors in California various
19 wage-related claims against Postmates arising from Postmates’ alleged misclassification of couriers
20 as independent contractors. On July 11, 2018, Plaintiff Rimler filed a First Amended Complaint,
21 which added Plaintiff Giovanni Jones (“the *Rimler* Action”);

22 1.2 WHEREAS, on August 17, 2018, Postmates filed a Petition for an Order Compelling
23 Arbitration, which the *Rimler* Plaintiffs opposed. On January 2, 2019, the Court denied Postmates’
24 Petition, and Postmates filed a notice of appeal. On December 9, 2020, the California Court of
25 Appeal, First Appellate District, issued its decision affirming the trial court’s Order;

26
27
28 ¹ Postmates, Inc. is now Postmates, LLC f/k/a Postmates Inc., and its parent corporation is Uber
Technologies, Inc.

1 1.3 WHEREAS, on May 8, 2018, Plaintiff Dora Lee filed a class action complaint in the
2 Superior Court of California, San Francisco County (Case No. CGC-18-566394), on behalf of herself
3 and a proposed class consisting of all couriers in California classified by Postmates as independent
4 contractors, asserting various wage-related claims against Postmates arising from Postmates' alleged
5 misclassification of couriers as independent contractors. On June 8, 2018, Postmates filed a Notice
6 of Removal to the United States District Court for the Northern District of California, Case No. 3:18-
7 cv-03421-JCS. On July 23, 2018, Postmates filed a Motion to Compel Arbitration. On October 15,
8 2018, the Court granted Plaintiff Lee's Motion for Leave to Amend the Complaint to add Plaintiffs
9 Kellyn Timmerman and Joshua Albert, and granted Postmates' Motion to Compel Arbitration of
10 Plaintiff Lee's claims. On November 6, 2018, Postmates filed a Motion to Compel Arbitration for
11 Plaintiff Timmerman. On December 17, 2018, the Court granted Postmates' Motion to Compel
12 Arbitration and dismissed the case so that Plaintiffs Lee and Timmerman could pursue an appeal to
13 the United States Court of Appeals for the Ninth Circuit. On January 4, 2019, Plaintiffs Lee and
14 Timmerman filed a notice of appeal, which is pending as Ninth Cir. Case No. 19-15024 (together
15 with the case dismissed by the Northern District of California, the "*Lee Action*"). Subsequently,
16 Plaintiffs Lee and Timmerman moved the District Court to certify its orders for interlocutory review.
17 The Court granted the motion, and Plaintiffs Lee and Timmerman filed a petition in Ninth Cir. Case
18 No. 19-80055, seeking permission to appeal. On July 30, 2019, the Ninth Circuit denied the petition;

19 1.4 WHEREAS, on December 17, 2018, the District Court in *Lee* severed Plaintiff Joshua
20 Albert's claims to proceed as a separate case, Northern District of California Case No. 3:18-cv-
21 07592-JCS. On January 4, 2019, Plaintiff Albert filed a Second Amended Complaint asserting a
22 PAGA claim based on various wage-related claims against Postmates arising from Postmates' alleged
23 misclassification of couriers as independent contractors (the "*Albert Action*"). The parties were
24 engaged in written discovery until they requested and received a stay to participate in mediation;

25 1.5 WHEREAS, on November 2, 2017, Plaintiff Melanie Anne Winns filed a California
26 Private Attorneys General Act ("PAGA"), Labor Code § 2698, et seq., representative action
27 complaint (Case No. CGC-17-562282) in the Superior Court of California, San Francisco County,
28 asserting on behalf of herself and all couriers classified by Postmates as independent contractors in

1 California various wage-related violations arising from Postmates’ alleged misclassification of
2 couriers as independent contractors (the “*Winns* Action”). On December 22, 2017, Plaintiff Winns
3 filed a First Amended Complaint, which added Plaintiffs Ralph John Hickey Jr., Steven Alvarado,
4 and Kristie Logan. On January 23, 2018, Postmates filed a Petition to Compel Arbitration in *Winns*,
5 which the *Winns* Plaintiffs opposed. On September 24, 2018, the Court partially granted and partially
6 denied Postmates’ motion to compel arbitration, and Postmates filed a notice of appeal;

7 1.6 WHEREAS, on May 8, 2019, Plaintiff Vincent filed a PAGA representative action
8 complaint (Case No. RG19018205) in the Superior Court of California, Alameda County, asserting
9 on behalf of herself and all couriers classified by Postmates as independent contractors in California
10 various wage-related violations arising from Postmates’ alleged misclassification of couriers as
11 independent contractors (the “*Vincent* Action”). On June 25, 2019, Postmates filed a Petition to
12 Compel Arbitration in *Vincent*, which has not yet been ruled on;

13 1.7 WHEREAS, on September 4, 2018, Plaintiff Santana filed a PAGA representative
14 action complaint (Case No. BC720151) in the Superior Court of California, Los Angeles County,
15 asserting on behalf of herself and all couriers classified by Postmates as independent contractors in
16 California various wage-related violations arising from Postmates’ alleged misclassification of
17 couriers as independent contractors (the “*Santana* Action”).

18 1.8 WHEREAS, the *Rimler* Plaintiffs and Postmates attended an in-person mediation
19 session in July 2019 with professional mediator Tripper Ortman of Ortman Mediation, who is
20 experienced in mediating class action disputes. Before agreeing to the terms of the first proposed
21 arm’s-length settlement, and in preparation for the mediation, the parties engaged in extensive
22 informal discovery, exchanging information, documents and voluminous data, which enabled the
23 parties and the mediator to thoroughly evaluate Plaintiffs’ claims and the claims of the putative
24 Settlement Class Members, and the likely outcomes, risks, and expense of pursuing litigation;

25 1.9 WHEREAS, the *Rimler* Plaintiffs and Postmates filed a Motion for Preliminary
26 Approval of Class Settlement and a Proposed Settlement on October 8, 2019;

27 1.10 WHEREAS, Plaintiffs filed a revised proposed settlement agreement and a stipulation
28 to file a proposed Second Amended Complaint adding other named plaintiffs, including Plaintiffs

1 Melanie Ann Winns, Ralph John Hickey Jr., Steven Alvarado, Kristie Logan, and Shericka Vincent,
2 and additional claims against Postmates under California’s Unfair Competition Law, the California
3 Labor Code, Wage Order 9, and the Fair Labor Standards Act (“FLSA”) on June 8, 2020;

4 1.11 WHEREAS, the Court denied Plaintiffs’ Motion for Preliminary Approval of Class
5 Settlement on June 17, 2020 without prejudice and “encourage[d] the parties to continue settlement
6 negotiations in hopes that they are able to present another agreement for preliminary approval that is
7 otherwise consistent with [the Court’s] order”;

8 1.12 WHEREAS, the Court issued an order on June 17, 2020, coordinating the *Rimler*,
9 *Winns, Vincent*, and *Santana* Actions with two other similar matters pending against Postmates:
10 *Brown v. Postmates, Inc.*, Case No. BC712974 (Los Angeles Super. Ct.) and *Altounian v. Postmates,*
11 *Inc.*, Case No. CGC-20-584366 (San Francisco Super. Ct.);

12 1.13 WHEREAS, the *Rimler* Plaintiffs and Postmates attended a second mediation through
13 Zoom conference with mediator Tripper Ortman in the Fall of 2020 to discuss a second proposed
14 settlement, before agreeing to this second proposed arm’s-length Settlement Agreement;

15 1.14 WHEREAS, in preparation for the second mediation, Postmates and the *Rimler*
16 Plaintiffs exchanged additional, updated voluminous data, which enabled the parties and the mediator
17 to update their evaluation of Plaintiffs’ claims and the claims of the putative Settlement Class
18 Members, and the likely outcomes, risks, and expense of pursuing litigation;

19 1.15 WHEREAS, the Parties submit this Settlement Agreement in good faith and after
20 having considered the Court’s concerns with the prior proposed settlement;

21 1.16 WHEREAS, Plaintiffs allege generally that Postmates improperly classified them and
22 all putative Settlement Class Members as independent contractors rather than employees, and assert
23 derivative claims related thereto;

24 1.17 WHEREAS, on November 3, 2020, California voters approved Proposition 22,
25 which—after the election results are certified—will be added as section 7451 to the California
26 Business and Professions Code and provides that “an app-based driver is an independent contractor
27 and not an employee or agent with respect to the app-based driver’s relationship with a network
28 company” if certain conditions are met;

1 1.18 WHEREAS, Postmates denies the allegations in the Action; maintains that each
2 courier’s claims must be individually arbitrated pursuant to any arbitration agreement to which that
3 courier may be bound; denies that it has engaged in any wrongdoing; denies that any Settlement
4 Class Member was ever an employee of Postmates; denies that Plaintiffs’ allegations state valid
5 claims; denies that a litigation class could properly be certified under California Code of Civil
6 Procedure section 382 in the Action; denies that a collective action could properly be certified under
7 the FLSA in the Action; denies that Plaintiffs’ claims could properly be maintained as a collective,
8 class, or representative action; and states that it is entering into this Settlement Agreement solely to
9 eliminate the burden, expense, and delay of further litigation and arbitrations, and on the express
10 conditions that: (a) if for any reason the Settlement is not finalized according to the terms of this
11 Agreement, the Settlement and the documents generated as a result of the Settlement shall be void ab
12 initio, and shall not be admissible or usable for any purpose in any of the cases included in the Action
13 or any other civil or administrative proceeding or arbitration; and (b) this Settlement and the
14 documents generated as a result of the Settlement are not admissible or usable in any other civil or
15 administrative proceeding or arbitration, except to the extent necessary to enforce this Settlement and
16 the orders, judgment and agreements arising from this Settlement;

17 1.19 WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties
18 are due from Postmates to any putative Settlement Class Member or to the California Labor and
19 Workforce Development Agency (“LWDA”);

20 1.20 WHEREAS, as a result of the mediation, Plaintiffs and Plaintiffs’ Counsel believe that
21 the global Settlement provides a favorable recovery for the Settlement Class, based on the claims
22 asserted, the evidence developed, and the damages that might be proven against Postmates in the
23 Action. The Plaintiffs and Plaintiffs’ Counsel further recognize and acknowledge the expense and
24 length of continued proceedings necessary to prosecute the Action against Postmates through trial
25 and appeals. They also have considered the uncertain outcome and the risk of any litigation,
26 especially in complex litigation such as the Action, as well as the difficulties and delays inherent in
27 any such litigation. They are also mindful of the inherent challenges of proof and the strength of the
28 defenses to the alleged claims, and therefore believe that it is desirable that the Released Claims be

1 fully and finally compromised, settled, and resolved with prejudice as set forth herein, subject to the
2 approval of the Court;

3 1.21 WHEREAS, Plaintiffs and Plaintiffs' Counsel, based on their own independent
4 investigations and evaluations, have examined the benefits to be obtained under the terms of this
5 Settlement Agreement, have considered the claims of the Plaintiffs, the claims of the average
6 Settlement Class Member, the risks associated with the continued prosecution of the Action, and the
7 likelihood of success on the merits of the Action, and believe that, after considering all the
8 circumstances, including the uncertainties surrounding the risk of further litigation and the defenses
9 that Postmates has asserted and could assert, the proposed Settlement set forth in this Agreement is
10 fair, reasonable, adequate, in the best interests of the Plaintiffs and the Settlement Class, and confers
11 substantial benefits upon the Settlement Class;

12 1.22 WHEREAS, Plaintiffs warrant and represent that they are effecting this Settlement
13 and executing this Agreement after having received full legal advice as to their respective rights and
14 have had the opportunity to obtain independent counsel to review this Agreement;

15 1.23 WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
16 any of the terms of this Agreement, and any documents filed in connection with the Settlement shall
17 not constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding, or
18 evidence of: (i) any wrongdoing by any Released Parties; (ii) any violation of any statute, law, or
19 regulation by Released Parties; (iii) any liability on the claims or allegations in the Action on the part
20 of any Released Parties; (iv) any waiver of Postmates' right to arbitration or the enforceability of any
21 Postmates arbitration agreement; or (v) the propriety of certifying a litigation class or collective
22 action or pursuing representative relief under PAGA in the Action or any other proceeding; and shall
23 not be used by any Person for any purpose whatsoever in any administrative or legal proceeding,
24 including but not limited to arbitrations, other than a proceeding to enforce the terms of the
25 Agreement. There has been no final determination by any court as to the merits of the claims
26 asserted by Plaintiffs against Postmates, nor has there been any final determination as to whether a
27 class or collective action should be certified or whether representative claims may properly be
28 pursued, other than for settlement purposes only;

1 1.24 WHEREAS, for settlement purposes only, Postmates will stipulate to the certification
2 of class claims that are subject to the certification requirements of California Code of Civil Procedure
3 section 382, on the express conditions that Postmates does not waive its right to compel arbitration
4 and if this Settlement Agreement is not preliminarily or finally approved, this paragraph, the
5 Settlement Agreement, and any class certified pursuant to the Settlement Agreement are all void ab
6 initio. Postmates disputes that certification is proper for the purposes of litigating the class claims
7 proposed in or flowing from the claims asserted in the *Rimler* lawsuit;

8 1.25 WHEREAS, for settlement purposes only, Postmates will stipulate to the conditional
9 certification of FLSA claims that are subject to the certification requirements of the Fair Labor
10 Standards Act, 29 U.S.C. § 201, et seq., on the express conditions that Postmates does not waive its
11 right to compel arbitration and if this Settlement Agreement is not preliminarily or finally approved,
12 this paragraph, the Settlement Agreement, and any collective action certified pursuant to the
13 Settlement Agreement are all void ab initio. Postmates disputes that conditional certification is
14 proper for the purposes of litigating the FLSA claims proposed in or flowing from the claims asserted
15 in the *Rimler* lawsuit;

16 1.26 WHEREAS, the Parties desire to compromise and settle all Released Claims,
17 including all issues and claims that have been, could have been, or should have been brought against
18 Postmates or related persons in the Action, and all claims brought on a putative class and
19 representative basis in the *Rimler* lawsuit; and

20 1.27 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
21 AGREED, by the Plaintiffs for themselves and on behalf of the Settlement Class and by Postmates,
22 that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on
23 the merits and with prejudice, and the Released Claims shall be finally and fully compromised,
24 settled, and dismissed as to the Released Parties, in the manner and upon the terms and conditions
25 hereafter set forth in this Settlement Agreement.

26 **II. DEFINITIONS**

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

1 2.1 “Authorized Claimant” means any Settlement Class Member who submits a valid and
2 timely Claim that qualifies for a payment under the terms of this Settlement Agreement and who by
3 validly and timely submitting the Claim using the Claim Form consents to join as a party plaintiff in
4 the Fair Labor Standards Act (“FLSA”) claims in this Action.

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

14 2.3 “Bar Date” means the final time and date by which a Claim Form must be postmarked
15 or submitted to the Settlement Administrator for a Settlement Class Member to be eligible to receive
16 an Individual Settlement Payment. The Bar Date shall be sixty (60) days after the Notice Distribution
17 Date and shall be specifically identified and set forth in the Preliminary Approval Order and the
18 Settlement Class Notice.

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

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

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

5 2.6 “Consent to Join” means a Settlement Class Member’s consent to join as a party
6 plaintiff to the FLSA claims asserted in this Action pursuant to 29 U.S.C. § 216(b). A Settlement
7 Class Member’s signed Claim Form that is timely and validly submitted to the Settlement
8 Administrator shall serve as that Settlement Class Member’s Consent to Join.

9 2.7 “Courier” means any individual who has been approved to use or has used the
10 Postmates platform as an independent contractor courier.

11 2.8 “Superior Court” means the Superior Court of California, San Francisco County.

12 2.9 “Dispute Resolution Fund” means the fund consisting of Two Hundred and Fifty
13 Thousand dollars and no cents (\$250,000) set aside from the Total Settlement Amount to be used: (i)
14 to resolve any bona fide disputes that may arise regarding the calculation and disbursement of
15 Individual Settlement Payments according to the Plan of Allocation, as provided in Section V; and
16 (ii) to disburse Individual Settlement Payments to individuals mistakenly excluded from the
17 Settlement Class, as provided in Paragraph 6.11. The Dispute Resolution Fund shall be paid from the
18 Total Settlement Amount. Prior to final approval, the Settlement Administrator shall submit an
19 accounting to the Court of the monies that have been allocated from the Dispute Resolution Fund.
20 Following the Bar Date, any monies not allocated from the Dispute Resolution Fund shall revert to
21 the general fund for distribution to the Settlement Class pursuant to Paragraph 5.6.

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

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

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

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

14 2.14 “Final Approval” means the Court’s entry of an order that the Named Plaintiffs and
15 Postmates will seek from the Court, to be agreed upon by the Parties, and the entry of which shall
16 reflect the Court’s Judgment finally approving the Settlement Agreement.

17 2.15 “Final Approval Hearing” means the hearing that is to take place after the entry of the
18 Preliminary Approval Order and after the Notice Distribution Date for purposes of: (i) entering Final
19 Approval; (ii) determining whether the Settlement Agreement shall be approved as fair, reasonable,
20 and adequate; (iii) ruling upon an application by Settlement Class Counsel for Attorneys’ Fees; and
21 (iv) ruling on the application for a Settlement Class Counsel Award.

22 2.16 “General Released Claims” includes all of the Settlement Class Members’ Released
23 Claims, with the addition of: (i) violations of Title VII of the Civil Rights Act of 1964; (ii) violations
24 of the Civil Rights Act of 1866; (iii) violations of the Americans with Disabilities Act; (iv) violations
25 of any and all potential claims against Postmates that could be brought under corresponding state or
26 local law; and (v) any claims for wages, penalties, breach of an express or implied contract, breach of
27 the covenant of good faith and fair dealing, breach of fiduciary duty, fraud, misrepresentation,
28 defamation, slander, retaliation, discrimination, harassment, wrongful termination, infliction of

1 emotional distress, loss of future earnings or profits or any other claims based upon any state or
2 federal public policy, or any other alleged wrongful conduct or injury, arising out of or in any way
3 connected with any acts or omissions occurring during the Settlement Period, based on the claims
4 that were alleged in the Action or that arise out of or relate to Plaintiffs' relationship with Postmates
5 or the services Plaintiffs provided using Postmates' platform, or that arise out of or relate to the facts
6 alleged in the action, in addition to all claims based on or arising under the federal and state law
7 sections included in the Settlement Class Members' Released Claims and any other equivalent
8 federal, state, or local law of any state or locality in which Plaintiffs reside and/or used Postmates'
9 platform as an independent contractor courier.

10 2.17 "Individual Settlement Payment" means the amount payable from the Total Settlement
11 Amount to each Settlement Class Member who does not timely and properly request exclusion from
12 the Settlement Class and submits a Claim Form. The Individual Settlement Payment shall be
13 calculated pursuant to Section V herein.

14 2.18 "Judgment" means the judgment to be entered in the Action on Final Approval of this
15 Settlement.

16 2.19 "Legally Authorized Representatives" means an administrator/administratrix, personal
17 representative, or executor/executrix of a deceased Settlement Class Member's estate; a guardian,
18 conservator, or next friend of an incapacitated Settlement Class Member; or any other legally
19 appointed Person responsible for handling the business affairs of a Settlement Class Member who is
20 not the Settlement Class Member's counsel.

21 2.20 "Notice Distribution Date" means the date of the initial distribution of the Settlement
22 Class Notice to Settlement Class Members as set forth in Section VI.

23 2.21 "Opt-Out List" means the Court-approved list of all persons who timely and properly
24 request exclusion from the Settlement Class as set forth in Section VII.

