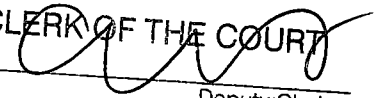




FILED
San Francisco County Superior Court

NOV 26 2019

CLERK OF THE COURT
BY: 
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

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

Plaintiff,

v.

POSTMATES, INC.

Defendant.

Case No. CGC-18-567868

ORDER RE MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT

Plaintiffs' motion for preliminary approval of class settlement was scheduled for hearing on November 22, 2019 at 10:00 a.m. in Department 304. Prior to the hearing the Court issued a tentative ruling. Plaintiffs and defendant submitted on the tentative. Therefore, the Court continues the hearing to January 31, 2020 at 1:30 p.m. and directs Plaintiffs to address the following in supplemental briefing to be filed not later than January 15, 2020. Plaintiffs are directed to cross reference this order in their supplemental filings to the Court.

1 **I. Class Certification for Settlement Purposes**

2 Plaintiffs must provide their own declarations setting forth the basic material facts about their
3 employment to demonstrate their adequacy to represent a settlement class. Their declarations should also
4 set forth whether they have worked in each of the municipalities that impose civil penalties that are being
5 released, and if not, why it is proper to release class members' local-ordinance claims that they do not
6 themselves possess. Plaintiffs should also disclose whether they received consideration of any kind,
7 directly or indirectly, for the release of their individual claims because that bears on their adequacy.

8 **II. Reasonableness of the Settlement Consideration**

9 **A. Maximum Value of the Claims**

10 In their valuation of the case, Plaintiffs have declined to advise the Court as to the maximum value
11 of all the class claims and PAGA claims or the bases for their valuation. Plaintiffs must do so. In
12 addition, due to the explicit release of additional claims in the Settlement Agreement not pleaded in the
13 First Amended Complaint or Proposed Second Amended Complaint, the Court believes Plaintiffs must
14 provide a full valuation of *all* released claims and provide the Court with an explanation of how they
15 calculated the value of these claims. If Plaintiffs do not believe that the valuation should extend to all
16 released claims, Plaintiffs must provide argument supported by citation to legal authority in support of
17 their position. All information should be set forth in a declaration except for the legal arguments, if any,
18 as to the valuation of all released claims.

19 **B. The Settlement Discount**

20 Plaintiffs have set forth several reasons to discount the settlement. However, the Court cannot
21 evaluate the reasonableness of the discount without knowing what the discount is, a value that in turn
22 depends on the maximum value of the claims. Plaintiffs' counsel's reliance on a settlement discount
provided in a previous class settlement her firm negotiated with Postmates, i.e., *Singer v. Postmates, Inc.*
(N.D. Cal. Sept. 1, 2017) 2017 WL 4842334, to guide her analysis here is not adequate. This federal
case was settled prior to the California Supreme Court decision in *Dynamex* that adopted the less
stringent ABC test, and the passage of Assembly Bill 5 (A.B. 5). Second, while a substantial discount for

1 PAGA penalties may be reasonable, counsel failed to provide any factual or legal basis to justify the near
2 100% discount. None of the cases Plaintiffs cited justify the 0.09% allocation.

3 In a supplemental filing, Plaintiffs must: (1) Justify the 0.09% allocation; (2) Discuss the
4 maximum civil penalty that could be imposed if Plaintiffs were to succeed on their PAGA claims; and (3)
5 Provide an evaluation of the factors the Court would be called on to consider in determining the ultimate
6 civil penalty amount.

6 **C. Investigation and Discovery**

7 Plaintiffs' counsel must disclose, in a declaration, the "substantial data" that was received in
8 advance of mediation and the discovery that was obtained in the *Albert* case before the case was stayed.
9 Generalized statements will be deemed insufficient.

9 **D. Dispute Resolution Fund**

10 Plaintiffs' counsel must justify the \$250,000 set aside from the class and explain how
11 compensating for payments mistakenly excluded from the class should not be covered as part of the
12 \$450,000 set aside for claims administration.

