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9 *and Joshua Albert, on behalf of themselves and*  
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12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF SAN FRANCISCO**

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

20 Plaintiffs,

21 v.

22 POSTMATES INC.,

23 Defendant.  
24

Case No. CGC-18-567868

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

1 This Class Action Settlement Agreement and Release, including Exhibits A through C  
2 hereto (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and  
3 among Plaintiffs Jacob Rimler, Giovanni Jones, Dora Lee, Kellyn Timmerman, and Joshua  
4 Albert (“Plaintiffs”) on behalf of themselves and the Settlement Class, as defined below, on the  
5 one hand, and Defendant Postmates Inc. (“Defendant” or “Postmates”) on the other hand.  
6 Plaintiffs and Defendant (collectively, the “Parties”) enter into this Agreement to effect a full  
7 and final settlement and preclusive judgment resolving all claims brought or that could have  
8 been brought against Postmates in the following putative collective, representative, and class  
9 actions: (1) Rimler v. Postmates, Inc., Case No. CGC-18-567868 in the Superior Court of  
10 California, San Francisco County, and the related appeal docketed at No. A156450 in the  
11 California Court of Appeal, First Appellate District; (2) Lee v. Postmates, Inc., Case No. 3:18-  
12 cv-03421-JCS, in the United States District Court for the Northern District of California, and  
13 the related appeals docketed at Nos. 19-15024 and 19-80055 in the United States Court of  
14 Appeals for the Ninth Circuit; and (3) Albert v. Postmates, Inc., Case No. 18-cv-07592-JCS, in  
15 the United States District Court for the Northern District of California; including as amended  
16 pursuant to this Agreement (taken together, the three cases shall be referred to as “the Action”),  
17 and all claims based on or reasonably related thereto. This Agreement is intended to fully and  
18 finally compromise, resolve, discharge, and settle the Released Claims, as defined and on the  
19 terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

20 **I. RECITALS**

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

22 1.1. WHEREAS, on July 5, 2018, Plaintiff Jacob Rimler filed a California Private  
23 Attorneys General Act (“PAGA”), Labor Code §§ 2698, *et seq.* representative action complaint  
24 in the Superior Court of California, San Francisco County (Case No. CGC-18-567868),  
25 asserting on behalf of himself and all couriers classified by Postmates as independent  
26 contractors in California various wage-related claims against Postmates arising from Postmates’

1 alleged misclassification of couriers as independent contractors. On July 11, 2018, Plaintiff  
2 Rimler filed a First Amended Complaint, which added Plaintiff Giovanni Jones (“the Rimler  
3 action”);

4 1.2. WHEREAS, on August 17, 2018, Postmates filed a Petition for an Order  
5 Compelling Arbitration, which the Rimler Plaintiffs opposed. On January 2, 2019, the Court  
6 denied Postmates’ Petition, and Postmates filed a notice of appeal. Before any briefing was  
7 conducted on the appeal, Postmates and the Rimler Plaintiffs agreed to mediate the Rimler  
8 Action and requested an extension of briefing deadlines in light of the mediation, which the  
9 Court granted;

10 1.3. WHEREAS, on May 8, 2018, Plaintiff Dora Lee filed a class action complaint in  
11 the Superior Court of California, San Francisco County (Case No. CGC-18-566394) on behalf  
12 of herself and a proposed class consisting of all couriers in California classified by Postmates as  
13 independent contractors, asserting various wage-related claims against Postmates arising from  
14 Postmates’ alleged misclassification of couriers as independent contractors. On June 8, 2018,  
15 Postmates filed a Notice of Removal to the United States District Court for the Northern District  
16 of California, Case No. 3:18-cv-03421-JCS. On July 23, 2018, Postmates filed a Motion to  
17 Compel Arbitration. On October 15, 2018, the Court granted Plaintiff Lee’s Motion for Leave  
18 to Amend the Complaint to add Plaintiffs Kellyn Timmerman and Joshua Albert, and granted  
19 Postmates’ Motion to Compel Arbitration of Plaintiff Lee’s claims. On November 6, 2018,  
20 Postmates filed a Motion to Compel Arbitration for Plaintiff Timmerman. On December 17,  
21 2018, the Court granted Postmates’ Motion to Compel Arbitration and dismissed the case so  
22 that Plaintiffs Lee and Timmerman could pursue an appeal to the United States Court of  
23 Appeals for the Ninth Circuit. On January 4, 2019, Plaintiffs Lee and Timmerman filed a notice  
24 of appeal, which is pending as Ninth Cir. Case No. 19-15024 (together with the case dismissed  
25 by the Northern District of California, the “Lee Action”). Subsequently, Plaintiffs Lee and  
26 Timmerman moved the District Court to certify its orders for interlocutory review. The Court