25 2.22 "PAGA Claims" means Plaintiffs' representative claims seeking penalties pursuant to
26 PAGA, as alleged in the Rimler Complaint and/or based on any other provision of the Labor Code,
27 Wage Orders, or any other statute or regulation based upon independent contractor misclassification
28 to the fullest extent permitted by law.

1 2.23 “PAGA Payment” means a total payment of \$4,000,000 to settle all claims under the
2 PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to the PAGA
3 and 25% will be distributed to Settlement Class Members.

4 2.24 “Plaintiffs” means Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman,
5 Joshua Albert, Melanie Anne Winns, Ralph John Hickey, Jr., Steven Alvarado, Kristie Logan,
6 Shericka Vincent, and Wendy Santana.

7 2.25 “Plaintiffs’ Counsel” means Lichten & Liss-Riordan, P.C., the Mostafavi Law Group
8 APC, The Bainer Law Firm, and PARRIS Law Firm.

9 2.26 “Plan of Allocation” means the plan for allocating the Total Settlement Amount
10 between and among Settlement Class Members as approved by the Court.

11 2.27 “Preliminary Approval Date” means the date that the Court enters the Preliminary
12 Approval Order and thus: (i) preliminarily approves the Settlement Agreement, and the exhibits
13 thereto, and (ii) enters an order providing for notice to the Settlement Class, an opportunity to opt out
14 of the Settlement Class, an opportunity to submit timely objections to the Settlement, a procedure for
15 submitting Claims, and setting a hearing on the fairness of the terms of the Settlement Agreement,
16 including approval of the Settlement Class Counsel Award.

17 2.28 “Preliminary Approval Order” means the order that the Plaintiffs and Postmates will
18 seek from the Court, without material variation from Exhibit B. Entry of the Preliminary Approval
19 Order shall constitute preliminary approval of the Settlement Agreement.

20 2.29 “Released Claims” shall be construed as broadly as possible to effect complete finality
21 over this litigation involving Postmates. “Released Claims” include (i) Settlement Class Members’
22 Released Claims, (ii) General Released Claims, and (iii) Authorized Claimants’ Released Claims.
23 Notwithstanding any other provision of this Settlement Agreement, “Released Claims” do not include
24 claims for personal injuries. Moreover, the release of any claims under the FLSA contemplated by
25 this Settlement Agreement shall be effectuated only after a Settlement Class Member has timely and
26 validly submitted a Claim Form and thereby Consented to Join as a party to the FLSA claims asserted
27 in this action pursuant to 29 U.S.C. § 216(b).

1 2.30 “Released Parties” means (i) Postmates Inc. and its past, present, and future parents,
2 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,
3 whether foreign or domestic, that are owned or controlled by Postmates (but not including couriers
4 who use the Postmates platform); and (ii) the past, present, and future shareholders, officers,
5 directors, members, investors, agents, employees, agents, consultants, representatives, fiduciaries,
6 insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in
7 (i).

8 2.31 “Second Amended Complaint” means the Second Amended Complaint, without
9 material variation from Exhibit C, that Settlement Class Counsel shall seek to file in *Rimler*, the lead
10 lawsuit, pursuant to Paragraph 3.6 and shall file concurrently with the submission of the motion for
11 preliminary approval of the Settlement so that the Second Amended Complaint may be filed
12 promptly upon entry of the Preliminary Approval Order. The Second Amended Complaint shall add
13 Dora Lee, Kellyn Timmerman, Joshua Albert, Melanie Anne Winns, Ralph John Hickey, Jr., Steven
14 Alvarado, Kristie Logan, Shericka Vincent, and Wendy Santana as named Plaintiffs.

15 2.32 “Service Awards” means the amount approved by the Court to be paid to each
16 Plaintiff in addition to their respective Individual Settlement Payments, in recognition of their efforts
17 in coming forward as named plaintiffs. The Service Award amount payable to Plaintiffs is not to
18 exceed Five Thousand Dollars (\$5,000) each.

19 2.33 “Settlement” means the settlement of this Action between and among Plaintiffs and
20 Postmates, as set forth in this Settlement Agreement, and including all attached Exhibits, which are
21 an integral part of this Settlement Agreement and are incorporated in their entirety by reference.

22 2.34 “Settlement Administrator” means Simpluris, the administrator selected by the parties.

23 2.35 “Settlement Administrator Expenses” means the maximum amount to be paid to the
24 Settlement Administrator from the Total Settlement Amount, which shall be \$945,000. All
25 Settlement Administrator Expenses are to be paid exclusively from the Total Settlement Amount.

26 2.36 “Settlement Class” means any and all individuals who entered into an agreement with
27 Postmates to use the Postmates platform as an independent contractor to offer delivery services to
28

1 customers, and used the Postmates platform as an independent contractor courier to accept or
2 complete at least one delivery in California during the Settlement Period.

3 2.37 “Settlement Class Counsel” means Lichten & Liss-Riordan, P.C.

4 2.38 “Settlement Class Counsel Award” means (i) the attorneys’ fees for Settlement Class
5 Counsel’s litigation and resolution of the Action, including the *Rimler, Lee, Albert, Winns, Vincent,*
6 and *Santana* lawsuits, and any and all arbitrations and claims resolved by this Settlement, as awarded
7 by the Court, and (ii) all expenses and costs incurred by Settlement Class Counsel in connection with
8 litigation and resolution of *Rimler, Lee, Albert, Winns, Vincent,* and *Santana* lawsuits, and any and all
9 arbitrations and claims resolved by this Settlement, as awarded by the Court, which, together, may
10 not exceed thirty-three percent (33%) of \$32,000,000 (the Total Settlement Amount).

11 2.39 “Settlement Class Information” means information regarding Settlement Class
12 Members that Postmates will in good faith compile from its records and provide to the Settlement
13 Administrator, solely for purposes of the Settlement Administrator’s administration of the settlement,
14 and for no other purpose. Settlement Class Information shall be provided to the Settlement
15 Administrator and shall include, if possible, for each Settlement Class Member: full name, last known
16 address, email address, and Estimated Miles. Because Settlement Class Members’ private
17 information is included in the Settlement Class Information, the Settlement Administrator shall
18 maintain the Settlement Class Information in confidence and shall use and disclose Settlement Class
19 Information only for purposes of this Settlement and for no other purpose; access shall be limited to
20 employees of the Settlement Administrator with a need to use the Settlement Class Information as
21 part of the administration of the Settlement.

22 2.40 “Settlement Class Member” means any member of the Settlement Class.

23 2.41 “Settlement Class Members’ Released Claims” means any and all present and past
24 claims, actions, demands, causes of action, suits, debts, guarantees, obligations, damages, penalties,
25 rights or liabilities, of any nature and description whatsoever, known or unknown, existing or
26 potential, recognized now or hereafter, contingent or accrued, expected or unexpected, pursuant to
27 any theory of recovery (including but not limited to those based in contract or tort, common law or
28 equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory,

1 consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees,
2 costs, or disbursements) that are based on or reasonably related to the claims alleged in or that could
3 have been alleged in the *Rimler* Second Amended Complaint, and all misclassification claims, and
4 specifically including: claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et
5 seq. (only for those Settlement Class Members who submit a valid and timely Claim Form);
6 California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6,
7 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.5, 450, 510, 512, 551-
8 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804; the
9 Private Attorneys General Act ("PAGA"), California Labor Code section 2698 et seq.; California
10 Code of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and
11 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code
12 sections 17200 et seq.; and any other similar state, federal, local, or common law, statute, regulation,
13 or ordinance for unpaid wages, minimum wages, regular wages, tips, overtime wages (including but
14 not limited to calculation of the correct overtime or regular rate), working more than six days in
15 seven, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper
16 deduction of wages, failure to provide workers' compensation insurance, meal periods, rest breaks,
17 sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time penalties,
18 PAGA penalties, unfair business practices, all claims arising out of or relating to the statutory causes
19 of action described herein, restitution, interest, costs and expenses, attorneys' fees, declaratory relief,
20 injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable
21 remedies, and/or pre- or post- judgment interest at any time during the Settlement Period.

22 2.42 "Settlement Class Notice" means the notice of class, representative, and collective
23 action settlement and enclosed Claim Form to be provided to Settlement Class Members, without
24 material variation from the relevant portion of Exhibit A.

25 2.43 "Settlement Period" means June 3, 2017 through January 1, 2021.

26 2.44 "Total Settlement Amount" means Thirty-Two Million Dollars and zero cents
27 (\$32,000,000), which will resolve all Released Claims, and is the maximum amount that Postmates is
28 obligated to pay under this Settlement Agreement under any circumstances to resolve and settle this

1 Action, subject to Court approval. The Total Settlement Amount includes all costs and fees,
2 including, but not limited to, the Settlement Class Counsel Award, Settlement Administrator
3 Expenses, escrow costs and expenses, Service Awards, interest, all payments to the Settlement Class
4 and Plaintiffs, and the PAGA Payment.

5 2.45 “Void Date” means the date by which any checks issued to Settlement Class Members
6 shall become void, i.e., on the 181st day after mailing.

7 **III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
8 **PRELIMINARY AND FINAL APPROVAL**

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

25 3.2 The Parties stipulate, for settlement purposes only, to certification of the Settlement
26 Class under California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769,
27 excluding the Settlement Class’s PAGA Claims, and to conditional certification of the Settlement
28 Class under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., on the express condition that if

1 the Settlement is not Preliminarily or Finally Approved, this paragraph, the Settlement Agreement,
2 and any class or collective action certified pursuant to the Settlement Agreement are all void ab initio.
3 The Parties also agree that this stipulation is in no way an admission that class or collective
4 certification is proper under the standard applied for litigation purposes, and that this stipulation shall
5 not be admissible, and may not be used by any person for any purpose whatsoever, in any legal or
6 administrative proceeding, including but not limited to arbitrations, other than a proceeding to
7 enforce the terms of the Agreement, as further set forth in this Agreement. Postmates expressly
8 reserves the right to oppose certification of any purported class or collective should the settlement fail
9 to become final and effective.

10 3.3 The Settlement is not intended to and may not be deemed to affect the enforceability
11 of any arbitration agreement between Postmates and any member of the Settlement Class, including
12 Plaintiffs.

13 3.4 Settlement Class Counsel and Plaintiffs agree to cooperate in good faith and to use
14 their best efforts to seek a stay in the *Rimler, Lee, Winns, Vincent, and Santana* Actions and to keep
15 the *Albert* Action stayed pending Final Approval of the Settlement, and upon Final Approval of the
16 Settlement, Settlement Class Counsel and Plaintiffs agree to dismiss the *Lee, Albert, Winns, Vincent,*
17 and *Santana* Actions with prejudice.

18 3.5 The Parties stipulate to the form of, and agree to submit to the Court for its
19 consideration this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
20 Settlement Class Notice (Exhibit A), [Proposed] Preliminary Approval Order (Exhibit B), and
21 [Proposed] Second Amended Complaint (Exhibit C).

22 3.6 Solely for purposes of implementing this Agreement and effectuating the proposed
23 Settlement, the Parties agree and stipulate that:

24 3.6.1 Plaintiffs' Counsel shall amend the letters sent on behalf of Plaintiffs to the
25 LWDA to add any and all claims alleged in the *Rimler* Action, and any and all potential claims
26 necessary to effectuate the Released Claims.

27 3.6.2 Plaintiffs shall seek the Court's permission to file the Second Amended
28 Complaint, without material variation from Exhibit C, and Postmates shall consent to such

1 amendment pursuant to Cal. Rule of Court 3.1324. The Second Amended Complaint shall be filed
2 concurrently with the submission of the motion for preliminary approval of the Settlement Agreement
3 so that the Second Amended Complaint may be filed or deemed filed promptly upon entry of the
4 Preliminary Approval Order. Obtaining the Court's approval to file the Second Amended Complaint,
5 the subsequent prompt entry of the Second Amended Complaint, and the dismissal of the *Lee, Albert,*
6 *Winns, Vincent,* and *Santana* Actions are material conditions of this Settlement Agreement. The
7 Parties agree that the filing of the Second Amended Complaint will streamline the settlement process.
8 The Parties further agree and stipulate that the allegations in the Second Amended Complaint are
9 deemed controverted by the answer previously filed by Postmates in response to the currently
10 operative complaint, such that no further responsive pleading from Postmates is required. If for any
11 reason the Settlement Agreement does not become Final or the Effective Date does not occur, the
12 Second Amended Complaint shall not be operative and shall be deemed withdrawn; the parties agree
13 to submit a stipulated motion to strike the Second Amended Complaint, and agree the Court shall
14 strike the allegations of the Second Amended Complaint, so the operative complaint in the *Rimler*
15 Action shall revert to the filed complaint that preceded the Second Amended Complaint; the *Lee,*
16 *Albert, Winns, Vincent,* and *Santana* Actions shall proceed based on the operative complaints as
17 currently filed; and the amended letters sent to the LWDA pursuant to paragraph 3.6.1 shall be void
18 ab initio.

19 3.6.3 The Court may enter the Preliminary Approval Order, without material
20 variation from Exhibit B, preliminarily approving the Settlement and this Agreement. Among other
21 things, the Preliminary Approval Order shall grant leave to preliminarily certify the Settlement Class
22 and an FLSA collective for settlement purposes only; approve the Plaintiffs as class representatives,
23 appoint Settlement Class Counsel to represent the Settlement Class, and appoint the Settlement
24 Administrator; approve the Settlement Class Notice, and the notice plan embodied in the Settlement
25 Agreement, and approve them as consistent with California Code of Civil Procedure § 382,
26 California Rules of Court, Rule 3.769, 29 U.S.C. § 201, et seq. and due process; set out the
27 requirements for disputing the information upon which Settlement Class Members' share of the
28 Settlement will be calculated, objecting to the Settlement Agreement, excluding Settlement Class

1 Members from the Settlement Class, all as provided in this Settlement Agreement; provide that
2 certification of the Settlement Class and all actions associated with each certification are undertaken
3 on the condition that each certification and other actions shall be automatically vacated and of no
4 force or evidentiary effect if this Agreement is terminated, as provided in this Agreement, or if the
5 Settlement does not become Final; and schedule the Final Approval Hearing.

6 3.7 Within 10 days of the Preliminary Approval Date, Settlement Class Counsel will
7 notify the LWDA of the Preliminary Approval Order.

8 3.8 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval order
9 and Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this
10 Settlement and that, among other things:

11 3.8.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its
12 consummation pursuant to the terms of the Settlement Agreement;

13 3.8.2 Finds that Settlement Class Counsel and Plaintiffs adequately represented the
14 Settlement Class for the purpose of entering into and implementing the Agreement;

15 3.8.3 Re-confirms the appointment of the Settlement Administrator and finds that
16 the Settlement Administrator has fulfilled its initial duties under the Settlement;

17 3.8.4 Finds that the Settlement Class Notice (i) constituted the best practicable
18 notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise
19 Settlement Class Members of the pendency of the Action, and their right to exclude themselves from
20 or object to the proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable
21 and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv)
22 met all applicable requirements of California Rule of Court 3.769, due process, and any other
23 applicable rules or law;

24 3.8.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete
25 list of all Settlement Class Members who have timely requested exclusion from the Settlement Class
26 and, accordingly, shall neither share in the Settlement nor be bound by the Final Approval order and
27 Judgment;

28

1 3.8.6 Directs that the Final Approval order and Judgment of dismissal shall be final
2 and entered forthwith;

3 3.8.7 Without affecting the finality of the Final Approval order and Judgment,
4 retains continuing jurisdiction over the Plaintiffs, the Settlement Class and Postmates as to all matters
5 concerning the administration, consummation, and enforcement of this Settlement Agreement;

6 3.8.8 Adjudges that, as of the Final Approval Date, the Plaintiffs and all Settlement
7 Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out
8 List approved by the Court, and their Legally Authorized Representatives, heirs, estates, trustees,
9 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors,
10 and/or anyone claiming through them or acting or purporting to act for them or on their behalf,
11 regardless of whether they have received actual notice of the proposed Settlement, have conclusively
12 compromised, settled, discharged, and released the General Released Claims (in the case of the
13 Plaintiffs), the Authorized Claimants' Released Claims (in the case of the Authorized Claimants), and
14 Settlement Class Members' Released Claims (in the case of the Settlement Class Members) against
15 Postmates and the Released Parties, and are bound by the provisions of this Settlement Agreement;

16 3.8.9 Affirms that, notwithstanding the submission of a timely request for exclusion,
17 Settlement Class Members will still be bound by the settlement and release of the PAGA Claims or
18 remedies under the Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969, as requests
19 for exclusion do not apply to the PAGA Claims, and further affirms that the State's claims for civil
20 penalties pursuant to PAGA are also extinguished;

21 3.8.10 Declares this Agreement and the Final Approval order and Judgment to be
22 binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other
23 proceedings: (i) that encompass the Plaintiffs' Claims, and that are maintained by or on behalf of
24 Plaintiffs and/or their Legally Authorized Representatives, heirs, estates, trustees, executors,
25 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or
26 anyone claiming through them or acting or purporting to act for them or on their behalf; and (ii) that
27 encompass the Settlement Class Members' Released Claims and that are maintained by or on behalf
28 of any Settlement Class Member who has not been excluded from the Settlement Class as provided in

1 the Opt-Out List approved by the Court and/or his or her Legally Authorized Representatives, heirs,
2 estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns,
3 and successors, and/or anyone claiming through them or acting or purporting to act for them or on
4 their behalf, regardless of whether the Settlement Class Member previously initiated or subsequently
5 initiates individual litigation, arbitration, or other proceedings encompassed by the Settlement Class
6 Members' Released Claims, and even if such Settlement Class Member never received actual notice
7 of the Action or this proposed Settlement;

8 3.8.11 Determines that the Agreement and the Settlement provided for herein, and
9 any proceedings undertaken pursuant thereto, are not, and should not in any event be offered,
10 received, or construed as evidence of, or a presumption, concession, or admission by, any Party of
11 liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or
12 that PAGA representative claims may validly be pursued, or of any misrepresentation or omission in
13 any statement or written document approved or made by any Party; provided, however, that reference
14 may be made to this Agreement and the Settlement provided for herein in such proceedings as may
15 be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement;

16 3.8.12 Directs Plaintiffs' Counsel to seek dismissal of the *Lee, Albert, Winns, Vincent,*
17 and *Santana* Actions with prejudice within 14 days of Final Approval;

18 3.8.13 Orders that the preliminary approval of the Settlement, certification of the
19 Settlement Class, and Final Approval of the proposed Settlement, and all actions associated with
20 them, are undertaken on the condition that they shall be vacated and void ab initio if the Settlement
21 Agreement is terminated or disapproved in whole or in part by the Court, or any appellate court
22 and/or other court of review in which event the Agreement and the fact that it was entered into shall
23 not be offered, received, or construed as an admission or as evidence for any purpose, including but
24 not limited to an admission by any Party of liability or non-liability or of any misrepresentation or
25 omission in any statement or written document approved or made by any Party, or of the certifiability
26 of a litigation class or the appropriateness of maintaining a representative action, as further provided
27 in Section XI;

28

1 3.8.14 Authorizes the Parties, with approval from the Court, to agree to and adopt
2 such amendments, modifications, and expansions of this Agreement, including all Exhibits hereto, as
3 (i) shall be consistent in all material respects with the Final Approval order and (ii) do not limit the
4 rights of Settlement Class Members; and

5 3.8.15 Contains such other and further provisions consistent with the terms of this
6 Settlement Agreement to which the Parties expressly consent in writing.