12 **III. Notice**

13 **A. LWDA**

14 Counsel must attest to compliance with Cal. Lab. Code § 2699(1)(2).

15 **B. Process**

16 The notice process as outlined in the present motion is very confusing and raises concerns about
17 the adequacy of the notice to the class. The questions and concerns about the notice process are
18 summarized in the following informal list.

- 18 • Why are the parties relying on e-mail notice and then mailed notice? Were alternatives such as notice
19 via the Postmates App considered? If so, why were they rejected? If not, why not?
20 • Exclusion/Objection deadline: This is defined as '60 days after the Mailed Notice Date.' (Proposed
21 Settlement Agreement, ¶ 2.12.) It is unclear what the Mailed Notice Date purports to be. Compare ¶¶

1 3.1 and 6.2. Second, it's unclear if 'initial distribution' means distribution via electronic mail or
2 postal mail. To the extent the parties are referring to electronic mail, there is no extension for those
3 individuals to whom notice is accomplished via postal mail. Are the parties agreeable to expanding
4 the 'Mailed Notice Date' to include initial distribution when postal mail is utilized? If the parties are
5 opposed to extending the 60-day deadline, the settlement should contain clear terms requiring prompt
6 mailing of Notices by the Settlement Administrator if an email returns undeliverable. (See *Id.* at ¶
7 6.5.)

- 8 • Non-wages and Form 1099: What is the justification to exclude all payments under the settlement
9 from the IRS reporting requirements? (See *Id.* at ¶ 4.2.) A declaration from a tax expert will suffice
10 to provide the response on this issue.
- 11 • Opt outs: First, what interest do Plaintiffs have for preventing counsel to opt out on behalf of their
12 clients, either individually or on behalf of a group? What is the justification for preventing counsel
13 from even helping *submit* an opt out? Second, explain the email procedures for opting out? (See *Id.*
14 at ¶ 7.1.) For example, do class members have to download a form, complete it, print it, sign it, and
15 attach it to an email? Or may a class member simply opt out in the body of an email? To the extent
16 class members may submit claim forms through an online portal why are the procedures requesting
17 exclusion different? Third, the Court should ultimately decide whether a contested opt out is valid.
18 (*Id.* at ¶ 7.5.)
- 19 • Objections: First, to the extent the Settlement Agreement requires objectors to file objections with the
20 Court, this requirement should be excluded. (*Id.* at ¶¶ 8.1, 8.2, 8.4.) Second, no separate 'Notice' of
21 an intent to appear at the final approval hearing, of any kind, should be required. (See *Id.* at ¶ 8.4.)
22 Third, a legal basis for each objection should not be required. (*Id.* at ¶ 8.3.) Fourth, to the extent the
settlement doesn't provide an email procedure / online submission portal for Objections, the parties
should explain why. Fifth, what interest do Plaintiffs have for preventing counsel to object on behalf
of their clients, either individually or on behalf of a group? What is the justification for preventing
counsel from even helping *submit* an objection? (See *Id.* at ¶¶ 8.3, 8.5.) Sixth, explain the purpose
and the effect of ¶ 8.7: "It shall be Settlement Class Counsel's sole responsibility to respond" to any

1 objections made with respect to Counsel’s award and Plaintiffs’ service awards. Seventh, it’s not
2 clear what “supporting papers” are contemplated in ¶ 8.2.

- 3 • Exclusion of an Individual: What is a ‘reasonable amount of time’ in which an individual must notify
4 the Settlement Administrator that they have been excluded from the class list? (See *Id.* ¶ 6.11.) How
5 does an individual notify the Settlement Administrator? What is the timeframe for them to submit a
6 Claim Form, an Objection, or an Opt out? Is the 60-day deadline tolled for these individuals? If there
7 is no further money left in the Dispute Resolution Fund after they have submitted a Claim Form will
8 that individual be able to opt out of the settlement?
- 9 • Claim Form: First, the deadline to submit the Claim Form - ‘the Bar date’ - is not defined in the
10 Settlement Agreement. (See *Id.* at ¶ 5.3.) Second, the settlement provides that claim forms are
11 submitted through an online portal or by mail. The Notice provides a third option—by email. Was
12 this third option intended?
- 13 • Reminders: The Settlement Agreement calls for ‘reminders’ to be sent to Class Members following
14 the initial Notice. (*Id.* at ¶ 6.7.) Who will receive these reminders? How will reminders be sent, via
15 email or postal mail? When will the two reminders be sent? What information will the reminders
16 contain?
- 17 • Settlement Share Disputes: The Settlement Agreement provides that the Notice will inform Class
18 Members of their right to dispute the information upon which their share of the Settlement will be
19 calculated. (*Id.* at ¶¶ 6.3, 6.4.) However, there is no further information explaining the process by
20 which Class Members are required to dispute, e.g., through the claim form or by letter; by electronic
21 mail or postal mail; and what documentation is required and/or acceptable.