1 granted the motion, and Plaintiffs Lee and Timmerman filed a petition in Ninth Cir. Case No.  
2 19-80055, seeking permission to appeal. On July 30, 2019, the Ninth Circuit denied the  
3 petition;

4 1.4. WHEREAS, on December 17, 2018, the District Court in Lee severed Plaintiff  
5 Joshua Albert's claims to proceed as a separate case, Northern District of California Case No.  
6 3:18-cv-07592-JCS. On January 4, 2019, Plaintiff Albert filed a Second Amended Complaint  
7 asserting a PAGA claim based on various wage-related claims against Postmates arising from  
8 Postmates' alleged misclassification of couriers as independent contractors (the "Albert"  
9 Action). The parties were engaged in written discovery until they requested and received a stay  
10 to participate in mediation;

11 1.5. WHEREAS, Plaintiffs allege generally that Postmates improperly classified them  
12 and all putative Settlement Class Members as independent contractors rather than employees,  
13 and assert derivative claims related thereto;

14 1.6. WHEREAS, Postmates denies the allegations in the Action; maintains that each  
15 courier's claims must be individually arbitrated pursuant to any arbitration agreement to which  
16 that courier may be bound; denies that it has engaged in any wrongdoing; denies that any  
17 Settlement Class Member was ever an employee of Postmates; denies that Plaintiffs' allegations  
18 state valid claims; denies that a litigation class could properly be certified in the Action; denies  
19 that Plaintiffs' claims could properly be maintained as a collective, class or representative  
20 action; and states that it is entering into this Settlement Agreement solely to eliminate the  
21 burden, expense, and delay of further litigation and arbitrations, and on the express conditions  
22 that: (a) if for any reason the Settlement is not finalized according to the terms of this  
23 Agreement, the Settlement and the documents generated as a result of the Settlement shall be  
24 void *ab initio*, and shall not be admissible or usable for any purpose in any of the cases included  
25 in the Action or any other civil or administrative proceeding or arbitration; and (b) this  
26 Settlement and the documents generated as a result of the Settlement are not admissible or

1 usable in any other civil or administrative proceeding or arbitration, except to the extent  
2 necessary to enforce this Settlement and the orders, judgment and agreements arising from this  
3 Settlement;

4 1.7. WHEREAS, a bona fide dispute exists as to whether any amount of wages or  
5 penalties are due from Postmates to any putative Settlement Class Member or to the California  
6 Labor and Workforce Development Agency (“LWDA”);

7 1.8. WHEREAS, in preparation for mediation, Postmates and Plaintiffs engaged in  
8 extensive informal discovery, exchanging information, documents and voluminous data, which  
9 enabled the parties and the mediator to thoroughly evaluate Plaintiffs’ claims and the claims of  
10 the putative Settlement Class Members, and the likely outcomes, risks, and expense of pursuing  
11 litigation;

12 1.9. WHEREAS, the Plaintiffs and Postmates attended an in-person mediation  
13 session with professional mediator Tripper Ortman of Ortman Mediation, who is experienced in  
14 mediating class action disputes, before agreeing to the terms of this arm’s-length Settlement;