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

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

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

26 3.12 Within 10 days after entry of Judgment, Settlement Class Counsel will provide a copy
27 of the Judgment to the LWDA.
28

1 **IV. SETTLEMENT CONSIDERATION**

2 4.1 The Total Settlement Amount is \$32,000,000. This is an “all in” number that will
3 resolve all Released Claims, and which includes, without limitation, all monetary benefits and
4 payments to the Settlement Class and Plaintiffs, Service Awards, Settlement Class Counsel Award,
5 Settlement Administrator Expenses, and the PAGA Payment, and all claims for interest, fees, and
6 costs. Under no circumstances shall Postmates be required to pay anything more than the Total
7 Settlement Amount. In no event shall Postmates be liable for making any payments under this
8 Settlement, or for providing any relief to Settlement Class Members, before the deadlines set forth in
9 this Agreement.

10 4.2 The Plaintiffs and all Settlement Class Members who receive a payment of any kind
11 from the Total Settlement Amount (including, in the case of the Plaintiffs, Service Awards) expressly
12 acknowledge that such payments shall be considered non-wages for which an IRS Form 1099 will be
13 issued, if required. The Plaintiffs and all Settlement Class Members who receive a payment of any
14 kind from the Total Settlement Amount agree to timely pay in full all of the federal, state, and
15 municipal income taxes owed on such payments.

16 4.3 The terms of this Agreement relating to the Service Awards and Settlement Class
17 Counsel Award were not negotiated by the Parties before full agreement was reached as to all other
18 material terms of the proposed Settlement, including, but not limited to, any terms relating to the
19 relief to the Settlement Class. Postmates agrees to the amount of Service Awards (if any) granted by
20 the Superior Court. The Plaintiffs and Settlement Class Counsel agree not to seek Service Awards in
21 excess of the amounts described in Paragraph 2.32.

22 4.4 Settlement Class Counsel agrees not to seek an award of attorneys’ fees, costs and
23 expenses from the Court in excess of one third (1/3) of the Total Settlement Amount of \$32,000,000.
24 Postmates agrees to the amount of attorneys’ fees, costs and expenses (if any) granted by the Superior
25 Court.

26 4.5 The payment of the Settlement Class Counsel Award, the Service Awards, the
27 Settlement Administrator Expenses, the Individual Settlement Payments, and the PAGA Payment
28

1 shall be made by the Settlement Administrator from the Total Settlement Amount within thirty (30)
2 days after the Effective Date.

3 4.6 The Settlement Administrator shall pay the Settlement Class Counsel Award by check,
4 payable to "Lichten & Liss-Riordan, P.C." Settlement Class Counsel shall provide the Settlement
5 Administrator notice of receipt of the Settlement Class Counsel Award.

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

7 5.1 Within fourteen (14) calendar days following the Effective Date, Postmates shall
8 provide the Total Settlement Amount (\$32,000,000) to the Settlement Administrator. The Settlement
9 Administrator shall thereafter distribute the funds in the manner and at the times set forth in this
10 Agreement.

11 5.2 To receive an Individual Settlement Payment from the Total Settlement Amount, a
12 Settlement Class Member or his or her Legally Authorized Representative must timely submit a
13 Claim Form that satisfies the requirements of paragraph 5.3, must not have submitted a request for
14 exclusion, and must be eligible for a payment under the Plan of Allocation.

15 5.3 A Claim Form is timely if it is postmarked by the Bar Date and mailed or submitted as
16 an attachment to an email to the Settlement Administrator at the address in the Settlement Class
17 Notice, or if it is submitted online to the Settlement Administrator, in accordance with the online
18 submission instructions to be provided by the Settlement Administrator, by the Bar Date. The Claim
19 Form must be signed (electronically, if submitted via online portal) under penalty of perjury. To be
20 valid, a Claim Form must be signed without any deletion or amendment to its language, regarding the
21 release of FLSA claims and without any deletion or amendment to any other portion.

22 5.4 Settlement Class Members who timely submit a Claim Form will receive their
23 proportionate share of the Total Settlement Amount. No Settlement Class Member who timely
24 submits a Claim Form will receive less than \$10.

25 5.5 Settlement Class Members are not eligible to receive any compensation other than the
26 Individual Settlement Payment.

27 5.6 The Settlement Administrator shall calculate and distribute the Individual Settlement
28 Payments for the Settlement Class Members within thirty (30) days following the Effective Date,

1 provided Postmates has provided the Total Settlement Amount to the Settlement Administrator in
2 accordance with Paragraph 5.1.

3 5.7 Individual Settlement Payments shall be tied to the following distribution formula:

4 Settlement Class Members will be awarded points proportional to the estimated
5 number of miles driven while using the Postmates application as a courier, with one
6 point for every estimated mile driven. Settlement Class Members who either opt out
7 of arbitration, initiate arbitration, or demonstrate in writing an interest in initiating an
8 arbitration demand against Postmates prior to January 1, 2021 will have their points
9 doubled for purposes of this distribution formula (to account for, from plaintiffs'
10 perspective, these drivers' greater likelihood of having their claims pursued, in light of
11 Postmates' arbitration clauses).

12 Postmates will produce Settlement Class Information needed for the allocation to be calculated. The
13 Total Settlement Amount is non-reversionary. The Notice shall advise Settlement Class Members
14 that they may contest whether they are entitled to double points by submitting to the Settlement
15 Administrator in an email or letter (i) proof of a valid request to opt out of arbitration before January
16 1, 2021; (ii) submission of an arbitration demand against Postmates before January 1, 2021; or (iii)
17 communication to Postmates in writing of an intent to initiate arbitration before January 1, 2021.

18 5.8 Following distribution of the Individual Settlement Payments to Settlement Class
19 Members, any Settlement Class Members who received checks for more than \$100 that remain
20 uncashed more than 60 days after distribution will receive a reminder to cash their check. All funds
21 not claimed prior to the Void Date (i.e. all funds from uncashed checks) shall be redistributed to the
22 Settlement Class Members who received and cashed their Individual Settlement Payments. These
23 unclaimed funds shall be redistributed pursuant to the same formula described in Paragraph 5.7.
24 These residual funds will only be distributed to Settlement Class Members for whom this second
25 payment would be at least \$50. The value of any uncashed checks following this residual distribution
26 will be donated on a cy pres basis to Legal Aid at Work.

27 5.9 The Individual Settlement Payments received shall be reported by the Settlement
28 Administrator to the applicable governmental authorities on IRS Form 1099s (if required). The
portions allocated to Service Awards shall likewise be reported on IRS Form 1099s by the Settlement
Administrator. The Settlement Administrator shall be responsible for issuing copies of IRS Form
1099s for the Plaintiffs and Settlement Class Members.

1 **VI. NOTICE PROCEDURES**

2 6.1 No more than fourteen (14) calendar days after entry of the Preliminary Approval
3 Order, Postmates shall provide the Settlement Administrator with the Settlement Class Information
4 for purposes of sending the Settlement Class Notice to Settlement Class Members.

5 6.2 No more than twenty (20) calendar days after entry of the Preliminary Approval Order
6 (on the Notice Distribution Date), the Settlement Administrator shall send the Settlement Class
7 Notice to the Settlement Class Members, via electronic mail.

8 6.3 The Settlement Class Notice will inform Settlement Class Members of their right to
9 request exclusion from the Settlement, of their right to object to the Settlement, of their right to
10 dispute the information upon which their share of the Settlement will be calculated, and the claims to
11 be released.

12 6.4 The Settlement Class Notice shall include an explanation for how the Estimated Miles
13 will be used to calculate the Individual Settlement Payments. The Settlement Administrator's
14 determination of the amount of any Settlement Class Member's Estimated Miles shall be binding
15 upon the Settlement Class Member, and the Parties. There will be a presumption that Postmates'
16 records are correct, absent evidence produced by a Settlement Class Member to the contrary. A
17 Settlement Class Member who wishes to dispute their Estimated Miles must contact the Settlement
18 Administrator by mail or email and must provide documentation in the form of tax records or trip
19 histories from the Postmates Application.

20 6.5 If any Settlement Class Notice sent via electronic mail to any Settlement Class
21 Member is undeliverable, the Settlement Administrator shall, within seven (7) days of an
22 undeliverable email, mail the Settlement Class Notice to each Settlement Class Member whose
23 Settlement Class Notice was undeliverable. Before mailing, the Settlement Administrator shall make
24 a good-faith attempt to obtain the most-current names and postal mail addresses for all Settlement
25 Class Members to receive such postal mail, including cross-checking the names and/or postal mail
26 addresses it received from Postmates, as well as any other sources, with appropriate databases (e.g.,
27 the National Change of Address Database) and performing further reasonable searches (e.g., through
28 Lexis/Nexis) for more-current names and/or postal mail addresses for Settlement Class Member. All

1 Settlement Class Members' names and postal mail addresses obtained through these sources shall be
2 protected as confidential and not used for purposes other than the notice and administration of this
3 Settlement. The Settlement Administrator shall exercise its best judgment to determine the current
4 mailing address for each Settlement Class Member. The address determined by the Settlement
5 Administrator as the current mailing address shall be presumed to be the best mailing address for
6 each Settlement Class Member. The Bar Date and Exclusion/Objection Deadlines shall be extended
7 as necessary in order to ensure that the Settlement Class Member receiving a mailed notice has sixty
8 (60) days to submit a claim form or to opt-out or object to the Settlement.

9 6.6 If any Settlement Class Notice to a Settlement Class Member is returned to the
10 Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the
11 postal mailing to that address. For any remaining returned postal mailings, the Settlement
12 Administrator shall make a good-faith search of an appropriate database (as described in the
13 preceding paragraph), and postal mailings shall be forwarded to any new postal mail address obtained
14 through such a search. In the event that any Settlement Class Notice is returned as undeliverable a
15 second time, no further postal mailing shall be required. The Settlement Administrator shall maintain
16 a log detailing the instances Settlement Class Notices are returned as undeliverable.

17 6.7 At least two reminders will be sent to Settlement Class Members following the initial
18 Settlement Class Notice, and the parties will agree to any further reminders that may be reasonably
19 necessary to assure adequate opportunity for Settlement Class Members to participate in the
20 settlement. These reminders will be sent to Settlement Class Members who have not already
21 submitted a claim form, opt-out request, or objection. These reminders will be sent via email to those
22 Settlement Class Members whose emailed notices were not returned as undeliverable and via mail for
23 those Settlement Class Members who received their initial Settlement Class Notice in the mail.
24 Settlement Class Members who are expected to have their points doubled pursuant to Paragraph 5.7
25 will receive at least one additional reminder (for a total of at least three reminders) advising them of
26 their right to opt-out and continue to pursue their claims in arbitration or to release their claims in
27 order to participate in the settlement.

1 6.8 The Parties agree that the procedures set forth in this Section constitute reasonable and
2 the best practicable notice under the circumstances and an appropriate and sufficient effort to locate
3 current addresses for Settlement Class Members such that no additional efforts to do so shall be
4 required.

5 6.9 The Settlement Administrator will provide Settlement Class Notice by, at a minimum,
6 (i) electronic mail notice without material variation from the form attached as the relevant portion of
7 Exhibit A; (ii) if necessary in accordance with Paragraph 6.7, first-class mail (where available) notice
8 without material variation from the relevant portion of Exhibit A; and (iii) a content-neutral
9 settlement website accessible to Settlement Class Members managed by the Settlement
10 Administrator, and approved by counsel for the Parties, which will contain further information about
11 the Settlement, including relevant pleadings. The Settlement Class Notice shall comply with
12 California Rule of Court 3.769 and due process.

13 6.10 Prior to the Final Approval Hearing, the Settlement Administrator shall prepare a
14 declaration of due diligence and proof of dissemination with regard to the mailing of the Settlement
15 Class Notice, and any attempts by the Settlement Administrator to locate Settlement Class Members,
16 its receipt of valid Claim Forms, Opt-outs, and Objections (and copies of same), and its inability to
17 deliver the Settlement Class Notice to Settlement Class Members due to invalid addresses (“Due
18 Diligence Declaration”), to Settlement Class Counsel and counsel for Postmates for presentation to
19 the Court. Settlement Class Counsel shall be responsible for filing the Due Diligence Declaration
20 with the Court.

21 6.11 If any individual whose name does not appear in the Settlement Class Information
22 believes that he or she is a Settlement Class Member, he or she shall have the opportunity to dispute
23 his or her exclusion from the Settlement Class. If an individual believes he or she is a Settlement
24 Class Member, he or she must notify the Settlement Administrator by mail, email, or telephone
25 within thirty (30) days after the distribution of the Settlement Class Notice. The Parties will meet and
26 confer regarding any such individuals in an attempt to reach an agreement as to whether any such
27 individual should be regarded as a Settlement Class Member. If the Parties so agree, such an
28 individual will have all of the same rights as any other Settlement Class Member under this

1 Agreement. In the event that the Parties agree that the individual is a Settlement Class Member, the
2 Individual Settlement Payment to such individual shall be disbursed from the Dispute Resolution
3 Fund. Under no circumstances will any action under this paragraph increase the Total Settlement
4 Amount.

5 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

6 7.1 Settlement Class Members (with the exception of the Plaintiffs) may opt out of the
7 Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement Class must
8 submit timely, written requests for exclusion. To be effective, such a request must include the
9 Settlement Class Member’s name, address, and telephone number; a clear and unequivocal statement
10 that the Settlement Class Member wishes to be excluded from the Settlement Class; and the signature
11 of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class
12 Member. The request must be mailed or submitted in the body of an email (from the Settlement
13 Class Member’s account used to sign up on the Postmates platform) to the Settlement Administrator
14 at the address provided in the Settlement Class Notice and must be postmarked or emailed no later
15 than the Exclusion/Objection Deadline. For those Settlement Class Members who submit a request in
16 an email, the Settlement Class Member’s typed name at the bottom of the email shall constitute their
17 signature. The date of the postmark or email shall be the exclusive means used to determine whether
18 a request for exclusion has been timely submitted. Requests for exclusion must be exercised
19 individually by the Settlement Class Member or the Settlement Class Member’s Legally Authorized
20 Representative, not as or on behalf of a group, class, or subclass. All requests for exclusion must be
21 submitted by the requesting Settlement Class Member (or their Legally Authorized Representative),
22 except that the Settlement Class Member’s counsel may submit an opt-out request on behalf of the
23 individual Settlement Class Member if:

24 7.1.1 The Settlement Class Member’s counsel retains a copy of the Settlement Class
25 Member’s signed retention agreement with the counsel who is submitting the opt-out request, along
26 with a copy of any other agreements between the Settlement Class Member and counsel who is
27 submitting the opt-out request or their co-counsel, and agrees that any such agreements shall be
28 provided to the Court in camera if the Court so requests;

1 7.1.2 The Settlement Class Member’s counsel submits a declaration under penalty of
2 perjury that:

3 7.1.2.1 Avers that the Settlement Class Member signed a retention agreement
4 with the individual attorney signing the declaration and submitting the
5 opt-out request, and identifies approximately when this occurred;

6 7.1.2.2 Avers that the attorney signing the declaration (a) personally advised
7 the Settlement Class Member of the estimate the parties provided of
8 how much the individual Settlement Class Member would have
9 recovered under the Settlement (assuming a 50% claim rate); and (b)
10 personally inquired whether the Settlement Class Member would prefer
11 to accept the settlement or opt out and maintain their right to pursue
12 individual claims, and the Settlement Class Member consented verbally
13 or in writing to opt out; and

14 7.1.2.3 Contains the advising attorney’s original signature.

15 7.2 The Settlement Administrator shall promptly log each request for exclusion that it
16 receives and provide copies of the log and all such requests for exclusion to Settlement Class Counsel
17 and counsel for Postmates upon request. The Settlement Administrator shall automatically notify
18 Settlement Class Counsel and counsel for Postmates if and when the number of timely-submitted
19 requests for exclusion reaches 250.

20 7.3 The Settlement Administrator shall prepare a list of all persons who timely and
21 properly requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final
22 Approval Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

23 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by
24 the Court shall be bound by this Settlement Agreement, and all their claims shall be dismissed with
25 prejudice and released as provided for herein, even if they never received actual notice of the Action
26 or this proposed Settlement.

1 7.5 In the event that a Settlement Class Member submits a request for exclusion that the
2 parties do not believe was timely and/or properly submitted, the Court shall determine whether the
3 request for exclusion was timely and properly submitted.

4 7.6 The Plaintiffs agree not to request exclusion from the Settlement Class.

5 7.7 Settlement Class Members may request exclusion from the Settlement. Any such
6 Settlement Class Member may also object to the PAGA portion of the Settlement.

7 7.8 Notwithstanding the submission of a timely request for exclusion, Settlement Class
8 Members will still be bound by the settlement and release of the PAGA Claims or remedies under the
9 Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969. Requests for exclusion do not
10 apply to the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims.

11 7.9 Settlement Class Members may object to or opt out of the Settlement, but may not do
12 both. Any Settlement Class Member who submits a timely request for exclusion may not file an
13 objection to the Settlement, submit a Claim, or receive a Settlement Payment, and shall be deemed to
14 have waived any rights or benefits under the Settlement Agreement.

15 7.10 No later than ten (10) business days after the Exclusion/Objection Deadline, the
16 Settlement Administrator shall provide to Settlement Class Counsel and counsel for Postmates the
17 Opt-Out List together with copies of the exclusion requests. Notwithstanding any other provision of
18 this Settlement Agreement, if more than two hundred fifty (250) Settlement Class Members exercise
19 their right to opt out of the Settlement, Postmates at its sole and absolute discretion may rescind and
20 revoke the Settlement Agreement by sending written notice that it revokes the Settlement pursuant to
21 this Paragraph to Settlement Class Counsel within fourteen (14) business days following receipt of
22 the Opt-Out List.

23 7.11 Any Settlement Class Member who submits a timely and valid Claim Form, or does
24 not submit a timely and valid opt-out request, agrees to waive the Class Action Waiver in any
25 existing arbitration agreement between the Settlement Class Member and Postmates with respect to
26 the Released Claims.

1 **VIII. PROCEDURES FOR OBJECTIONS**

2 8.1 Any Settlement Class Member who wishes to object to the fairness, reasonableness, or
3 adequacy of this Agreement or the proposed Settlement must provide to the Settlement Administrator
4 a timely statement of the objection. The Settlement Administrator shall promptly forward any
5 objections to Settlement Class Counsel and counsel for Postmates.

6 8.2 All written objections must (a) clearly identify the case name and number, (b) be
7 submitted to the Settlement Administrator by mail or in the body of an email, and (c) be emailed or
8 postmarked no later than the Exclusion/Objection Deadline. The date of the postmark on the return-
9 mailing envelope, or the date of the email, shall be the exclusive means used to determine whether
10 the written objection has been timely submitted. If an objection is submitted using more than one
11 method (e.g. if it is mailed and emailed), the earlier date shall be used to determine timeliness.

12 8.3 The objection must contain at least the following: (i) the objector's full name, address,
13 telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the basis for each
14 objection argument; and (iv) a statement whether the objecting person or entity intends to appear at
15 the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement
16 identifying that counsel by name, bar number, address, and telephone number. All objections shall be
17 signed by the objecting Settlement Class Member (or their Legally Authorized Representative), even
18 if the Settlement Class Member is represented by counsel. For those Settlement Class Members who
19 submit an objection in an email, the Settlement Class Member's typed name at the bottom of the
20 email shall constitute their signature.

21 8.4 The right to object to the proposed Settlement must be exercised individually by a
22 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be
23 ineffective and disregarded. Individual objections may be submitted by a Settlement Class Member's
24 Legally Authorized Representative (who is not the Settlement Class Member's counsel).

25 8.5 Settlement Class Members who object to the proposed Settlement shall remain
26 Settlement Class Members, and shall be deemed to have voluntarily waived their right to exclude
27 themselves from the Settlement Class or pursue an independent remedy against Postmates and the
28 Released Parties. To the extent any Settlement Class Member objects to the proposed Settlement

1 Agreement, and such objection is overruled in whole or in part, such Settlement Class Member will
2 be forever bound by the Final Approval order and Judgment.