17 C. Substance

18 The questions and concerns about the notice substance are summarized in the following informal
19 list.

- 20 • Have the parties confirmed that English language notice is appropriate for Postmates’s workforce –
21 i.e., is English language proficiency required for the job?

- 1 • The summary paragraph should provide an estimated total of the \$11,500,000 which will be available
2 for distribution to the class after attorneys' fees and other costs (which appears to be approximately
3 \$6,890,000 based on the present terms of the settlement).
- 4 • Page 1-2: There should be a more thorough summary of the recipients options – (1) Participating in
5 the settlement by either (a) Submitting a claim, (b) Doing nothing, in which case they will receive no
6 payment and release claims they may have against Postmates, (c) Objecting to the settlement, (d)
7 Disputing the information provided as a basis for calculating their claim amount; or (2) Electing not to
8 participate in the settlement by opting out. The summary should succinctly set forth the options and
9 reference the *specific* sections in the notice where more information is provided with respect to each
10 option.
- 11 • Page 2, § 2: This section should disclose and briefly discuss the federal actions of *Lee* and *Albert*.
- 12 • Page 3, third paragraph: The references to approval of the class representatives and class counsel
13 should include the word “preliminarily.”
- 14 • Page 3, § III: The Notice should disclose that the settlement amount includes a Dispute Resolution
15 Fund of \$250,000. The Notice should state that the Administration Costs are capped at \$450,000, as
16 set forth in the Settlement Agreement, not “estimated” at \$450,000.
- 17 • Page 4, § III: The Notice should explain what ‘demonstrate in writing an interest in initiating an
18 arbitration demand against Postmates prior to October 17, 2019’ means. (See first paragraph, line 4.)
19 The fifth, sixth, and seventh paragraphs discussing the rights and options of class members is
20 confusing. A reader could reasonably come away with the impression that only individuals who
21 submit a claim form, to the exclusion of individuals who object, are participating in the settlement
22 such that they will receive a payment if the settlement is approved. The Notice should be clear that
both submitting a claim form and objecting are options that constitute participation in the settlement,
such that a payment will be received if the settlement is approved.
- Page 4-6, § IV: The Notice should state the effect of the release, and who it impacts, in plain and
concise language. For example: “If the Court grants final approval of the Settlement, the Court will
enter judgment, the Settlement will bind all Class Members who have not opted out, and the judgment

1 will bar all Class Members from bringing any claims released in the Settlement. The release is
2 described below.” This section also should clearly disclose the following: (1) that only by submitting
3 a claim form, is the Class Member consenting to join as a party plaintiff to the FLSA claims and
4 releasing those claims; and (2) that even by excluding yourself from the settlement class members still
5 release the PAGA claims. The second paragraph on page 6 is confusing because it appears that by
6 ‘doing nothing’ or not timely excluding yourself from the settlement, a person releases their FLSA
7 claims. Also, the third and fourth paragraphs cover distinctly different information. The fourth
8 paragraph should not start with “This means that . . .”