15 1.10. WHEREAS, as a result of the mediation, Plaintiffs and Plaintiffs’ Counsel  
16 believe that the global Settlement provides a favorable recovery for the Settlement Class, based  
17 on the claims asserted, the evidence developed, and the damages that might be proven against  
18 Postmates in the Action. The Plaintiffs and Plaintiffs’ Counsel further recognize and  
19 acknowledge the expense and length of continued proceedings necessary to prosecute the  
20 Action against Postmates through trial and appeals. They also have considered the uncertain  
21 outcome and the risk of any litigation, especially in complex litigation such as the Action, as  
22 well as the difficulties and delays inherent in any such litigation. They are also mindful of the  
23 inherent challenges of proof and the strength of the defenses to the alleged claims, and therefore  
24 believe that it is desirable that the Released Claims be fully and finally compromised, settled,  
25 and resolved with prejudice as set forth herein, subject to the approval of the Court;



1 been any final determination as to whether a class should be certified or whether representative  
2 claims may properly be pursued, other than for settlement purposes only;

3 1.14. WHEREAS, for settlement purposes only, Postmates will stipulate to the  
4 certification of class claims that are subject to the certification requirements of California Code  
5 of Civil Procedure section 382, on the express condition that if this Settlement Agreement is not  
6 preliminarily or finally approved, this paragraph, the Settlement Agreement, and any class  
7 certified pursuant to the Settlement Agreement are all void *ab initio*. Postmates disputes that  
8 certification is proper for the purposes of litigating the class claims proposed in or flowing from  
9 the claims asserted in the Rimler, Lee, or Albert lawsuits;

10 1.15. WHEREAS, the Parties desire to compromise and settle all Released Claims,  
11 including, all issues and claims that have been, could have been, or should have been brought  
12 against Postmates or related persons in the Action, and all claims brought on a putative class  
13 and representative basis in the Rimler, Lee, and Albert lawsuits;

14 1.16. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND  
15 AGREED, by the Plaintiffs for themselves and on behalf of the Settlement Class and by  
16 Postmates, that, subject to the approval of the Court, the Action (including Rimler, Lee, and  
17 Albert, the lawsuits that comprise the Action) shall be settled, compromised, and dismissed, on  
18 the merits and with prejudice, and the Released Claims shall be finally and fully compromised,  
19 settled, and dismissed as to the Released Parties, in the manner and upon the terms and  
20 conditions hereafter set forth in this Settlement Agreement.

## 21 II. DEFINITIONS

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

24 2.1 “Authorized Claimant” means any Settlement Class Member who submits a  
25 valid and timely Claim that qualifies for a payment under the terms of this Settlement  
26

1 Agreement and who by validly and timely submitting the Claim using the Claim Form consents  
2 to join as a party plaintiff in the Fair Labor Standards Act (“FLSA”) claims in this Action.

3           2.2     “Authorized Claimants’ Released Claims” means all of the Settlement Class  
4 Members’ Released Claims as well as any and all claims, debts, liabilities, demands, obligations,  
5 guarantees, penalties, costs, expenses, attorneys’ fees, damages, liquidated damages, action or  
6 causes of action of whatever kind or nature, whether known or unknown, contingent or accrued,  
7 against the Released Parties or any of them based on putative violations of federal law based on  
8 or related to the claims asserted in or that could have been asserted in this Action under the  
9 FLSA. “Authorized Claimants’ Released Claims” include any unknown claims that an  
10 Authorized Claimant does not know or suspect to exist in his or her favor, which if known by  
11 him or her, might have affected this Settlement Agreement and release of the Released Parties.

12           2.3     “Bar Date” means the final time and date by which a Claim Form must be  
13 postmarked or submitted to the Settlement Administrator for a Settlement Class Member to be  
14 eligible to receive an Individual Settlement Payment. The Bar Date shall be sixty (60) days  
15 after the Notice Distribution Date and shall be specifically identified and set forth in the  
16 Preliminary Approval Order and the Settlement Class Notice.