3 8.6 It shall be Settlement Class Counsel's sole responsibility to respond to any objections
4 made with respect to any application for the Settlement Class Counsel Award and Service Awards.

5 8.7 The Settlement Administrator shall prepare a list of all persons who timely and
6 properly submitted an objection (the Objection List) and shall, before the Final Approval Hearing,
7 submit an affidavit to the Court attesting to the accuracy of the list.

8 **IX. RELEASES**

9 9.1 The Released Claims against each and all of the Released Parties shall be released and
10 dismissed with prejudice and on the merits (without an award of costs to any party other than as
11 provided in this Agreement) upon entry of the Final Approval order and Judgment.

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

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

5 9.3 The Plaintiffs and the Settlement Class Members expressly acknowledge that they are
6 familiar with principles of law such as Section 1542 of the California Civil Code, which provides:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
8 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
10 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
11 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
12 PARTY.

13 With respect to the Settlement Class Released Claims, as described in Paragraph 2.41, each
14 Settlement Class Member who has not been excluded from the Settlement Class as provided in the
15 Opt-Out List shall be deemed to have expressly, knowingly, and voluntarily waived and relinquished,
16 to the fullest extent permitted by law, the provisions, rights, and benefits he or she may otherwise
17 have had pursuant to Section 1542 of the California Civil Code and all similar federal, state, and local
18 laws, rights, rules, and legal principles of any other jurisdiction that may be applicable herein. In
19 connection with the release, the Settlement Class Members acknowledge that they are aware that they
20 may hereafter discover claims presently unknown and unsuspected or facts in addition to or different
21 from those which they now know or believe to be true with respect to matters released herein.
22 Nevertheless, the Settlement Class Members acknowledge that a portion of the consideration received
23 herein is for a release with respect to unknown damages and complaints, whether resulting from
24 known injuries and consequences or from unknown injuries or unknown consequences of known or
25 unknown injuries, and state that it is the intention of the Settlement Class Members in agreeing to this
26 release fully, finally, and forever to settle and release all matters and all claims that exist, hereafter
27 may exist, or might have existed (whether or not previously or currently asserted in any action),
28 constituting the Settlement Class Members' Released Claims.

1 9.4 With respect to those claims that could be asserted under the FLSA, an Authorized
2 Claimant's timely and valid submission of a signed Claim Form shall be deemed as that Authorized
3 Claimant's Consent to Join and release all such matters and claims. The timely and valid submission
4 of a signed Claim Form shall fully, finally and forever settle and release all such matters and claims
5 as of the Effective Date.

6 9.5 With respect to the General Released Claims, as described in Paragraph 2.16, each
7 Plaintiff shall be deemed to have expressly, knowingly, and voluntarily waived and relinquished, to
8 the fullest extent permitted by law, the provisions, rights, and benefits he or she may otherwise have
9 had pursuant to Section 1542 of the California Civil Code and all similar federal, state, and local
10 laws, rights, rules, and legal principles of any other jurisdiction that may be applicable herein. In
11 connection with the release, Plaintiffs acknowledge that they are aware that they may hereafter
12 discover claims presently unknown and unsuspected or facts in addition to or different from those
13 which they now know or believe to be true with respect to matters released herein. Nevertheless,
14 Plaintiffs acknowledge that a portion of the consideration received herein is for a release with respect
15 to unknown damages and complaints, whether resulting from known injuries and consequences or
16 from unknown injuries or unknown consequences of known or unknown injuries, and state that it is
17 the intention of Plaintiffs in agreeing to this release fully, finally, and forever to settle and release all
18 matters and all claims that exist, hereafter may exist, or might have existed (whether or not
19 previously or currently asserted in any action), constituting the General Released Claims.

20 9.6 Each Plaintiff further acknowledges, agrees, and understands that: (i) he or she has
21 read and understands the terms of this Agreement; (ii) he or she has been advised in writing to
22 consult with an attorney before executing this Agreement; (iii) he or she has obtained and considered
23 such legal counsel as he or she deems necessary; (iv) he or she has been given twenty-one (21) days
24 to consider whether or not to enter into this Agreement (although he or she may elect not to use the
25 full 21 day period at his or her option).

26 9.7 Subject to Court approval, the Plaintiffs and all Settlement Class Members who have
27 not been excluded from the Settlement Class as provided in the Opt-Out List shall be bound by this
28

1 Settlement Agreement, and all of the Released Claims shall be dismissed with prejudice and released,
2 even if they never received actual notice of the Action or this Settlement.

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

4 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties
5 and subject to the supervision, direction, and approval of the Court, shall calculate the allocation of
6 and oversee the distribution of the Total Settlement Amount.

7 10.2 The Total Settlement Amount shall be applied as follows:

8 10.2.1 To pay the costs and expenses incurred in connection with providing
9 Settlement Class Notice to potential Settlement Class Members, locating Settlement Class Members'
10 last-known postal mail addresses and processing any objections, requests for exclusion or challenges
11 to calculations of Estimated Miles;

12 10.2.2 After the Effective Date as provided in Paragraph 2.10, and subject to the
13 approval and further order(s) of the Court, to pay Plaintiffs Service Awards based on contributions
14 and time expended assisting in the litigation, up to the amounts described in Paragraph 2.29.

15 10.2.3 After the Effective Date as provided in Paragraph 2.10, and subject to the
16 approval and further order(s) of the Court, to pay the Settlement Class Counsel Award as ordered by
17 the Court;

18 10.2.4 After the Effective Date as provided in Paragraph 2.10, and subject to the
19 approval and further order(s) of the Court, to distribute 75% of the PAGA Payment to the LWDA;

20 10.2.5 After the Effective Date as provided in Paragraph 2.10, and subject to the
21 approval and further order(s) of the Court, to distribute the Individual Settlement Payments from the
22 Total Settlement Amount for the benefit of the Settlement Class pursuant to the Plan of Allocation, or
23 as otherwise ordered by the Court.

24 10.3 If any portion of the Total Settlement Amount is not successfully redistributed to
25 Settlement Class Members after the initial Void Date (i.e. checks are not cashed or checks are
26 returned as undeliverable after the second distribution), then after the Void Date for redistributed
27 checks, the Settlement Administrator shall void the check and shall direct such unclaimed funds to be
28

1 paid to Legal Aid at Work. Such unclaimed funds may also be used to resolve disputes regarding the
2 distribution of settlement funds.

3 10.4 Settlement Class Members who are not on the Opt-Out List approved by the Court
4 shall be subject to and bound by the provisions of the Settlement Agreement, the releases contained
5 herein, and the Judgment with respect to all Settlement Class Members' Released Claims, regardless
6 of whether they obtain any distribution from the Total Settlement Amount.

7 10.5 Payment from the Total Settlement Amount shall be deemed conclusive of compliance
8 with this Settlement Agreement as to all Settlement Class Members.

9 10.6 No Settlement Class Member shall have any claim against the Plaintiffs, Settlement
10 Class Counsel, or the Settlement Administrator based on distributions made substantially in
11 accordance with this Settlement Agreement and/or orders of the Court. No Settlement Class Member
12 shall have any claim against Postmates or its counsel relating to distributions made under this
13 Settlement.

14 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
15 **SETTLEMENT AGREEMENT**

16 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement,
17 or if the Court enters the Judgment and appellate review is sought, and on such review, the entry of
18 Judgment is vacated, modified in any way, or reversed, or if the Final Approval order does not
19 otherwise become Final, then this Settlement Agreement shall be cancelled, terminated, and void ab
20 initio, unless all Parties, in their sole discretion within thirty (30) days from the date such ruling
21 becomes final, provide written notice to all other Parties hereto of their intent to proceed with the
22 Settlement under the terms of the Judgment as it may be modified by the Court or any appellate court.

23 11.2 Postmates shall have the right to withdraw from the Settlement if the number of
24 Settlement Class Members who attempt to exclude themselves from the Settlement Class equals or
25 exceeds 250. If Postmates chooses, pursuant to its sole and absolute discretion, to exercise this right,
26 it must do so within fourteen (14) days of receipt of the Opt-Out List as provided in Paragraphs 7.2
27 and 7.9, by providing written notice to Settlement Class Counsel.

1 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is materially
2 modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement
3 Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the Parties
4 stipulate and agree that the Settlement, this Agreement, the Settlement Class Information, the Opt-
5 Out List, and all documents exchanged and filed in connection with the Settlement shall be treated as
6 inadmissible mediation communications under Cal. Evid. Code § 1115 et seq.; (b) the Settlement
7 shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be
8 effective or enforceable, with the exception of this Paragraph, which shall remain effective and
9 enforceable; (c) the Parties shall be deemed to have reverted nunc pro tunc to their respective statuses
10 prior to execution of this Agreement, including with respect to any Court-imposed deadlines; (d) all
11 Orders entered in connection with the Settlement, including the certification of the Settlement and
12 certification of the FLSA claims, shall be vacated without prejudice to any Party's position on the
13 issues of class and collective action certification, the issue of amending the complaint, or any other
14 issue, in this Action or any other action, and the Parties shall be restored to their litigation positions
15 existing on the date of execution of this Agreement; and (e) the Parties shall proceed in all respects as
16 if the Settlement Agreement and related documentation and orders had not been executed, and
17 without prejudice in any way from the negotiation or fact of the Settlement or the terms of the
18 Settlement Agreement. The Settlement Agreement, the Settlement, all documents, orders, and
19 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release or
20 other statement or report by the Parties or by others concerning the Settlement Agreement, the
21 Settlement, their existence, or their terms, and any negotiations, proceedings, acts performed, or
22 documents executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall
23 not be admissible in any proceeding, and shall not be offered, received, or construed as evidence of a
24 presumption, concession, or an admission of liability, of unenforceability of any arbitration
25 agreement, of the certifiability of a litigation class, or of any misrepresentation or omission in any
26 statement or written document approved or made, or otherwise used by any Person for any purpose
27 whatsoever, in any trial of this Action or any other action or proceedings. Plaintiffs, Settlement Class
28 Counsel, and the Settlement Administrator shall return to counsel for Postmates all copies of the

1 Settlement Class Information and Opt-Out Lists and shall not use or disclose the Settlement Class
2 Information or Opt-Out List for any purpose or in any proceeding.

3 11.4 Postmates does not agree or consent to certification of the class or FLSA claims for
4 any purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement is
5 terminated pursuant to its terms, or the Effective Date for any reason does not occur, all Orders
6 certifying the Settlement Class and FLSA collective for purposes of effecting this Settlement
7 Agreement, and all preliminary and/or final findings regarding the Settlement Class, shall be void ab
8 initio and automatically vacated upon notice to the Court, the Action shall proceed as though the
9 Settlement Class had never been certified pursuant to this Settlement Agreement and such findings
10 had never been made, and the Action shall revert nunc pro tunc to the procedural status quo as of the
11 date and time immediately before the execution of the Settlement Agreement, in accordance with this
12 Settlement Agreement.

13 **XII. ADDITIONAL PROVISIONS**

14 12.1 In the event that one or more of the Parties to this Settlement Agreement institutes any
15 legal action, arbitration, or other proceeding against any other party to enforce the provisions of this
16 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the
17 prevailing party shall be entitled to recover from the unsuccessful party reasonable attorneys' fees
18 and costs, including expert witness fees incurred in connection with any enforcement actions.

19 12.2 Unless otherwise specifically provided here, all notices, demands, or other
20 communications given hereunder shall be in writing and shall be deemed to have been duly given as
21 of the third business day after mailing by United States registered or certified mail, return receipt
22 requested, addressed as follows:

23 To Plaintiffs and the Settlement Class:

24 Shannon Liss-Riordan, Esq.
25 Lichten & Liss-Riordan, P.C.
26 729 Boylston Street
Suite 2000
Boston, MA 02116

1 To Defendants:

2 Theane Evangelis, Esq.
3 Gibson, Dunn & Crutcher LLP
4 333 South Grand Avenue
5 Los Angeles, CA 90071-3197

6 12.3 All of the Exhibits to this Settlement Agreement are an integral part of the Settlement
7 and are incorporated by reference as though fully set forth herein.

8 12.4 The Parties agree that the recitals are contractual in nature and form a material part of
9 this Settlement Agreement.

10 12.5 The Plaintiffs and Settlement Class Counsel acknowledge that an adequate factual
11 record has been established that supports the Settlement and hereby waive any right to conduct
12 further discovery to assess or confirm the Settlement. Notwithstanding the prior sentence, the Parties
13 agree to reasonably cooperate with respect to efforts to identify the last-known addresses of
14 Settlement Class Members.

15 12.6 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar
16 days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal
17 holiday, such date or deadline shall be on the first business day thereafter.

18 12.7 This Agreement supersedes all prior negotiations and agreements and may be
19 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
20 successors-in-interest.

21 12.8 The Parties reserve the right, subject to the Court’s approval, to agree to any
22 reasonable extensions of time that might be necessary to carry out any of the provisions of this
23 Agreement. Such extensions must be in writing to be enforceable.

24 12.9 The Settlement Agreement, the Settlement, the fact of the Settlement’s existence, any
25 of the terms of the Settlement Agreement, any press release or other statement or report by the Parties
26 or by others concerning the Settlement Agreement or the Settlement, and any negotiations,
27 proceedings, acts performed, or documents executed pursuant to or in furtherance of the Settlement
28 Agreement or the Settlement: (i) may not be deemed to be, may not be used as, and do not constitute
an admission or evidence of the validity of any Released Claims or of any wrongdoing or liability of

1 Postmates; (ii) may not be deemed to be, may not be used as, and do not constitute an admission or
2 evidence of any fault, wrongdoing, or omission by Postmates in any trial, civil, criminal, arbitration,
3 or administrative proceeding of the Action or any other action or proceedings in any court,
4 administrative agency, arbitral forum or other tribunal; (iii) may not be used as evidence of any
5 waiver of, unenforceability of, or as a defense to any Postmates arbitration agreement; and (iv) may
6 not be used as evidence in any class certification proceeding.

7 12.10 The Released Parties shall have the right to file the Settlement Agreement, the Final
8 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any
9 action that may be brought against them in order to support a defense or counterclaim based on
10 principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
11 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12 12.11 The Parties to the Settlement Agreement agree that the Total Settlement Amount and
13 the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
14 resulted from an arm's-length mediation session facilitated by Tripper Ortman, and reflect a
15 settlement that was reached voluntarily based upon adequate information and sufficient discovery and
16 after consultation with experienced legal counsel.

17 12.12 The Plaintiffs and Settlement Class Counsel have concluded that the Settlement set
18 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiffs
19 asserted against Postmates, including the claims on behalf of the Settlement Class, and that it
20 promotes the best interests of the Settlement Class.

21 12.13 To the extent permitted by law, all agreements made and orders entered during the
22 course of the Action relating to the confidentiality of information shall survive this Settlement
23 Agreement.

24 12.14 The Parties agree that Plaintiffs and Settlement Class Counsel are not required to
25 return any documents or data produced by Postmates until the final resolution of the Action. Within
26 sixty (60) days following the Effective Date, Settlement Class Counsel shall return to Postmates all
27 documents and data produced in the Action or in connection with the Parties' mediation, or confirm
28 in writing that all such documents have been destroyed.

1 12.15 The waiver by one Party of any breach of this Settlement Agreement by any other
2 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
3 Agreement.

4 12.16 This Settlement Agreement, including its Exhibits, constitutes the entire agreement
5 among the Parties, and no representations, warranties, or inducements have been made to any Party
6 concerning this Settlement Agreement or its Exhibits, other than the representations, warranties, and
7 covenants contained and memorialized in this Settlement Agreement and its Exhibits.

8 12.17 This Settlement Agreement may be executed in one or more counterparts. All
9 executed counterparts and each of them shall be deemed to be one and the same instrument provided
10 that counsel for the Parties to this Settlement Agreement shall exchange among themselves original
11 signed counterparts.

12 12.18 This Settlement Agreement may be signed with a facsimile signature and in
13 counterparts, each of which shall constitute a duplicate original.

14 12.19 The Parties hereto and their respective counsel agree that they will use their best
15 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement.

16 12.20 This Settlement Agreement shall be binding upon and shall inure to the benefit of the
17 successors and assigns of the Parties hereto, including any and all Released Parties and any
18 corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate,
19 or reorganize.

20 12.21 This Settlement Agreement has been negotiated among and drafted by Settlement
21 Class Counsel and Postmates' Counsel. Named Plaintiffs, Settlement Class Members, and Postmates
22 shall not be deemed to be the drafters of this Settlement Agreement or of any particular provision, nor
23 shall they argue that any particular provision should be construed against its drafter or otherwise
24 resort to the contra proferentem canon of construction. Accordingly, this Settlement Agreement
25 should not be construed in favor of or against one Party as the drafter, and the Parties agree that the
26 provisions of California Civil Code § 1654 and common law principles of construing ambiguities
27 against the drafter shall have no application. All Parties agree that counsel for the Parties drafted this
28 Settlement Agreement during extensive arm's-length negotiations. No parol or other evidence may

1 be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their
2 counsel, or the circumstances under which this Settlement Agreement was made or executed.

3 12.22 Except where this Settlement Agreement itself provides otherwise, all terms,
4 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been
5 relied upon by the Parties in entering into this Settlement Agreement.

6 12.23 This Settlement Agreement shall be governed by California law. Any action or
7 dispute based on this Settlement Agreement, including any action to enforce any of the terms of this
8 Settlement Agreement, shall be commenced and maintained only in the Superior Court of California,
9 San Francisco County, which shall retain jurisdiction over all such actions and disputes.

10 12.24 All Parties to this Settlement Agreement shall be subject to the jurisdiction of the
11 Superior Court of California, San Francisco County for all purposes related to this Settlement
12 Agreement.

13 12.25 The Court shall retain continuing and exclusive jurisdiction over the Parties to this
14 Settlement Agreement for the purpose of the administration and enforcement of this Settlement
15 Agreement.

16 12.26 The headings used in this Settlement Agreement are for the convenience of the reader
17 only, and shall not affect the meaning or interpretation of this Settlement Agreement.

18 12.27 In construing this Settlement Agreement, the use of the singular includes the plural
19 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

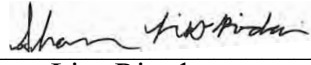
20 12.28 Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his,
21 her, or its independent judgment and upon the advice of counsel, and not in reliance upon any
22 warranty or representation, express or implied, of any nature or of any kind by any other Party, other
23 than the warranties and representations expressly made in this Settlement Agreement.

24 12.29 Signatory counsel warrant that they are fully authorized to execute this Agreement on
25 behalf of their respective clients listed below. Each Counsel signing this Settlement Agreement on
26 behalf of his/her clients who are unable to sign the Agreement on the date that it is executed by other
27 Parties represents that such counsel is fully authorized to sign this Settlement Agreement on behalf of
28 his/her clients; provided, however, that all Parties who have not executed this Agreement on the date

1 that it is executed by the other Parties shall promptly thereafter execute this Agreement and in any
2 event no later than one (1) week after the Agreement has been executed by counsel.


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

6
7
8 Dated: July 21, 2021

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

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

9
10
11
12 Dated: July 21, 2021

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

Attorneys for Defendant POSTMATES, INC.