- 9 • Page 6, § V: The Notice discloses the formula used to calculate a class member’s settlement share.
10 However, it does not disclose each class members’ estimated Delivery Miles or estimated value of
11 each mile used to compute the settlement share. This makes it practically impossible for a class
12 member to dispute those figures or make a reasonable estimate of their payment. The following
13 information should be clearly disclosed in each individual notice: (1) The estimated net settlement
14 amount for distribution to class members; (2) The fact that employer-side payroll taxes will be
15 deducted from the settlement amount; (3) Any factors that may impact the estimate for the net
16 settlement amount (i.e., claims submitted, opt outs, reduced fee or incentive awards, successful
17 disputes, exclusions of class members, etc.); and (4) The data used to calculate that specific class
18 member’s share of the net settlement amount, i.e., the estimated Delivery miles for that class member
19 and estimated recovery per mile, which the class member may contest, including whether he or she is
20 expected to have their points doubled.
- 21 • Page 7, § VI: This section should disclose the procedure and the means by which to notify the
22 Settlement Administrator of any change of address and how to request a replacement check if lost or
misplaced. This section should explain the procedure to dispute the estimated Delivery Miles and
what documentation is required and/or acceptable. Lastly, the last paragraph, line 3, states that
“payments will be mailed within a “couple months.” The Settlement Agreement and the preceding
section state that payment will be distributed approximately 30 days after the settlement becomes
final. (Page 6, § V; see Proposed Settlement Agreement ¶¶ 5.1, 5.6.)

- 1 • Page 7, § VII: The Notice does not provide the procedure to email an opt out. (See Proposed
2 Settlement Agreement ¶ 7.1.) This section should disclose that opting out of the settlement will still
3 release the PAGA claims but that those who want to opt out may still object to the PAGA component
4 of the settlement.
- 5 • Page 8, § VIII: The first sentence of the first and third paragraphs is confusing because a class
6 member may opt out and still object to the PAGA portion of the settlement. Paragraph 8.3 of the
7 Settlement Agreement and the Notice are inconsistent. The Notice contains an additional requirement
8 whereby objecting Class Members must include their dates of service with Postmates. (See first
9 paragraph, line 6.) All reference to the Court should be excluded. The Notice should be clear that
10 objections are submitted *by mail* to the Settlement Administrator. This section should also disclose
11 that Class Members may submit an objection, including to the settlement itself, the request for
12 attorney’s fees, or Plaintiffs’ awards, and also submit a claim form for payment. “In the manner
13 provided” in the last sentence of the third paragraph is vague.
- 14 • Page 8, § IX: The third sentence in lines 7-8 is vague: “The court will listen to people who have made
15 a timely written request to speak at the hearing.” It is not clear what website line 10 is referring to.
16 This section should disclose that at the final approval hearing the Court will consider Class Counsel’s
17 application for attorney’s fees and Plaintiffs’ service awards, in addition to whether the settlement is
18 fair, reasonable, and adequate.
- 19 • Page 8-9, § X: This section should also direct the reader to the website. The URL should be
20 displayed prominently at the end of the notice and the documents contained on the settlement website
21 should be listed, i.e., the operative complaint, the *Lee* complaint, *Albert* complaint and any other
22 complaint upon which a release of claims may be based, notice, settlement agreement, preliminary
approval order, all papers filed in connection with preliminary approval motions (including all orders
and tentative rulings) to the class. In addition, the Notice should direct the reader to the Court’s
website (<https://www.sfsuperiorcourt.org/online-services>), which provides access to the full docket in
this case free of charge. The Notice should contain instructions on how to use the website.
- Any and all revisions to settlement terms should be reflected in the notice.

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4 **IV. Allocation and Distribution of Funds**

5 The questions and concerns about the allocation and distribution of funds are summarized in the
6 following informal list.

- 7
- 8 • The Individual Settlement Amounts will be apportioned based on the estimated number of miles
9 driven while using the Postmates application as a courier. This approach may be justified on the basis
10 that computing specific damages for each Class Participant is impossible or infeasible. However, it is
11 not clear whether impossibility of infeasibility exists here for three reasons: First, Plaintiffs should be
12 in possession of records that elucidate variations in the (i) meal and rest break, (ii) overtime, (iii) and
13 sick pay violation rates experienced by putative class members. Second, waiting time penalties, in
14 particular, would only be available to individuals who no longer work for Defendant. Third, arguably
15 class members who worked for Postmates after *Dynamex* presumably have stronger claims than those
16 class members whose reimbursement claims may not be retroactive. Please explain the justification
17 for computing the Individual Settlement Amounts in the chosen manner.
 - 18 • The settlement's proposal to double the points of class members 'who opt out of arbitration, initiate
19 arbitration, or demonstrate in writing an interest in initiating an arbitration demand against Postmates'
20 is vague. Additionally, the reasons for such an allocation should be set forth in more detail.
 - 21 • To the extent that no class member is capable of receiving a \$100 settlement check the reminder
22 provision is futile. To the extent that no class member is capable of receiving a \$50 settlement check,
the redistribution process is similarly futile. Please provide, assuming a 100% claim rate, the number
of class members expected to receive an individual payment of at least \$50 and the number expected
to receive at least \$100.