17           2.4     “Claim” means the submission to be made by a Settlement Class Member using  
18 the Claim Form, which form shall serve as the Settlement Class Member’s means of requesting  
19 payment from the Total Settlement Amount and serve as that Settlement Class Member’s  
20 Consent to Join as a party plaintiff to the FLSA claims asserted in this Action pursuant to 29  
21 U.S.C. § 216(b).

22           2.5     “Claim Form” means the document included in the Settlement Class Notice  
23 without material variation from the relevant portion of Exhibit A. The Claim Form, if signed by  
24 a Settlement Class Member and timely and validly submitted to the Settlement Administrator,  
25 shall serve as that Settlement Class Member’s Consent to Join as a party plaintiff to the FLSA  
26 claims asserted in this Action pursuant to 29 U.S.C. § 216(b), and effect a full and complete

1 release of all claims under the FLSA based on or reasonably related to the claims asserted in this  
2 Action. To be valid, a Claim Form must be signed without any deletion or amendment to its  
3 language regarding the release of the FLSA claims and without any deletion or amendment to  
4 any other portion. If the Court does not finally approve this Settlement Agreement, any Consent  
5 to Join and release of the FLSA claims filed on behalf of any Settlement Class Member shall be  
6 void *ab initio*.

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

11           2.7     “Courier” means any individual who has been approved to use or has used the  
12 Postmates platform as an independent contractor courier.

13           2.8     “Superior Court” means the Superior Court of California, San Francisco County.

14           2.9     “Dispute Resolution Fund” means the fund consisting of Two Hundred and Fifty  
15 Thousand dollars and no cents (\$250,000) set aside from the Total Settlement Amount to be  
16 used: (i) to resolve any bona fide disputes that may arise regarding the calculation and  
17 disbursement of Individual Settlement Payments according to the Plan of Allocation, as  
18 provided in Section III(8)(f); and (ii) to disburse Individual Settlement Payments to individuals  
19 mistakenly excluded from the Settlement Class, as provided in Section III(8)(f). The Dispute  
20 Resolution Fund shall be paid from the Total Settlement Amount.

21           2.10    “Effective Date” means seven (7) days after which both of the following events  
22 have occurred: (i) the Court’s Final Approval order and Judgment has been entered, and (ii) the  
23 Court’s Final Approval order and Judgment have become Final.

24           2.11    “Estimated Miles” means the estimated total number of miles from the location  
25 where a delivery offer is accepted to the location where orders are picked up and to the location  
26

1 where orders are delivered, for each Settlement Class Member during the Settlement Period, as  
2 determined by Postmates' records.

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

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

17 2.14 "Final Approval" means the Court's entry of an order that the Named Plaintiffs  
18 and Postmates will seek from the Court, to be agreed upon by the Parties, and the entry of which  
19 shall reflect the Court's Judgment finally approving the Settlement Agreement.

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

25 2.16 "General Released Claims" includes all of the Settlement Class Members'  
26 Released Claims, with the addition of: (i) violations of Title VII of the Civil Rights Act of 1964;

1 (ii) violations of the Civil Rights Act of 1866; (iii) violations of the Americans with Disabilities  
2 Act; (iv) violations of any and all potential claims against Postmates that could be brought under  
3 corresponding state or local law; and (v) any claims for wages, penalties, breach of an express  
4 or implied contract, breach of the covenant of good faith and fair dealing, breach of fiduciary  
5 duty, fraud, misrepresentation, defamation, slander, retaliation, discrimination, harassment,  
6 wrongful termination, infliction of emotional distress, loss of future earnings or profits or any  
7 other claims based upon any state or federal public policy, or any other alleged wrongful  
8 conduct or injury, arising out of or in any way connected with any acts or omissions occurring  
9 during the Settlement Period, based on the claims that were alleged in the Action or that arise  
10 out of or relate to Plaintiffs' relationship with Postmates or the services Plaintiffs provided  
11 using Postmates' platform, or that arise out of or relate to the facts alleged in the action, in  
12 addition to all claims based on or arising under the federal and state law sections included in the  
13 Settlement Class Members' Released Claims and any other equivalent federal, state, or local  
14 law of any state or locality in which Plaintiffs reside and/or used Postmates' platform as an  
15 independent contractor courier.