13
14
15
16 Dated: July ____, 2021

By: _____
Amir Mostafavi

Attorney for Plaintiffs MELANIE WINNS,
RALPH HICKEY JR., STEVEN ALVARADO,
AND KRISTIE LOGAN

17
18
19
20 Dated: July ____, 2021

By: _____
Matthew Bainer

Attorney for Plaintiff SHERICKA VINCENT

21
22
23
24 Dated: July ____, 2021

By: _____
Kitty Szeto

Attorney for Plaintiff WENDY SANTANA

25
26
27 Dated: _____, 2021

By: _____
Jacob Rimler
NAMED PLAINTIFF

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Dated: _____, 2021

By: _____
Giovanni Jones
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Dora Lee
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Kellyn Timmerman
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Joshua Albert
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Melanie Ann Winns
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Ralph John Hickey Jr.
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Steven Alvarado
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Kristie Logan
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Shericka Vincent
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Wendy Santana
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Angela Corridan
Senior Counsel
POSTMATES, LLC f/k/a POSTMATES INC.

EXHIBIT 2

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

6 *Attorneys for Plaintiffs Jacob Rimler, Giovanni*
7 *Jones, Dora Lee, Kellyn Timmerman, and*
8 *Joshua Albert, on behalf of themselves and*
9 *others similarly situated and in their capacities*
10 *as Private Attorney General Representatives*

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Facsimile: 949.475.4668

Attorney for Defendant Postmates Inc.

11
12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO

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

18 Plaintiffs,

19 v.

20 POSTMATES INC.,

21 Defendant.
22

CASE NO. CGC-18-567868

**THIRD AMENDED CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

23
24 This Third Amended Class Action Settlement Agreement and Release, including Exhibits A
25 through C hereto (“Settlement Agreement” or “Agreement”), is made and entered into by,
26 between, and among Plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and
27 Joshua Albert (“the *Rimler* Plaintiffs”), Plaintiffs Melanie Anne Winns, Ralph John Hickey, Jr.,
28 Steven Alvarado, and Kristie Logan (“the *Winns* Plaintiffs”), Plaintiff Shericka Vincent (“Plaintiff

1 Vincent”), and Plaintiff Wendy Santana (“Plaintiff Santana”) on behalf of themselves and the
2 Settlement Class, as defined below, on the one hand, and Defendant Postmates Inc.¹ (“Defendant” or
3 “Postmates”) on the other hand.

4 Plaintiffs and Defendant (collectively, the “Parties”) enter into this Agreement to effect a full
5 and final settlement and preclusive judgment resolving all claims brought or that could have been
6 brought against Postmates in *Rimler v. Postmates, Inc.*, Case No. CGC-18-567868, in the Superior
7 Court of California, San Francisco County, and the related appeal docketed at No. A156450 in the
8 California Court of Appeal, First Appellate District, including as amended pursuant to this
9 Agreement (taken together, the case shall be referred to as “the Action”), and all claims based on or
10 reasonably related thereto. This Agreement is intended to fully and finally compromise, resolve,
11 discharge, and settle the Released Claims, as defined and on the terms set forth below, and to the full
12 extent reflected herein, subject to the approval of the Court.

13 **I. RECITALS**

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

15 1.1 WHEREAS, on July 5, 2018, Plaintiff Jacob Rimler filed a California Private
16 Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, representative action complaint in the
17 Superior Court of California, San Francisco County (Case No. CGC-18-567868), asserting on behalf
18 of himself and all couriers classified by Postmates as independent contractors in California various
19 wage-related claims against Postmates arising from Postmates’ alleged misclassification of couriers
20 as independent contractors. On July 11, 2018, Plaintiff Rimler filed a First Amended Complaint,
21 which added Plaintiff Giovanni Jones (“the *Rimler* Action”);

22 1.2 WHEREAS, on August 17, 2018, Postmates filed a Petition for an Order Compelling
23 Arbitration, which the *Rimler* Plaintiffs opposed. On January 2, 2019, the Court denied Postmates’
24 Petition, and Postmates filed a notice of appeal. On December 9, 2020, the California Court of
25 Appeal, First Appellate District, issued its decision affirming the trial court’s Order;

26
27
28 ¹ Postmates, Inc. is now Postmates, LLC f/k/a Postmates Inc., and its parent corporation is Uber Technologies, Inc.

1 1.3 WHEREAS, on May 8, 2018, Plaintiff Dora Lee filed a class action complaint in the
2 Superior Court of California, San Francisco County (Case No. CGC-18-566394), on behalf of herself
3 and a proposed class consisting of all couriers in California classified by Postmates as independent
4 contractors, asserting various wage-related claims against Postmates arising from Postmates' alleged
5 misclassification of couriers as independent contractors. On June 8, 2018, Postmates filed a Notice
6 of Removal to the United States District Court for the Northern District of California, Case No. 3:18-
7 cv-03421-JCS. On July 23, 2018, Postmates filed a Motion to Compel Arbitration. On October 15,
8 2018, the Court granted Plaintiff Lee's Motion for Leave to Amend the Complaint to add Plaintiffs
9 Kellyn Timmerman and Joshua Albert, and granted Postmates' Motion to Compel Arbitration of
10 Plaintiff Lee's claims. On November 6, 2018, Postmates filed a Motion to Compel Arbitration for
11 Plaintiff Timmerman. On December 17, 2018, the Court granted Postmates' Motion to Compel
12 Arbitration and dismissed the case so that Plaintiffs Lee and Timmerman could pursue an appeal to
13 the United States Court of Appeals for the Ninth Circuit. On January 4, 2019, Plaintiffs Lee and
14 Timmerman filed a notice of appeal, which is pending as Ninth Cir. Case No. 19-15024 (together
15 with the case dismissed by the Northern District of California, the "*Lee Action*"). Subsequently,
16 Plaintiffs Lee and Timmerman moved the District Court to certify its orders for interlocutory review.
17 The Court granted the motion, and Plaintiffs Lee and Timmerman filed a petition in Ninth Cir. Case
18 No. 19-80055, seeking permission to appeal. On July 30, 2019, the Ninth Circuit denied the petition;

19 1.4 WHEREAS, on December 17, 2018, the District Court in *Lee* severed Plaintiff Joshua
20 Albert's claims to proceed as a separate case, Northern District of California Case No. 3:18-cv-
21 07592-JCS. On January 4, 2019, Plaintiff Albert filed a Second Amended Complaint asserting a
22 PAGA claim based on various wage-related claims against Postmates arising from Postmates' alleged
23 misclassification of couriers as independent contractors (the "*Albert Action*"). The parties were
24 engaged in written discovery until they requested and received a stay to participate in mediation;

25 1.5 WHEREAS, on November 2, 2017, Plaintiff Melanie Anne Winns filed a California
26 Private Attorneys General Act ("PAGA"), Labor Code § 2698, et seq., representative action
27 complaint (Case No. CGC-17-562282) in the Superior Court of California, San Francisco County,
28 asserting on behalf of herself and all couriers classified by Postmates as independent contractors in

1 California various wage-related violations arising from Postmates’ alleged misclassification of
2 couriers as independent contractors (the “*Winns* Action”). On December 22, 2017, Plaintiff Winns
3 filed a First Amended Complaint, which added Plaintiffs Ralph John Hickey Jr., Steven Alvarado,
4 and Kristie Logan. On January 23, 2018, Postmates filed a Petition to Compel Arbitration in *Winns*,
5 which the *Winns* Plaintiffs opposed. On September 24, 2018, the Court partially granted and partially
6 denied Postmates’ motion to compel arbitration, and Postmates filed a notice of appeal;

7 1.6 WHEREAS, on May 8, 2019, Plaintiff Vincent filed a PAGA representative action
8 complaint (Case No. RG19018205) in the Superior Court of California, Alameda County, asserting
9 on behalf of herself and all couriers classified by Postmates as independent contractors in California
10 various wage-related violations arising from Postmates’ alleged misclassification of couriers as
11 independent contractors (the “*Vincent* Action”). On June 25, 2019, Postmates filed a Petition to
12 Compel Arbitration in *Vincent*, which has not yet been ruled on;

13 1.7 WHEREAS, on September 4, 2018, Plaintiff Santana filed a PAGA representative
14 action complaint (Case No. BC720151) in the Superior Court of California, Los Angeles County,
15 asserting on behalf of herself and all couriers classified by Postmates as independent contractors in
16 California various wage-related violations arising from Postmates’ alleged misclassification of
17 couriers as independent contractors (the “*Santana* Action”).

18 1.8 WHEREAS, the *Rimler* Plaintiffs and Postmates attended an in-person mediation
19 session in July 2019 with professional mediator Tripper Ortman of Ortman Mediation, who is
20 experienced in mediating class action disputes. Before agreeing to the terms of the first proposed
21 arm’s-length settlement, and in preparation for the mediation, the parties engaged in extensive
22 informal discovery, exchanging information, documents and voluminous data, which enabled the
23 parties and the mediator to thoroughly evaluate Plaintiffs’ claims and the claims of the putative
24 Settlement Class Members, and the likely outcomes, risks, and expense of pursuing litigation;

25 1.9 WHEREAS, the *Rimler* Plaintiffs and Postmates filed a Motion for Preliminary
26 Approval of Class Settlement and a Proposed Settlement on October 8, 2019;

27 1.10 WHEREAS, Plaintiffs filed a revised proposed settlement agreement and a stipulation
28 to file a proposed Second Amended Complaint adding other named plaintiffs, including Plaintiffs

1 Melanie Ann Winns, Ralph John Hickey Jr., Steven Alvarado, Kristie Logan, and Shericka Vincent,
2 and additional claims against Postmates under California’s Unfair Competition Law, the California
3 Labor Code, Wage Order 9, and the Fair Labor Standards Act (“FLSA”) on June 8, 2020;

4 1.11 WHEREAS, the Court denied Plaintiffs’ Motion for Preliminary Approval of Class
5 Settlement on June 17, 2020 without prejudice and “encourage[d] the parties to continue settlement
6 negotiations in hopes that they are able to present another agreement for preliminary approval that is
7 otherwise consistent with [the Court’s] order”;

8 1.12 WHEREAS, the Court issued an order on June 17, 2020, coordinating the *Rimler*,
9 *Winns, Vincent, and Santana* Actions with two other similar matters pending against Postmates:
10 *Brown v. Postmates, Inc.*, Case No. BC712974 (Los Angeles Super. Ct.) and *Altounian v. Postmates,*
11 *Inc.*, Case No. CGC-20-584366 (San Francisco Super. Ct.);

12 1.13 WHEREAS, the *Rimler* Plaintiffs and Postmates attended a second mediation through
13 Zoom conference with mediator Tripper Ortman in the Fall of 2020 to discuss a second proposed
14 settlement, before agreeing to this second proposed arm’s-length Settlement Agreement;

15 1.14 WHEREAS, in preparation for the second mediation, Postmates and the *Rimler*
16 Plaintiffs exchanged additional, updated voluminous data, which enabled the parties and the mediator
17 to update their evaluation of Plaintiffs’ claims and the claims of the putative Settlement Class
18 Members, and the likely outcomes, risks, and expense of pursuing litigation;

19 1.15 WHEREAS, the Parties submit this Settlement Agreement in good faith and after
20 having considered the Court’s concerns with the prior proposed settlement;

21 1.16 WHEREAS, Plaintiffs allege generally that Postmates improperly classified them and
22 all putative Settlement Class Members as independent contractors rather than employees, and assert
23 derivative claims related thereto;

24 1.17 WHEREAS, on November 3, 2020, California voters approved Proposition 22,
25 which—after the election results are certified—will be added as section 7451 to the California
26 Business and Professions Code and provides that “an app-based driver is an independent contractor
27 and not an employee or agent with respect to the app-based driver’s relationship with a network
28 company” if certain conditions are met;

1 1.18 WHEREAS, Postmates denies the allegations in the Action; maintains that each
2 courier’s claims must be individually arbitrated pursuant to any arbitration agreement to which that
3 courier may be bound; denies that it has engaged in any wrongdoing; denies that any Settlement
4 Class Member was ever an employee of Postmates; denies that Plaintiffs’ allegations state valid
5 claims; denies that a litigation class could properly be certified under California Code of Civil
6 Procedure section 382 in the Action; denies that a collective action could properly be certified under
7 the FLSA in the Action; denies that Plaintiffs’ claims could properly be maintained as a collective,
8 class, or representative action; and states that it is entering into this Settlement Agreement solely to
9 eliminate the burden, expense, and delay of further litigation and arbitrations, and on the express
10 conditions that: (a) if for any reason the Settlement is not finalized according to the terms of this
11 Agreement, the Settlement and the documents generated as a result of the Settlement shall be void ab
12 initio, and shall not be admissible or usable for any purpose in any of the cases included in the Action
13 or any other civil or administrative proceeding or arbitration; and (b) this Settlement and the
14 documents generated as a result of the Settlement are not admissible or usable in any other civil or
15 administrative proceeding or arbitration, except to the extent necessary to enforce this Settlement and
16 the orders, judgment and agreements arising from this Settlement;

17 1.19 WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties
18 are due from Postmates to any putative Settlement Class Member or to the California Labor and
19 Workforce Development Agency (“LWDA”);

20 1.20 WHEREAS, as a result of the mediation, Plaintiffs and Plaintiffs’ Counsel believe that
21 the global Settlement provides a favorable recovery for the Settlement Class, based on the claims
22 asserted, the evidence developed, and the damages that might be proven against Postmates in the
23 Action. The Plaintiffs and Plaintiffs’ Counsel further recognize and acknowledge the expense and
24 length of continued proceedings necessary to prosecute the Action against Postmates through trial
25 and appeals. They also have considered the uncertain outcome and the risk of any litigation,
26 especially in complex litigation such as the Action, as well as the difficulties and delays inherent in
27 any such litigation. They are also mindful of the inherent challenges of proof and the strength of the
28 defenses to the alleged claims, and therefore believe that it is desirable that the Released Claims be

1 fully and finally compromised, settled, and resolved with prejudice as set forth herein, subject to the
2 approval of the Court;

3 1.21 WHEREAS, Plaintiffs and Plaintiffs' Counsel, based on their own independent
4 investigations and evaluations, have examined the benefits to be obtained under the terms of this
5 Settlement Agreement, have considered the claims of the Plaintiffs, the claims of the average
6 Settlement Class Member, the risks associated with the continued prosecution of the Action, and the
7 likelihood of success on the merits of the Action, and believe that, after considering all the
8 circumstances, including the uncertainties surrounding the risk of further litigation and the defenses
9 that Postmates has asserted and could assert, the proposed Settlement set forth in this Agreement is
10 fair, reasonable, adequate, in the best interests of the Plaintiffs and the Settlement Class, and confers
11 substantial benefits upon the Settlement Class;

12 1.22 WHEREAS, Plaintiffs warrant and represent that they are effecting this Settlement
13 and executing this Agreement after having received full legal advice as to their respective rights and
14 have had the opportunity to obtain independent counsel to review this Agreement;

15 1.23 WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
16 any of the terms of this Agreement, and any documents filed in connection with the Settlement shall
17 not constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding, or
18 evidence of: (i) any wrongdoing by any Released Parties; (ii) any violation of any statute, law, or
19 regulation by Released Parties; (iii) any liability on the claims or allegations in the Action on the part
20 of any Released Parties; (iv) any waiver of Postmates' right to arbitration or the enforceability of any
21 Postmates arbitration agreement; or (v) the propriety of certifying a litigation class or collective
22 action or pursuing representative relief under PAGA in the Action or any other proceeding; and shall
23 not be used by any Person for any purpose whatsoever in any administrative or legal proceeding,
24 including but not limited to arbitrations, other than a proceeding to enforce the terms of the
25 Agreement. There has been no final determination by any court as to the merits of the claims
26 asserted by Plaintiffs against Postmates, nor has there been any final determination as to whether a
27 class or collective action should be certified or whether representative claims may properly be
28 pursued, other than for settlement purposes only;

1 1.24 WHEREAS, for settlement purposes only, Postmates will stipulate to the certification
2 of class claims that are subject to the certification requirements of California Code of Civil Procedure
3 section 382, on the express conditions that Postmates does not waive its right to compel arbitration
4 and if this Settlement Agreement is not preliminarily or finally approved, this paragraph, the
5 Settlement Agreement, and any class certified pursuant to the Settlement Agreement are all void ab
6 initio. Postmates disputes that certification is proper for the purposes of litigating the class claims
7 proposed in or flowing from the claims asserted in the *Rimler* lawsuit;

8 1.25 WHEREAS, for settlement purposes only, Postmates will stipulate to the conditional
9 certification of FLSA claims that are subject to the certification requirements of the Fair Labor
10 Standards Act, 29 U.S.C. § 201, et seq., on the express conditions that Postmates does not waive its
11 right to compel arbitration and if this Settlement Agreement is not preliminarily or finally approved,
12 this paragraph, the Settlement Agreement, and any collective action certified pursuant to the
13 Settlement Agreement are all void ab initio. Postmates disputes that conditional certification is
14 proper for the purposes of litigating the FLSA claims proposed in or flowing from the claims asserted
15 in the *Rimler* lawsuit;

16 1.26 WHEREAS, the Parties desire to compromise and settle all Released Claims,
17 including all issues and claims that have been, could have been, or should have been brought against
18 Postmates or related persons in the Action, and all claims brought on a putative class and
19 representative basis in the *Rimler* lawsuit; and

20 1.27 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
21 AGREED, by the Plaintiffs for themselves and on behalf of the Settlement Class and by Postmates,
22 that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on
23 the merits and with prejudice, and the Released Claims shall be finally and fully compromised,
24 settled, and dismissed as to the Released Parties, in the manner and upon the terms and conditions
25 hereafter set forth in this Settlement Agreement.

26 **II. DEFINITIONS**

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

1 2.1 “Authorized Claimant” means any Settlement Class Member who submits a valid and
2 timely Claim that qualifies for a payment under the terms of this Settlement Agreement and who by
3 validly and timely submitting the Claim using the Claim Form consents to join as a party plaintiff in
4 the Fair Labor Standards Act (“FLSA”) claims in this Action.

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

14 2.3 “Bar Date” means the final time and date by which a Claim Form must be postmarked
15 or submitted to the Settlement Administrator for a Settlement Class Member to be eligible to receive
16 an Individual Settlement Payment. The Bar Date shall be sixty (60) days after the Notice Distribution
17 Date and shall be specifically identified and set forth in the Preliminary Approval Order and the
18 Settlement Class Notice.

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

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

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

5 2.6 “Consent to Join” means a Settlement Class Member’s consent to join as a party
6 plaintiff to the FLSA claims asserted in this Action pursuant to 29 U.S.C. § 216(b). A Settlement
7 Class Member’s signed Claim Form that is timely and validly submitted to the Settlement
8 Administrator shall serve as that Settlement Class Member’s Consent to Join.

9 2.7 “Courier” means any individual who has been approved to use or has used the
10 Postmates platform as an independent contractor courier.

11 2.8 “Superior Court” means the Superior Court of California, San Francisco County.

12 2.9 “Dispute Resolution Fund” means the fund consisting of Two Hundred and Fifty
13 Thousand dollars and no cents (\$250,000) set aside from the Total Settlement Amount to be used: (i)
14 to resolve any bona fide disputes that may arise regarding the calculation and disbursement of
15 Individual Settlement Payments according to the Plan of Allocation, as provided in Section V; and
16 (ii) to disburse Individual Settlement Payments to individuals mistakenly excluded from the
17 Settlement Class, as provided in Paragraph 6.11. The Dispute Resolution Fund shall be paid from the
18 Total Settlement Amount. Prior to final approval, the Settlement Administrator shall submit an
19 accounting to the Court of the monies that have been allocated from the Dispute Resolution Fund.

20 Following the Bar Date, any monies not allocated from the Dispute Resolution Fund shall revert to
21 the general fund for distribution to the Settlement Class pursuant to Paragraph 5.6.

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

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

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

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

14 2.14 “Final Approval” means the Court’s entry of an order that the Named Plaintiffs and
15 Postmates will seek from the Court, to be agreed upon by the Parties, and the entry of which shall
16 reflect the Court’s Judgment finally approving the Settlement Agreement.