18 **V. Release of Claims**

19 The questions and concerns regarding the Release are summarized in the following informal list.

- 20
- 21 • Please explain the justification for the broad release of claims and the justification for Plaintiffs'
22 additional release of claims without proper compensation. To the extent Plaintiffs claim the service
awards may be used as consideration for Plaintiffs' release of additional claims, Plaintiffs must

1 provide argument supported by citation to legal authority in support of their position. All information
2 should be set forth in a declaration.

- 3 • Plaintiffs must reconcile ¶ 2.29 which purports to limit the FLSA release to those who submit valid
4 claims, with ¶ 9.2 and ¶ 2.41 that effectuates a release unless a class member opts out.
- 5 • The Release encompasses “all claims that are based on [sic] reasonably related to the claims alleged
6 in or that could have been alleged in the *Rimler* SAC, including any allegations in *Lee*, *Albert*, and/or
7 *Rimler* preceding said amended complaint, and all misclassification claims.” (*Id.* at ¶ 2.41.) Plaintiffs
8 must explain the justification for including a release of claims encompassed in three additional
9 complaints, two of which are in a different jurisdiction.

8 VI. Miscellaneous Issues

- 9 • Class Definition ¶¶ 2.36, 2.7: Why does the Class definition include couriers who have only been
10 ‘approved to use the Postmates platform’ as opposed to those who have actually used the platform and
11 completed at least one delivery?
- 12 • Proposed Settlement ¶ 2.31: Plaintiffs seek to file a second amended complaint, but Plaintiffs have
13 not filed a motion or a stip/order to do so. A settlement based on the proposed Second Amended
14 Complaint will not be approved until it is the operative complaint. The parties must comply with Cal.
15 Rules of Court, rule 3.1324 in filing any such amendment.
- 16 • Proposed Settlement ¶¶ 3.6.3, 3.8.11, ¶9.3: The Court will not order Settlement Class Members
17 preliminarily and permanently enjoined from initiating litigation against Postmates.
- 18 • Proposed Settlement ¶ 3.8.15: This section purports to allow amendments, modifications, and
19 expansions of the agreement without further approval from the Court after final approval. The Court
20 should not be omitted from this process.
- 21 • Proposed Settlement ¶ 4.5: Explain the parties’ “6-month grace period to come to an agreement
22 regarding terms applicable in the event any appeal of the settlement is file.”
- Proposed Settlement ¶ 6.10: The Settlement Administrator will have to provide receipt of valid Claim
Forms *and* Objections to the Court.

- 1 • Proposed Settlement ¶ 10.6: This seems to be a release concerning the administration of the
2 settlement. ¶ 10.6 bars any action against Plaintiffs, Class Counsel, Settlement Administrator, or
3 Postmates based on distributions made under the agreement. Why is this proper?
- 4 • Plaintiffs must select a Settlement Administrator. The proposed administrator must submit a
5 declaration confirming how it will protect sensitive personal information and its ability to administer
6 the settlement.
- 7 • When will the website be accessible to Class Members? What does content-neutral mean? (*Id.* at ¶
8 6.9.)
- 9 • Explain whether an objection is valid and/or waives any rights if the objector does not include a
10 statement of whether they intend to appear at the final approval hearing, either individually or through
11 counsel? If so, what is the justification?

12 IT IS SO ORDERED.

13 Dated: November 25, 2019



14 Anne-Christine Massullo
15 Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On November 26, 2019, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: November 26, 2019

T. Michael Yuen, Clerk

By: 

Ericka Larnauti, Deputy Clerk