17 2.15 “Final Approval Hearing” means the hearing that is to take place after the entry of the
18 Preliminary Approval Order and after the Notice Distribution Date for purposes of: (i) entering Final
19 Approval; (ii) determining whether the Settlement Agreement shall be approved as fair, reasonable,
20 and adequate; (iii) ruling upon an application by Settlement Class Counsel for Attorneys’ Fees; and
21 (iv) ruling on the application for a Settlement Class Counsel Award.

22 2.16 “General Released Claims” includes all of the Settlement Class Members’ Released
23 Claims, with the addition of: (i) violations of Title VII of the Civil Rights Act of 1964; (ii) violations
24 of the Civil Rights Act of 1866; (iii) violations of the Americans with Disabilities Act; (iv) violations
25 of any and all potential claims against Postmates that could be brought under corresponding state or
26 local law; and (v) any claims for wages, penalties, breach of an express or implied contract, breach of
27 the covenant of good faith and fair dealing, breach of fiduciary duty, fraud, misrepresentation,
28 defamation, slander, retaliation, discrimination, harassment, wrongful termination, infliction of

1 emotional distress, loss of future earnings or profits or any other claims based upon any state or
2 federal public policy, or any other alleged wrongful conduct or injury, arising out of or in any way
3 connected with any acts or omissions occurring during the Settlement Period, based on the claims
4 that were alleged in the Action or that arise out of or relate to Plaintiffs' relationship with Postmates
5 or the services Plaintiffs provided using Postmates' platform, or that arise out of or relate to the facts
6 alleged in the action, in addition to all claims based on or arising under the federal and state law
7 sections included in the Settlement Class Members' Released Claims and any other equivalent
8 federal, state, or local law of any state or locality in which Plaintiffs reside and/or used Postmates'
9 platform as an independent contractor courier.

10 2.17 "Individual Settlement Payment" means the amount payable from the Total Settlement
11 Amount to each Settlement Class Member who does not timely and properly request exclusion from
12 the Settlement Class and submits a Claim Form. The Individual Settlement Payment shall be
13 calculated pursuant to Section V herein.

14 2.18 "Judgment" means the judgment to be entered in the Action on Final Approval of this
15 Settlement.

16 2.19 "Legally Authorized Representatives" means an administrator/administratrix, personal
17 representative, or executor/executrix of a deceased Settlement Class Member's estate; a guardian,
18 conservator, or next friend of an incapacitated Settlement Class Member; or any other legally
19 appointed Person responsible for handling the business affairs of a Settlement Class Member who is
20 not the Settlement Class Member's counsel.

21 2.20 "Notice Distribution Date" means the date of the initial distribution of the Settlement
22 Class Notice to Settlement Class Members as set forth in Section VI.

23 2.21 "Opt-Out List" means the Court-approved list of all persons who timely and properly
24 request exclusion from the Settlement Class as set forth in Section VII.

25 2.22 "PAGA Claims" means Plaintiffs' representative claims seeking penalties pursuant to
26 PAGA, as alleged in the Rimler Complaint and/or based on any other provision of the Labor Code,
27 Wage Orders, or any other statute or regulation based upon independent contractor misclassification
28 to the fullest extent permitted by law.

1 2.23 “PAGA Payment” means a total payment of \$4,000,000 to settle all claims under the
2 PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to the PAGA
3 and 25% will be distributed to Settlement Class Members.

4 2.24 “Plaintiffs” means Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman,
5 Joshua Albert, Melanie Anne Winns, Ralph John Hickey, Jr., Steven Alvarado, Kristie Logan,
6 Shericka Vincent, and Wendy Santana.

7 2.25 “Plaintiffs’ Counsel” means Lichten & Liss-Riordan, P.C., the Mostafavi Law Group
8 APC, The Bainer Law Firm, and PARRIS Law Firm.

9 2.26 “Plan of Allocation” means the plan for allocating the Total Settlement Amount
10 between and among Settlement Class Members as approved by the Court.

11 2.27 “Preliminary Approval Date” means the date that the Court enters the Preliminary
12 Approval Order and thus: (i) preliminarily approves the Settlement Agreement, and the exhibits
13 thereto, and (ii) enters an order providing for notice to the Settlement Class, an opportunity to opt out
14 of the Settlement Class, an opportunity to submit timely objections to the Settlement, a procedure for
15 submitting Claims, and setting a hearing on the fairness of the terms of the Settlement Agreement,
16 including approval of the Settlement Class Counsel Award.

17 2.28 “Preliminary Approval Order” means the order that the Plaintiffs and Postmates will
18 seek from the Court, without material variation from Exhibit B. Entry of the Preliminary Approval
19 Order shall constitute preliminary approval of the Settlement Agreement.

20 2.29 “Released Claims” shall be construed as broadly as possible to effect complete finality
21 over this litigation involving Postmates. “Released Claims” include (i) Settlement Class Members’
22 Released Claims, (ii) General Released Claims, and (iii) Authorized Claimants’ Released Claims.
23 Notwithstanding any other provision of this Settlement Agreement, “Released Claims” do not include
24 claims for personal injuries. Moreover, the release of any claims under the FLSA contemplated by
25 this Settlement Agreement shall be effectuated only after a Settlement Class Member has timely and
26 validly submitted a Claim Form and thereby Consented to Join as a party to the FLSA claims asserted
27 in this action pursuant to 29 U.S.C. § 216(b).

1 2.30 “Released Parties” means (i) Postmates Inc. and its past, present, and future parents,
2 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,
3 whether foreign or domestic, that are owned or controlled by Postmates (but not including couriers
4 who use the Postmates platform); and (ii) the past, present, and future shareholders, officers,
5 directors, members, investors, agents, employees, agents, consultants, representatives, fiduciaries,
6 insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in
7 (i).

8 2.31 “Second Amended Complaint” means the Second Amended Complaint, without
9 material variation from Exhibit C, that Settlement Class Counsel shall seek to file in *Rimler*, the lead
10 lawsuit, pursuant to Paragraph 3.6 and shall file concurrently with the submission of the motion for
11 preliminary approval of the Settlement so that the Second Amended Complaint may be filed
12 promptly upon entry of the Preliminary Approval Order. The Second Amended Complaint shall add
13 Dora Lee, Kellyn Timmerman, Joshua Albert, Melanie Anne Winns, Ralph John Hickey, Jr., Steven
14 Alvarado, Kristie Logan, Shericka Vincent, and Wendy Santana as named Plaintiffs.

15 2.32 “Service Awards” means the amount approved by the Court to be paid to each
16 Plaintiff in addition to their respective Individual Settlement Payments, in recognition of their efforts
17 in coming forward as named plaintiffs. The Service Award amount payable to Plaintiffs is not to
18 exceed Five Thousand Dollars (\$5,000) each.

19 2.33 “Settlement” means the settlement of this Action between and among Plaintiffs and
20 Postmates, as set forth in this Settlement Agreement, and including all attached Exhibits, which are
21 an integral part of this Settlement Agreement and are incorporated in their entirety by reference.

22 2.34 “Settlement Administrator” means Simpluris, the administrator selected by the parties.

23 2.35 “Settlement Administrator Expenses” means the maximum amount to be paid to the
24 Settlement Administrator from the Total Settlement Amount, which shall be \$945,000. All
25 Settlement Administrator Expenses are to be paid exclusively from the Total Settlement Amount.

26 2.36 “Settlement Class” means any and all individuals who entered into an agreement with
27 Postmates to use the Postmates platform as an independent contractor to offer delivery services to
28

1 customers, and used the Postmates platform as an independent contractor courier to accept or
2 complete at least one delivery in California during the Settlement Period.

3 2.37 “Settlement Class Counsel” means Lichten & Liss-Riordan, P.C.

4 2.38 “Settlement Class Counsel Award” means (i) the attorneys’ fees for Settlement Class
5 Counsel’s litigation and resolution of the Action, including the *Rimler, Lee, Albert, Winns, Vincent,*
6 and *Santana* lawsuits, and any and all arbitrations and claims resolved by this Settlement, as awarded
7 by the Court, and (ii) all expenses and costs incurred by Settlement Class Counsel in connection with
8 litigation and resolution of *Rimler, Lee, Albert, Winns, Vincent,* and *Santana* lawsuits, and any and all
9 arbitrations and claims resolved by this Settlement, as awarded by the Court, which, together, may
10 not exceed thirty-three percent (33%) of \$32,000,000 (the Total Settlement Amount).

11 2.39 “Settlement Class Information” means information regarding Settlement Class
12 Members that Postmates will in good faith compile from its records and provide to the Settlement
13 Administrator, solely for purposes of the Settlement Administrator’s administration of the settlement,
14 and for no other purpose. Settlement Class Information shall be provided to the Settlement
15 Administrator and shall include, if possible, for each Settlement Class Member: full name, last known
16 address, email address, and Estimated Miles. Because Settlement Class Members’ private
17 information is included in the Settlement Class Information, the Settlement Administrator shall
18 maintain the Settlement Class Information in confidence and shall use and disclose Settlement Class
19 Information only for purposes of this Settlement and for no other purpose; access shall be limited to
20 employees of the Settlement Administrator with a need to use the Settlement Class Information as
21 part of the administration of the Settlement.

22 2.40 “Settlement Class Member” means any member of the Settlement Class.

23 2.41 “Settlement Class Members’ Released Claims” means any and all present and past
24 claims, actions, demands, causes of action, suits, debts, guarantees, obligations, damages, penalties,
25 rights or liabilities, of any nature and description whatsoever, known or unknown, existing or
26 potential, recognized now or hereafter, contingent or accrued, expected or unexpected, pursuant to
27 any theory of recovery (including but not limited to those based in contract or tort, common law or
28 equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory,

1 consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys’ fees,
2 costs, or disbursements) that are based on or reasonably related to the claims alleged in or that could
3 have been alleged in the *Rimler* Second Amended Complaint, and all misclassification claims, and
4 specifically including: claims pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et
5 seq. (only for those Settlement Class Members who submit a valid and timely Claim Form);
6 California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6,
7 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.5, 450, 510, 512, 551-
8 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804; the
9 Private Attorneys General Act (“PAGA”), California Labor Code section 2698 et seq.; California
10 Code of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and
11 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code
12 sections 17200 et seq.; and any other similar state, federal, local, or common law, statute, regulation,
13 or ordinance for unpaid wages, minimum wages, regular wages, tips, overtime wages (including but
14 not limited to calculation of the correct overtime or regular rate), working more than six days in
15 seven, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper
16 deduction of wages, failure to provide workers’ compensation insurance, meal periods, rest breaks,
17 sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time penalties,
18 PAGA penalties, unfair business practices, all claims arising out of or relating to the statutory causes
19 of action described herein, restitution, interest, costs and expenses, attorneys’ fees, declaratory relief,
20 injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable
21 remedies, and/or pre- or post- judgment interest at any time during the Settlement Period.

22 2.42 “Settlement Class Notice” means the notice of class, representative, and collective
23 action settlement and enclosed Claim Form to be provided to Settlement Class Members, without
24 material variation from the relevant portion of Exhibit A.

25 2.43 “Settlement Period” means June 3, 2017 through January 1, 2021.

26 2.44 “Total Settlement Amount” means Thirty-Two Million Dollars and zero cents
27 (\$32,000,000), which will resolve all Released Claims, and is the maximum amount that Postmates is
28 obligated to pay under this Settlement Agreement under any circumstances to resolve and settle this

1 Action, subject to Court approval. The Total Settlement Amount includes all costs and fees,
2 including, but not limited to, the Settlement Class Counsel Award, Settlement Administrator
3 Expenses, escrow costs and expenses, Service Awards, interest, all payments to the Settlement Class
4 and Plaintiffs, and the PAGA Payment.

5 2.45 "Void Date" means the date by which any checks issued to Settlement Class Members
6 shall become void, i.e., on the 181st day after mailing.

7 **III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
8 **PRELIMINARY AND FINAL APPROVAL**

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

25 3.2 The Parties stipulate, for settlement purposes only, to certification of the Settlement
26 Class under California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769,
27 excluding the Settlement Class's PAGA Claims, and to conditional certification of the Settlement
28 Class under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., on the express condition that if

1 the Settlement is not Preliminarily or Finally Approved, this paragraph, the Settlement Agreement,
2 and any class or collective action certified pursuant to the Settlement Agreement are all void ab initio.
3 The Parties also agree that this stipulation is in no way an admission that class or collective
4 certification is proper under the standard applied for litigation purposes, and that this stipulation shall
5 not be admissible, and may not be used by any person for any purpose whatsoever, in any legal or
6 administrative proceeding, including but not limited to arbitrations, other than a proceeding to
7 enforce the terms of the Agreement, as further set forth in this Agreement. Postmates expressly
8 reserves the right to oppose certification of any purported class or collective should the settlement fail
9 to become final and effective.

10 3.3 The Settlement is not intended to and may not be deemed to affect the enforceability
11 of any arbitration agreement between Postmates and any member of the Settlement Class, including
12 Plaintiffs.

13 3.4 Settlement Class Counsel and Plaintiffs agree to cooperate in good faith and to use
14 their best efforts to seek a stay in the *Rimler, Lee, Winns, Vincent, and Santana* Actions and to keep
15 the *Albert* Action stayed pending Final Approval of the Settlement, and upon Final Approval of the
16 Settlement, Settlement Class Counsel and Plaintiffs agree to dismiss the *Lee, Albert, Winns, Vincent,*
17 and *Santana* Actions with prejudice.

18 3.5 The Parties stipulate to the form of, and agree to submit to the Court for its
19 consideration this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
20 Settlement Class Notice (Exhibit A), [Proposed] Preliminary Approval Order (Exhibit B), and
21 [Proposed] Second Amended Complaint (Exhibit C).

22 3.6 Solely for purposes of implementing this Agreement and effectuating the proposed
23 Settlement, the Parties agree and stipulate that:

24 3.6.1 Plaintiffs' Counsel shall amend the letters sent on behalf of Plaintiffs to the
25 LWDA to add any and all claims alleged in the *Rimler* Action, and any and all potential claims
26 necessary to effectuate the Released Claims.

27 3.6.2 Plaintiffs shall seek the Court's permission to file the Second Amended
28 Complaint, without material variation from Exhibit C, and Postmates shall consent to such

1 amendment pursuant to Cal. Rule of Court 3.1324. The Second Amended Complaint shall be filed
2 concurrently with the submission of the motion for preliminary approval of the Settlement Agreement
3 so that the Second Amended Complaint may be filed or deemed filed promptly upon entry of the
4 Preliminary Approval Order. Obtaining the Court's approval to file the Second Amended Complaint,
5 the subsequent prompt entry of the Second Amended Complaint, and the dismissal of the *Lee, Albert,*
6 *Winns, Vincent, and Santana* Actions are material conditions of this Settlement Agreement. The
7 Parties agree that the filing of the Second Amended Complaint will streamline the settlement process.
8 The Parties further agree and stipulate that the allegations in the Second Amended Complaint are
9 deemed controverted by the answer previously filed by Postmates in response to the currently
10 operative complaint, such that no further responsive pleading from Postmates is required. If for any
11 reason the Settlement Agreement does not become Final or the Effective Date does not occur, the
12 Second Amended Complaint shall not be operative and shall be deemed withdrawn; the parties agree
13 to submit a stipulated motion to strike the Second Amended Complaint, and agree the Court shall
14 strike the allegations of the Second Amended Complaint, so the operative complaint in the *Rimler*
15 Action shall revert to the filed complaint that preceded the Second Amended Complaint; the *Lee,*
16 *Albert, Winns, Vincent, and Santana* Actions shall proceed based on the operative complaints as
17 currently filed; and the amended letters sent to the LWDA pursuant to paragraph 3.6.1 shall be void
18 ab initio.

19 3.6.3 The Court may enter the Preliminary Approval Order, without material
20 variation from Exhibit B, preliminarily approving the Settlement and this Agreement. Among other
21 things, the Preliminary Approval Order shall grant leave to preliminarily certify the Settlement Class
22 and an FLSA collective for settlement purposes only; approve the Plaintiffs as class representatives,
23 appoint Settlement Class Counsel to represent the Settlement Class, and appoint the Settlement
24 Administrator; approve the Settlement Class Notice, and the notice plan embodied in the Settlement
25 Agreement, and approve them as consistent with California Code of Civil Procedure § 382,
26 California Rules of Court, Rule 3.769, 29 U.S.C. § 201, et seq. and due process; set out the
27 requirements for disputing the information upon which Settlement Class Members' share of the
28 Settlement will be calculated, objecting to the Settlement Agreement, excluding Settlement Class

1 Members from the Settlement Class, all as provided in this Settlement Agreement; provide that
2 certification of the Settlement Class and all actions associated with each certification are undertaken
3 on the condition that each certification and other actions shall be automatically vacated and of no
4 force or evidentiary effect if this Agreement is terminated, as provided in this Agreement, or if the
5 Settlement does not become Final; and schedule the Final Approval Hearing.

6 3.7 Within 10 days of the Preliminary Approval Date, Settlement Class Counsel will
7 notify the LWDA of the Preliminary Approval Order.

8 3.8 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval order
9 and Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this
10 Settlement and that, among other things:

11 3.8.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its
12 consummation pursuant to the terms of the Settlement Agreement;

13 3.8.2 Finds that Settlement Class Counsel and Plaintiffs adequately represented the
14 Settlement Class for the purpose of entering into and implementing the Agreement;

15 3.8.3 Re-confirms the appointment of the Settlement Administrator and finds that
16 the Settlement Administrator has fulfilled its initial duties under the Settlement;

17 3.8.4 Finds that the Settlement Class Notice (i) constituted the best practicable
18 notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise
19 Settlement Class Members of the pendency of the Action, and their right to exclude themselves from
20 or object to the proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable
21 and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv)
22 met all applicable requirements of California Rule of Court 3.769, due process, and any other
23 applicable rules or law;

24 3.8.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete
25 list of all Settlement Class Members who have timely requested exclusion from the Settlement Class
26 and, accordingly, shall neither share in the Settlement nor be bound by the Final Approval order and
27 Judgment;

28

1 3.8.6 Directs that the Final Approval order and Judgment of dismissal shall be final
2 and entered forthwith;

3 3.8.7 Without affecting the finality of the Final Approval order and Judgment,
4 retains continuing jurisdiction over the Plaintiffs, the Settlement Class and Postmates as to all matters
5 concerning the administration, consummation, and enforcement of this Settlement Agreement;

6 3.8.8 Adjudges that, as of the Final Approval Date, the Plaintiffs and all Settlement
7 Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out
8 List approved by the Court, and their Legally Authorized Representatives, heirs, estates, trustees,
9 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors,
10 and/or anyone claiming through them or acting or purporting to act for them or on their behalf,
11 regardless of whether they have received actual notice of the proposed Settlement, have conclusively
12 compromised, settled, discharged, and released the General Released Claims (in the case of the
13 Plaintiffs), the Authorized Claimants' Released Claims (in the case of the Authorized Claimants), and
14 Settlement Class Members' Released Claims (in the case of the Settlement Class Members) against
15 Postmates and the Released Parties, and are bound by the provisions of this Settlement Agreement;

16 3.8.9 Affirms that, notwithstanding the submission of a timely request for exclusion,
17 Settlement Class Members will still be bound by the settlement and release of the PAGA Claims or
18 remedies under the Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969, as requests
19 for exclusion do not apply to the PAGA Claims, and further affirms that the State's claims for civil
20 penalties pursuant to PAGA are also extinguished;

21 3.8.10 Declares this Agreement and the Final Approval order and Judgment to be
22 binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other
23 proceedings: (i) that encompass the Plaintiffs' Claims, and that are maintained by or on behalf of
24 Plaintiffs and/or their Legally Authorized Representatives, heirs, estates, trustees, executors,
25 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or
26 anyone claiming through them or acting or purporting to act for them or on their behalf; and (ii) that
27 encompass the Settlement Class Members' Released Claims and that are maintained by or on behalf
28 of any Settlement Class Member who has not been excluded from the Settlement Class as provided in

1 the Opt-Out List approved by the Court and/or his or her Legally Authorized Representatives, heirs,
2 estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns,
3 and successors, and/or anyone claiming through them or acting or purporting to act for them or on
4 their behalf, regardless of whether the Settlement Class Member previously initiated or subsequently
5 initiates individual litigation, arbitration, or other proceedings encompassed by the Settlement Class
6 Members' Released Claims, and even if such Settlement Class Member never received actual notice
7 of the Action or this proposed Settlement;

8 3.8.11 Determines that the Agreement and the Settlement provided for herein, and
9 any proceedings undertaken pursuant thereto, are not, and should not in any event be offered,
10 received, or construed as evidence of, or a presumption, concession, or admission by, any Party of
11 liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or
12 that PAGA representative claims may validly be pursued, or of any misrepresentation or omission in
13 any statement or written document approved or made by any Party; provided, however, that reference
14 may be made to this Agreement and the Settlement provided for herein in such proceedings as may
15 be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement;

16 3.8.12 Directs Plaintiffs' Counsel to seek dismissal of the *Lee, Albert, Winns, Vincent,*
17 *and Santana* Actions with prejudice within 14 days of Final Approval;

18 3.8.13 Orders that the preliminary approval of the Settlement, certification of the
19 Settlement Class, and Final Approval of the proposed Settlement, and all actions associated with
20 them, are undertaken on the condition that they shall be vacated and void ab initio if the Settlement
21 Agreement is terminated or disapproved in whole or in part by the Court, or any appellate court
22 and/or other court of review in which event the Agreement and the fact that it was entered into shall
23 not be offered, received, or construed as an admission or as evidence for any purpose, including but
24 not limited to an admission by any Party of liability or non-liability or of any misrepresentation or
25 omission in any statement or written document approved or made by any Party, or of the certifiability
26 of a litigation class or the appropriateness of maintaining a representative action, as further provided
27 in Section XI;

28

1 3.8.14 Authorizes the Parties, with approval from the Court, to agree to and adopt
2 such amendments, modifications, and expansions of this Agreement, including all Exhibits hereto, as
3 (i) shall be consistent in all material respects with the Final Approval order and (ii) do not limit the
4 rights of Settlement Class Members; and

5 3.8.15 Contains such other and further provisions consistent with the terms of this
6 Settlement Agreement to which the Parties expressly consent in writing.

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

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

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

26 3.12 Within 10 days after entry of Judgment, Settlement Class Counsel will provide a copy
27 of the Judgment to the LWDA.
28

1 **IV. SETTLEMENT CONSIDERATION**

2 4.1 The Total Settlement Amount is \$32,000,000. This is an “all in” number that will
3 resolve all Released Claims, and which includes, without limitation, all monetary benefits and
4 payments to the Settlement Class and Plaintiffs, Service Awards, Settlement Class Counsel Award,
5 Settlement Administrator Expenses, and the PAGA Payment, and all claims for interest, fees, and
6 costs. Under no circumstances shall Postmates be required to pay anything more than the Total
7 Settlement Amount. In no event shall Postmates be liable for making any payments under this
8 Settlement, or for providing any relief to Settlement Class Members, before the deadlines set forth in
9 this Agreement.

10 4.2 The Plaintiffs and all Settlement Class Members who receive a payment of any kind
11 from the Total Settlement Amount (including, in the case of the Plaintiffs, Service Awards) expressly
12 acknowledge that such payments shall be considered non-wages for which an IRS Form 1099 will be
13 issued, if required. The Plaintiffs and all Settlement Class Members who receive a payment of any
14 kind from the Total Settlement Amount agree to timely pay in full all of the federal, state, and
15 municipal income taxes owed on such payments.

16 4.3 The terms of this Agreement relating to the Service Awards and Settlement Class
17 Counsel Award were not negotiated by the Parties before full agreement was reached as to all other
18 material terms of the proposed Settlement, including, but not limited to, any terms relating to the
19 relief to the Settlement Class. Postmates agrees to the amount of Service Awards (if any) granted by
20 the Superior Court. The Plaintiffs and Settlement Class Counsel agree not to seek Service Awards in
21 excess of the amounts described in Paragraph 2.32.

22 4.4 Settlement Class Counsel agrees not to seek an award of attorneys’ fees, costs and
23 expenses from the Court in excess of one third (1/3) of the Total Settlement Amount of \$32,000,000.
24 Postmates agrees to the amount of attorneys’ fees, costs and expenses (if any) granted by the Superior
25 Court.

26 4.5 The payment of the Settlement Class Counsel Award, the Service Awards, the
27 Settlement Administrator Expenses, the Individual Settlement Payments, and the PAGA Payment
28

1 shall be made by the Settlement Administrator from the Total Settlement Amount within thirty (30)
2 days after the Effective Date.

3 4.6 The Settlement Administrator shall pay the Settlement Class Counsel Award by check,
4 payable to "Lichten & Liss-Riordan, P.C." Settlement Class Counsel shall provide the Settlement
5 Administrator notice of receipt of the Settlement Class Counsel Award.

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

7 5.1 Within fourteen (14) calendar days following the Effective Date, Postmates shall
8 provide the Total Settlement Amount (\$32,000,000) to the Settlement Administrator. The Settlement
9 Administrator shall thereafter distribute the funds in the manner and at the times set forth in this
10 Agreement.

11 5.2 To receive an Individual Settlement Payment from the Total Settlement Amount, a
12 Settlement Class Member or his or her Legally Authorized Representative must timely submit a
13 Claim Form that satisfies the requirements of paragraph 5.3, must not have submitted a request for
14 exclusion, and must be eligible for a payment under the Plan of Allocation.

15 5.3 A Claim Form is timely if it is postmarked by the Bar Date and mailed or submitted as
16 an attachment to an email to the Settlement Administrator at the address in the Settlement Class
17 Notice, or if it is submitted online to the Settlement Administrator, in accordance with the online
18 submission instructions to be provided by the Settlement Administrator, by the Bar Date. The Claim
19 Form must be signed (electronically, if submitted via online portal) under penalty of perjury. To be
20 valid, a Claim Form must be signed without any deletion or amendment to its language, regarding the
21 release of FLSA claims and without any deletion or amendment to any other portion.

22 5.4 Settlement Class Members who timely submit a Claim Form will receive their
23 proportionate share of the Total Settlement Amount. No Settlement Class Member who timely
24 submits a Claim Form will receive less than \$10.

25 5.5 Settlement Class Members are not eligible to receive any compensation other than the
26 Individual Settlement Payment.

27 5.6 The Settlement Administrator shall calculate and distribute the Individual Settlement
28 Payments for the Settlement Class Members within thirty (30) days following the Effective Date,

1 provided Postmates has provided the Total Settlement Amount to the Settlement Administrator in
2 accordance with Paragraph 5.1.

3 5.7 Individual Settlement Payments shall be tied to the following distribution formula:

4 Settlement Class Members will be awarded points proportional to the estimated
5 number of miles driven while using the Postmates application as a courier, with one
6 point for every estimated mile driven. Settlement Class Members who either opt out
7 of arbitration, initiate arbitration, or demonstrate in writing an interest in initiating an
8 arbitration demand against Postmates prior to January 1, 2021 will have their points
9 doubled for purposes of this distribution formula (to account for, from plaintiffs'
10 perspective, these drivers' greater likelihood of having their claims pursued, in light of
11 Postmates' arbitration clauses).

12 Postmates will produce Settlement Class Information needed for the allocation to be calculated. The
13 Total Settlement Amount is non-reversionary. The Notice shall advise Settlement Class Members
14 that they may contest whether they are entitled to double points by submitting to the Settlement
15 Administrator in an email or letter (i) proof of a valid request to opt out of arbitration before January
16 1, 2021; (ii) submission of an arbitration demand against Postmates before January 1, 2021; or (iii)
17 communication to Postmates in writing of an intent to initiate arbitration before January 1, 2021.

18 5.8 Following distribution of the Individual Settlement Payments to Settlement Class
19 Members, any Settlement Class Members who received checks for more than \$100 that remain
20 uncashed more than 60 days after distribution will receive a reminder to cash their check. All funds
21 not claimed prior to the Void Date (i.e. all funds from uncashed checks ~~and any remaining funds in~~
22 ~~the Dispute Resolution Fund~~) shall be redistributed to the Settlement Class Members who received
23 and cashed their Individual Settlement Payments. These unclaimed funds shall be redistributed
24 pursuant to the same formula described in Paragraph 5.7. These residual funds will only be
25 distributed to Settlement Class Members for whom this second payment would be at least \$50. The
26 value of any uncashed checks following this residual distribution will be donated on a cy pres basis to
27 Legal Aid at Work.

28 5.9 The Individual Settlement Payments received shall be reported by the Settlement
Administrator to the applicable governmental authorities on IRS Form 1099s (if required). The
portions allocated to Service Awards shall likewise be reported on IRS Form 1099s by the Settlement

1 Administrator. The Settlement Administrator shall be responsible for issuing copies of IRS Form
2 1099s for the Plaintiffs and Settlement Class Members.

3 **VI. NOTICE PROCEDURES**

4 6.1 No more than fourteen (14) calendar days after entry of the Preliminary Approval
5 Order, Postmates shall provide the Settlement Administrator with the Settlement Class Information
6 for purposes of sending the Settlement Class Notice to Settlement Class Members.

7 6.2 No more than twenty (20) calendar days after entry of the Preliminary Approval Order
8 (on the Notice Distribution Date), the Settlement Administrator shall send the Settlement Class
9 Notice to the Settlement Class Members, via electronic mail.

10 6.3 The Settlement Class Notice will inform Settlement Class Members of their right to
11 request exclusion from the Settlement, of their right to object to the Settlement, of their right to
12 dispute the information upon which their share of the Settlement will be calculated, and the claims to
13 be released.

14 6.4 The Settlement Class Notice shall include an explanation for how the Estimated Miles
15 will be used to calculate the Individual Settlement Payments. The Settlement Administrator's
16 determination of the amount of any Settlement Class Member's Estimated Miles shall be binding
17 upon the Settlement Class Member, and the Parties. There will be a presumption that Postmates'
18 records are correct, absent evidence produced by a Settlement Class Member to the contrary. A
19 Settlement Class Member who wishes to dispute their Estimated Miles must contact the Settlement
20 Administrator by mail or email and must provide documentation in the form of tax records or trip
21 histories from the Postmates Application.

22 6.5 If any Settlement Class Notice sent via electronic mail to any Settlement Class
23 Member is undeliverable, the Settlement Administrator shall, within seven (7) days of an
24 undeliverable email, mail the Settlement Class Notice to each Settlement Class Member whose
25 Settlement Class Notice was undeliverable. Before mailing, the Settlement Administrator shall make
26 a good-faith attempt to obtain the most-current names and postal mail addresses for all Settlement
27 Class Members to receive such postal mail, including cross-checking the names and/or postal mail
28 addresses it received from Postmates, as well as any other sources, with appropriate databases (e.g.,

1 the National Change of Address Database) and performing further reasonable searches (e.g., through
2 Lexis/Nexis) for more-current names and/or postal mail addresses for Settlement Class Member. All
3 Settlement Class Members' names and postal mail addresses obtained through these sources shall be
4 protected as confidential and not used for purposes other than the notice and administration of this
5 Settlement. The Settlement Administrator shall exercise its best judgment to determine the current
6 mailing address for each Settlement Class Member. The address determined by the Settlement
7 Administrator as the current mailing address shall be presumed to be the best mailing address for
8 each Settlement Class Member. The Bar Date and Exclusion/Objection Deadlines shall be extended
9 as necessary in order to ensure that the Settlement Class Member receiving a mailed notice has sixty
10 (60) days to submit a claim form or to opt-out or object to the Settlement.

11 6.6 If any Settlement Class Notice to a Settlement Class Member is returned to the
12 Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the
13 postal mailing to that address. For any remaining returned postal mailings, the Settlement
14 Administrator shall make a good-faith search of an appropriate database (as described in the
15 preceding paragraph), and postal mailings shall be forwarded to any new postal mail address obtained
16 through such a search. In the event that any Settlement Class Notice is returned as undeliverable a
17 second time, no further postal mailing shall be required. The Settlement Administrator shall maintain
18 a log detailing the instances Settlement Class Notices are returned as undeliverable.

19 6.7 At least two reminders will be sent to Settlement Class Members following the initial
20 Settlement Class Notice, and the parties will agree to any further reminders that may be reasonably
21 necessary to assure adequate opportunity for Settlement Class Members to participate in the
22 settlement. These reminders will be sent to Settlement Class Members who have not already
23 submitted a claim form, opt-out request, or objection. These reminders will be sent via email to those
24 Settlement Class Members whose emailed notices were not returned as undeliverable and via mail for
25 those Settlement Class Members who received their initial Settlement Class Notice in the mail.
26 Settlement Class Members who are expected to have their points doubled pursuant to Paragraph 5.7
27 will receive at least one additional reminder (for a total of at least three reminders) advising them of
28

1 their right to opt-out and continue to pursue their claims in arbitration or to release their claims in
2 order to participate in the settlement.

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

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

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

23 6.11 If any individual whose name does not appear in the Settlement Class Information
24 believes that he or she is a Settlement Class Member, he or she shall have the opportunity to dispute
25 his or her exclusion from the Settlement Class. If an individual believes he or she is a Settlement
26 Class Member, he or she must notify the Settlement Administrator by mail, email, or telephone
27 within thirty (30) days after the distribution of the Settlement Class Notice. The Parties will meet and
28 confer regarding any such individuals in an attempt to reach an agreement as to whether any such

1 individual should be regarded as a Settlement Class Member. If the Parties so agree, such an
2 individual will have all of the same rights as any other Settlement Class Member under this
3 Agreement. In the event that the Parties agree that the individual is a Settlement Class Member, the
4 Individual Settlement Payment to such individual shall be disbursed from the Dispute Resolution
5 Fund, ~~as long as sufficient money is left in the Dispute Resolution Fund. If an individual notifies the~~
6 ~~Settlement Administrator that he or she is a Settlement Class Member more than thirty (30) days after~~
7 ~~the distribution of the Settlement Class Notice, and the Parties agree that the individual is a~~
8 ~~Settlement Class Member, the Parties shall endeavor to include the individual in the Settlement Class~~
9 ~~as long as sufficient money is left in the Dispute Resolution Fund or from uncashed checks to do so,~~
10 ~~and settlement awards for Settlement Class Members who submitted timely claims have been~~
11 ~~allocated or paid.~~ Under no circumstances will any action under this paragraph increase the Total
12 Settlement Amount.

13 VII. PROCEDURES FOR REQUESTS FOR EXCLUSION

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

1 submitted by the requesting Settlement Class Member (or their Legally Authorized Representative),
2 except that the Settlement Class Member's counsel may submit an opt-out request on behalf of the
3 individual Settlement Class Member if:

4 7.1.1 The Settlement Class Member's counsel retains a copy of the Settlement Class
5 Member's signed retention agreement with the counsel who is submitting the opt-out request, along
6 with a copy of any other agreements between the Settlement Class Member and counsel who is
7 submitting the opt-out request or their co-counsel, and agrees that any such agreements shall be
8 provided to the Court in camera if the Court so requests;

9 7.1.2 The Settlement Class Member's counsel submits a declaration under penalty of
10 perjury that:

11 7.1.2.1 Avers that the Settlement Class Member signed a retention agreement
12 with the individual attorney signing the declaration and submitting the
13 opt-out request, and identifies approximately when this occurred;

14 7.1.2.2 Avers that the attorney signing the declaration (a) personally advised
15 the Settlement Class Member of the estimate the parties provided of
16 how much the individual Settlement Class Member would have
17 recovered under the Settlement (assuming a 50% claim rate); and (b)
18 personally inquired whether the Settlement Class Member would prefer
19 to accept the settlement or opt out and maintain their right to pursue
20 individual claims, and the Settlement Class Member consented verbally
21 or in writing to opt out; and

22 7.1.2.3 Contains the advising attorney's original signature.

23 7.2 The Settlement Administrator shall promptly log each request for exclusion that it
24 receives and provide copies of the log and all such requests for exclusion to Settlement Class Counsel
25 and counsel for Postmates upon request. The Settlement Administrator shall automatically notify
26 Settlement Class Counsel and counsel for Postmates if and when the number of timely-submitted
27 requests for exclusion reaches 250.

1 7.3 The Settlement Administrator shall prepare a list of all persons who timely and
2 properly requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final
3 Approval Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

4 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by
5 the Court shall be bound by this Settlement Agreement, and all their claims shall be dismissed with
6 prejudice and released as provided for herein, even if they never received actual notice of the Action
7 or this proposed Settlement.

8 7.5 In the event that a Settlement Class Member submits a request for exclusion that the
9 parties do not believe was timely and/or properly submitted, the Court shall determine whether the
10 request for exclusion was timely and properly submitted.

11 7.6 The Plaintiffs agree not to request exclusion from the Settlement Class.

12 7.7 Settlement Class Members may request exclusion from the Settlement. Any such
13 Settlement Class Member may also object to the PAGA portion of the Settlement.

14 7.8 Notwithstanding the submission of a timely request for exclusion, Settlement Class
15 Members will still be bound by the settlement and release of the PAGA Claims or remedies under the
16 Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969. Requests for exclusion do not
17 apply to the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims.

18 7.9 Settlement Class Members may object to or opt out of the Settlement, but may not do
19 both. Any Settlement Class Member who submits a timely request for exclusion may not file an
20 objection to the Settlement, submit a Claim, or receive a Settlement Payment, and shall be deemed to
21 have waived any rights or benefits under the Settlement Agreement.

22 7.10 No later than ten (10) business days after the Exclusion/Objection Deadline, the
23 Settlement Administrator shall provide to Settlement Class Counsel and counsel for Postmates the
24 Opt-Out List together with copies of the exclusion requests. Notwithstanding any other provision of
25 this Settlement Agreement, if more than two hundred fifty (250) Settlement Class Members exercise
26 their right to opt out of the Settlement, Postmates at its sole and absolute discretion may rescind and
27 revoke the Settlement Agreement by sending written notice that it revokes the Settlement pursuant to
28

1 this Paragraph to Settlement Class Counsel within fourteen (14) business days following receipt of
2 the Opt-Out List.

3 7.11 Any Settlement Class Member who submits a timely and valid Claim Form, or does
4 not submit a timely and valid opt-out request, agrees to waive the Class Action Waiver in any
5 existing arbitration agreement between the Settlement Class Member and Postmates with respect to
6 the Released Claims.

7 **VIII. PROCEDURES FOR OBJECTIONS**

8 8.1 Any Settlement Class Member who wishes to object to the fairness, reasonableness, or
9 adequacy of this Agreement or the proposed Settlement must provide to the Settlement Administrator
10 a timely statement of the objection. The Settlement Administrator shall promptly forward any
11 objections to Settlement Class Counsel and counsel for Postmates.

12 8.2 All written objections must (a) clearly identify the case name and number, (b) be
13 submitted to the Settlement Administrator by mail or in the body of an email, and (c) be emailed or
14 postmarked no later than the Exclusion/Objection Deadline. The date of the postmark on the return-
15 mailing envelope, or the date of the email, shall be the exclusive means used to determine whether
16 the written objection has been timely submitted. If an objection is submitted using more than one
17 method (e.g. if it is mailed and emailed), the earlier date shall be used to determine timeliness.

18 8.3 The objection must contain at least the following: (i) the objector's full name, address,
19 telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the basis for each
20 objection argument; and (iv) a statement whether the objecting person or entity intends to appear at
21 the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement
22 identifying that counsel by name, bar number, address, and telephone number. All objections shall be
23 signed by the objecting Settlement Class Member (or their Legally Authorized Representative), even
24 if the Settlement Class Member is represented by counsel. For those Settlement Class Members who
25 submit an objection in an email, the Settlement Class Member's typed name at the bottom of the
26 email shall constitute their signature.

27 8.4 The right to object to the proposed Settlement must be exercised individually by a
28 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be

1 ineffective and disregarded. Individual objections may be submitted by a Settlement Class Member's
2 Legally Authorized Representative (who is not the Settlement Class Member's counsel).

3 8.5 Settlement Class Members who object to the proposed Settlement shall remain
4 Settlement Class Members, and shall be deemed to have voluntarily waived their right to exclude
5 themselves from the Settlement Class or pursue an independent remedy against Postmates and the
6 Released Parties. To the extent any Settlement Class Member objects to the proposed Settlement
7 Agreement, and such objection is overruled in whole or in part, such Settlement Class Member will
8 be forever bound by the Final Approval order and Judgment.

9 8.6 It shall be Settlement Class Counsel's sole responsibility to respond to any objections
10 made with respect to any application for the Settlement Class Counsel Award and Service Awards.

11 8.7 The Settlement Administrator shall prepare a list of all persons who timely and
12 properly submitted an objection (the Objection List) and shall, before the Final Approval Hearing,
13 submit an affidavit to the Court attesting to the accuracy of the list.

14 **IX. RELEASES**

15 9.1 The Released Claims against each and all of the Released Parties shall be released and
16 dismissed with prejudice and on the merits (without an award of costs to any party other than as
17 provided in this Agreement) upon entry of the Final Approval order and Judgment.

18 9.2 As of the Final Approval Date, the Plaintiffs and all Settlement Class Members who
19 have not been excluded from the Settlement Class as provided in the Opt-Out List, individually and
20 on behalf of their Legally Authorized Representatives, heirs, estates, trustees, executors,
21 administrators, representatives, agents, successors, and assigns, and anyone claiming through them or
22 acting or purporting to act on their behalf, agree to forever release, discharge, hold harmless, and
23 covenant not to sue each and all of the Released Parties from each and all of the Plaintiffs' General
24 Released Claims (in the case of the Plaintiffs), the Authorized Claimants' Released Claims (in the
25 case of the Authorized Claimants), and the Settlement Class Members' Released Claims (in the case
26 of the Settlement Class Members), and by operation of the Judgment becoming Final shall have fully
27 and finally released, relinquished, and discharged all such claims against each and all of the Released
28 Parties; and they further agree that they shall not now or hereafter initiate, maintain, or assert any of

1 the General Released Claims (in the case of the Plaintiffs), the Authorized Claimants' Released
2 Claims (in the case of the Authorized Claimants), or the Settlement Class Members' Released Claims
3 (in the case of the Settlement Class Members), against the Released Parties in any other court action
4 or before any administrative body, tribunal, arbitration panel, or other adjudicating body. Without in
5 any way limiting the scope of the releases described in Paragraphs 2.16, 2.29, and 2.41, or in the
6 remainder of this Section, this release covers, without limitation, any and all claims for attorneys'
7 fees, costs, or disbursements incurred by Settlement Class Counsel, or by the Plaintiffs or Settlement
8 Class Members, or any of them, in connection with or related in any manner to the Action, the
9 Settlement of the Action, and/or the Released Claims, except to the extent otherwise specified in this
10 Agreement.

11 9.3 The Plaintiffs and the Settlement Class Members expressly acknowledge that they are
12 familiar with principles of law such as Section 1542 of the California Civil Code, which provides:

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

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

1 herein is for a release with respect to unknown damages and complaints, whether resulting from
2 known injuries and consequences or from unknown injuries or unknown consequences of known or
3 unknown injuries, and state that it is the intention of the Settlement Class Members in agreeing to this
4 release fully, finally, and forever to settle and release all matters and all claims that exist, hereafter
5 may exist, or might have existed (whether or not previously or currently asserted in any action),
6 constituting the Settlement Class Members' Released Claims.

7 9.4 With respect to those claims that could be asserted under the FLSA, an Authorized
8 Claimant's timely and valid submission of a signed Claim Form shall be deemed as that Authorized
9 Claimant's Consent to Join and release all such matters and claims. The timely and valid submission
10 of a signed Claim Form shall fully, finally and forever settle and release all such matters and claims
11 as of the Effective Date.

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

26 9.6 Each Plaintiff further acknowledges, agrees, and understands that: (i) he or she has
27 read and understands the terms of this Agreement; (ii) he or she has been advised in writing to
28 consult with an attorney before executing this Agreement; (iii) he or she has obtained and considered

1 such legal counsel as he or she deems necessary; (iv) he or she has been given twenty-one (21) days
2 to consider whether or not to enter into this Agreement (although he or she may elect not to use the
3 full 21 day period at his or her option).

4 9.7 Subject to Court approval, the Plaintiffs and all Settlement Class Members who have
5 not been excluded from the Settlement Class as provided in the Opt-Out List shall be bound by this
6 Settlement Agreement, and all of the Released Claims shall be dismissed with prejudice and released,
7 even if they never received actual notice of the Action or this Settlement.

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

9 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties
10 and subject to the supervision, direction, and approval of the Court, shall calculate the allocation of
11 and oversee the distribution of the Total Settlement Amount.

12 10.2 The Total Settlement Amount shall be applied as follows:

13 10.2.1 To pay the costs and expenses incurred in connection with providing
14 Settlement Class Notice to potential Settlement Class Members, locating Settlement Class Members'
15 last-known postal mail addresses and processing any objections, requests for exclusion or challenges
16 to calculations of Estimated Miles;

17 10.2.2 After the Effective Date as provided in Paragraph 2.10, and subject to the
18 approval and further order(s) of the Court, to pay Plaintiffs Service Awards based on contributions
19 and time expended assisting in the litigation, up to the amounts described in Paragraph 2.29.

20 10.2.3 After the Effective Date as provided in Paragraph 2.10, and subject to the
21 approval and further order(s) of the Court, to pay the Settlement Class Counsel Award as ordered by
22 the Court;

23 10.2.4 After the Effective Date as provided in Paragraph 2.10, and subject to the
24 approval and further order(s) of the Court, to distribute 75% of the PAGA Payment to the LWDA;

25 10.2.5 After the Effective Date as provided in Paragraph 2.10, and subject to the
26 approval and further order(s) of the Court, to distribute the Individual Settlement Payments from the
27 Total Settlement Amount for the benefit of the Settlement Class pursuant to the Plan of Allocation, or
28 as otherwise ordered by the Court.

1 10.3 If any portion of the Total Settlement Amount is not successfully redistributed to
2 Settlement Class Members after the initial Void Date (i.e. checks are not cashed or checks are
3 returned as undeliverable after the second distribution), then after the Void Date for redistributed
4 checks, the Settlement Administrator shall void the check and shall direct such unclaimed funds to be
5 paid to Legal Aid at Work. Such unclaimed funds may also be used to resolve disputes regarding the
6 distribution of settlement funds.

7 10.4 Settlement Class Members who are not on the Opt-Out List approved by the Court
8 shall be subject to and bound by the provisions of the Settlement Agreement, the releases contained
9 herein, and the Judgment with respect to all Settlement Class Members' Released Claims, regardless
10 of whether they obtain any distribution from the Total Settlement Amount.

11 10.5 Payment from the Total Settlement Amount shall be deemed conclusive of compliance
12 with this Settlement Agreement as to all Settlement Class Members.

13 10.6 No Settlement Class Member shall have any claim against the Plaintiffs, Settlement
14 Class Counsel, or the Settlement Administrator based on distributions made substantially in
15 accordance with this Settlement Agreement and/or orders of the Court. No Settlement Class Member
16 shall have any claim against Postmates or its counsel relating to distributions made under this
17 Settlement.

18 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
19 **SETTLEMENT AGREEMENT**

20 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement,
21 or if the Court enters the Judgment and appellate review is sought, and on such review, the entry of
22 Judgment is vacated, modified in any way, or reversed, or if the Final Approval order does not
23 otherwise become Final, then this Settlement Agreement shall be cancelled, terminated, and void ab
24 initio, unless all Parties, in their sole discretion within thirty (30) days from the date such ruling
25 becomes final, provide written notice to all other Parties hereto of their intent to proceed with the
26 Settlement under the terms of the Judgment as it may be modified by the Court or any appellate court.

27 11.2 Postmates shall have the right to withdraw from the Settlement if the number of
28 Settlement Class Members who attempt to exclude themselves from the Settlement Class equals or

1 exceeds 250. If Postmates chooses, pursuant to its sole and absolute discretion, to exercise this right,
2 it must do so within fourteen (14) days of receipt of the Opt-Out List as provided in Paragraphs 7.2
3 and 7.9, by providing written notice to Settlement Class Counsel.

4 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is materially
5 modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement
6 Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the Parties
7 stipulate and agree that the Settlement, this Agreement, the Settlement Class Information, the Opt-
8 Out List, and all documents exchanged and filed in connection with the Settlement shall be treated as
9 inadmissible mediation communications under Cal. Evid. Code § 1115 et seq.; (b) the Settlement
10 shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be
11 effective or enforceable, with the exception of this Paragraph, which shall remain effective and
12 enforceable; (c) the Parties shall be deemed to have reverted nunc pro tunc to their respective statuses
13 prior to execution of this Agreement, including with respect to any Court-imposed deadlines; (d) all
14 Orders entered in connection with the Settlement, including the certification of the Settlement and
15 certification of the FLSA claims, shall be vacated without prejudice to any Party's position on the
16 issues of class and collective action certification, the issue of amending the complaint, or any other
17 issue, in this Action or any other action, and the Parties shall be restored to their litigation positions
18 existing on the date of execution of this Agreement; and (e) the Parties shall proceed in all respects as
19 if the Settlement Agreement and related documentation and orders had not been executed, and
20 without prejudice in any way from the negotiation or fact of the Settlement or the terms of the
21 Settlement Agreement. The Settlement Agreement, the Settlement, all documents, orders, and
22 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release or
23 other statement or report by the Parties or by others concerning the Settlement Agreement, the
24 Settlement, their existence, or their terms, and any negotiations, proceedings, acts performed, or
25 documents executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall
26 not be admissible in any proceeding, and shall not be offered, received, or construed as evidence of a
27 presumption, concession, or an admission of liability, of unenforceability of any arbitration
28 agreement, of the certifiability of a litigation class, or of any misrepresentation or omission in any

1 statement or written document approved or made, or otherwise used by any Person for any purpose
2 whatsoever, in any trial of this Action or any other action or proceedings. Plaintiffs, Settlement Class
3 Counsel, and the Settlement Administrator shall return to counsel for Postmates all copies of the
4 Settlement Class Information and Opt-Out Lists and shall not use or disclose the Settlement Class
5 Information or Opt-Out List for any purpose or in any proceeding.

6 11.4 Postmates does not agree or consent to certification of the class or FLSA claims for
7 any purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement is
8 terminated pursuant to its terms, or the Effective Date for any reason does not occur, all Orders
9 certifying the Settlement Class and FLSA collective for purposes of effecting this Settlement
10 Agreement, and all preliminary and/or final findings regarding the Settlement Class, shall be void ab
11 initio and automatically vacated upon notice to the Court, the Action shall proceed as though the
12 Settlement Class had never been certified pursuant to this Settlement Agreement and such findings
13 had never been made, and the Action shall revert nunc pro tunc to the procedural status quo as of the
14 date and time immediately before the execution of the Settlement Agreement, in accordance with this
15 Settlement Agreement.

16 **XII. ADDITIONAL PROVISIONS**

17 12.1 In the event that one or more of the Parties to this Settlement Agreement institutes any
18 legal action, arbitration, or other proceeding against any other party to enforce the provisions of this
19 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the
20 prevailing party shall be entitled to recover from the unsuccessful party reasonable attorneys' fees
21 and costs, including expert witness fees incurred in connection with any enforcement actions.

22 12.2 Unless otherwise specifically provided here, all notices, demands, or other
23 communications given hereunder shall be in writing and shall be deemed to have been duly given as
24 of the third business day after mailing by United States registered or certified mail, return receipt
25 requested, addressed as follows:

26 To Plaintiffs and the Settlement Class:

27 Shannon Liss-Riordan, Esq.
28 Lichten & Liss-Riordan, P.C.
729 Boylston Street

1 Suite 2000
2 Boston, MA 02116

3 To Defendants:

4 Theane Evangelis, Esq.
5 Gibson, Dunn & Crutcher LLP
6 333 South Grand Avenue
7 Los Angeles, CA 90071-3197

8 12.3 All of the Exhibits to this Settlement Agreement are an integral part of the Settlement
9 and are incorporated by reference as though fully set forth herein.

10 12.4 The Parties agree that the recitals are contractual in nature and form a material part of
11 this Settlement Agreement.

12 12.5 The Plaintiffs and Settlement Class Counsel acknowledge that an adequate factual
13 record has been established that supports the Settlement and hereby waive any right to conduct
14 further discovery to assess or confirm the Settlement. Notwithstanding the prior sentence, the Parties
15 agree to reasonably cooperate with respect to efforts to identify the last-known addresses of
16 Settlement Class Members.

17 12.6 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar
18 days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal
19 holiday, such date or deadline shall be on the first business day thereafter.

20 12.7 This Agreement supersedes all prior negotiations and agreements and may be
21 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
22 successors-in-interest.

23 12.8 The Parties reserve the right, subject to the Court’s approval, to agree to any
24 reasonable extensions of time that might be necessary to carry out any of the provisions of this
25 Agreement. Such extensions must be in writing to be enforceable.

26 12.9 The Settlement Agreement, the Settlement, the fact of the Settlement’s existence, any
27 of the terms of the Settlement Agreement, any press release or other statement or report by the Parties
28 or by others concerning the Settlement Agreement or the Settlement, and any negotiations,
proceedings, acts performed, or documents executed pursuant to or in furtherance of the Settlement
Agreement or the Settlement: (i) may not be deemed to be, may not be used as, and do not constitute

1 an admission or evidence of the validity of any Released Claims or of any wrongdoing or liability of
2 Postmates; (ii) may not be deemed to be, may not be used as, and do not constitute an admission or
3 evidence of any fault, wrongdoing, or omission by Postmates in any trial, civil, criminal, arbitration,
4 or administrative proceeding of the Action or any other action or proceedings in any court,
5 administrative agency, arbitral forum or other tribunal; (iii) may not be used as evidence of any
6 waiver of, unenforceability of, or as a defense to any Postmates arbitration agreement; and (iv) may
7 not be used as evidence in any class certification proceeding.

8 12.10 The Released Parties shall have the right to file the Settlement Agreement, the Final
9 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any
10 action that may be brought against them in order to support a defense or counterclaim based on
11 principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
12 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13 12.11 The Parties to the Settlement Agreement agree that the Total Settlement Amount and
14 the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
15 resulted from an arm's-length mediation session facilitated by Tripper Ortman, and reflect a
16 settlement that was reached voluntarily based upon adequate information and sufficient discovery and
17 after consultation with experienced legal counsel.

18 12.12 The Plaintiffs and Settlement Class Counsel have concluded that the Settlement set
19 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiffs
20 asserted against Postmates, including the claims on behalf of the Settlement Class, and that it
21 promotes the best interests of the Settlement Class.

22 12.13 To the extent permitted by law, all agreements made and orders entered during the
23 course of the Action relating to the confidentiality of information shall survive this Settlement
24 Agreement.

25 12.14 The Parties agree that Plaintiffs and Settlement Class Counsel are not required to
26 return any documents or data produced by Postmates until the final resolution of the Action. Within
27 sixty (60) days following the Effective Date, Settlement Class Counsel shall return to Postmates all
28

1 documents and data produced in the Action or in connection with the Parties' mediation, or confirm
2 in writing that all such documents have been destroyed.

3 12.15 The waiver by one Party of any breach of this Settlement Agreement by any other
4 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
5 Agreement.

6 12.16 This Settlement Agreement, including its Exhibits, constitutes the entire agreement
7 among the Parties, and no representations, warranties, or inducements have been made to any Party
8 concerning this Settlement Agreement or its Exhibits, other than the representations, warranties, and
9 covenants contained and memorialized in this Settlement Agreement and its Exhibits.

10 12.17 This Settlement Agreement may be executed in one or more counterparts. All
11 executed counterparts and each of them shall be deemed to be one and the same instrument provided
12 that counsel for the Parties to this Settlement Agreement shall exchange among themselves original
13 signed counterparts.

14 12.18 This Settlement Agreement may be signed with a facsimile signature and in
15 counterparts, each of which shall constitute a duplicate original.

16 12.19 The Parties hereto and their respective counsel agree that they will use their best
17 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement.

18 12.20 This Settlement Agreement shall be binding upon and shall inure to the benefit of the
19 successors and assigns of the Parties hereto, including any and all Released Parties and any
20 corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate,
21 or reorganize.

22 12.21 This Settlement Agreement has been negotiated among and drafted by Settlement
23 Class Counsel and Postmates' Counsel. Named Plaintiffs, Settlement Class Members, and Postmates
24 shall not be deemed to be the drafters of this Settlement Agreement or of any particular provision, nor
25 shall they argue that any particular provision should be construed against its drafter or otherwise
26 resort to the contra proferentem canon of construction. Accordingly, this Settlement Agreement
27 should not be construed in favor of or against one Party as the drafter, and the Parties agree that the
28 provisions of California Civil Code § 1654 and common law principles of construing ambiguities

1 against the drafter shall have no application. All Parties agree that counsel for the Parties drafted this
2 Settlement Agreement during extensive arm's-length negotiations. No parol or other evidence may
3 be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their
4 counsel, or the circumstances under which this Settlement Agreement was made or executed.

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

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

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

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

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

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

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

26 12.29 Signatory counsel warrant that they are fully authorized to execute this Agreement on
27 behalf of their respective clients listed below. Each Counsel signing this Settlement Agreement on
28 behalf of his/her clients who are unable to sign the Agreement on the date that it is executed by other

1 Parties represents that such counsel is fully authorized to sign this Settlement Agreement on behalf of
2 his/her clients; provided, however, that all Parties who have not executed this Agreement on the date
3 that it is executed by the other Parties shall promptly thereafter execute this Agreement and in any
4 event no later than one (1) week after the Agreement has been executed by counsel.

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

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9
10 Dated: July ____, 2021

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

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

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14
15 Dated: July ____, 2021

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

Attorneys for Defendant POSTMATES, INC.

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19 Dated: July ____, 2021

By: _____
Amir Mostafavi

Attorney for Plaintiffs MELANIE WINNS,
RALPH HICKEY JR., STEVEN ALVARADO,
AND KRISTIE LOGAN

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21
22 Dated: July ____, 2021

By: _____
Matthew Bainer

Attorney for Plaintiff SHERICKA VINCENT

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26 Dated: July ____, 2021

By: _____
Kitty Szeto

Attorney for Plaintiff WENDY SANTANA

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Dated: _____, 2021

By: _____
Jacob Rimler
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Giovanni Jones
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Dora Lee
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Kellyn Timmerman
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Joshua Albert
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Melanie Ann Winns
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Ralph John Hickey Jr.
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Steven Alvarado
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Kristie Logan
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Shericka Vincent
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Wendy Santana
NAMED PLAINTIFF

Dated: _____, 2021

By: _____
Angela Corridan
Senior Counsel
POSTMATES, LLC f/k/a POSTMATES INC.