16 2.17 "Individual Settlement Payment" means the amount payable from the Total  
17 Settlement Amount to each Settlement Class Member who does not timely and properly request  
18 exclusion from the Settlement Class and submits a Claim Form. The Individual Settlement  
19 Payment shall be calculated pursuant to Section V herein.

20 2.18 "Judgment" means the judgment to be entered in the Action on Final Approval of  
21 this Settlement.

22 2.19 "Legally Authorized Representatives" means an administrator/administratrix,  
23 personal representative, or executor/executrix of a deceased Settlement Class Member's estate;  
24 a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any  
25 other legally appointed Person responsible for handling the business affairs of a Settlement  
26 Class Member who is not the Settlement Class Member's counsel.











1 Award, Settlement Administrator Expenses, escrow costs and expenses, Service Awards,  
2 interest, taxes and tax expenses, all payments to the Settlement Class and Plaintiffs, Settlement  
3 Class Members' tax obligations arising out of the Settlement, and the PAGA Payment.

4 2.45 "Void Date" means the date by which any checks issued to Settlement Class  
5 Members shall become void, i.e., on the 181st day after mailing.

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

8 3.1 Upon execution of this Settlement Agreement, the Plaintiffs shall submit to the  
9 Court a motion for preliminary approval of the Settlement. The motion for preliminary  
10 approval shall include a proposed plan for sending the Settlement Class Notice to Settlement  
11 Class Members within twenty (20) days after the Preliminary Approval Date (the "Notice  
12 Distribution Date"), and establishing a period of sixty (60) days from the Notice Distribution  
13 Date within which any Settlement Class Member (i) may request exclusion from the respective  
14 Settlement Class, (ii) object to the proposed Settlement, or (iii) object to Settlement Class  
15 Counsel's request for the Settlement Class Counsel Award and for Service Awards to the  
16 Plaintiffs (the Exclusion/Objection Deadline). The motion for preliminary approval shall also  
17 request that any hearing on final approval of the Settlement and any determination on the  
18 request for a Settlement Class Counsel Award and Service Awards (the Final Approval  
19 Hearing) be set for after the Exclusion/Objection Deadline; that Settlement Class Counsel shall  
20 file a petition for the Settlement Class Counsel Award and Service Awards at least twenty-one  
21 (21) days before the Exclusion/Objection Deadline; that any opposition briefs on such motions  
22 and petitions be filed fourteen (14) days before the Final Approval Hearing; and that any reply  
23 briefs on such motions and petitions be filed seven (7) days before the Final Approval Hearing.

24 3.2 The Parties stipulate, for settlement purposes only, to certification of the  
25 Settlement Class under California Code of Civil Procedure § 382 and California Rules of Court,  
26 Rule 3.769, excluding the Settlement Class's PAGA Claims, on the express condition that if the  
27 Settlement is not Preliminarily or Finally Approved, this paragraph, the Settlement Agreement,







1 from or object to the proposed settlement and to appear at the Final Approval Hearing; (iii) was  
2 reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive  
3 notice; and (iv) met all applicable requirements of California Rule of Court 3.769, due process,  
4 and any other applicable rules or law;

5           3.8.5 Approves the Opt-Out List and determines that the Opt-Out List is a  
6 complete list of all Settlement Class Members who have timely requested exclusion from the  
7 Settlement Class and, accordingly, shall neither share in the Settlement nor be bound by the  
8 Final Approval order and Judgment;

9           3.8.6 Directs that the Final Approval order and Judgment of dismissal shall be  
10 final and entered forthwith;

11           3.8.7 Without affecting the finality of the Final Approval order and Judgment,  
12 retains continuing jurisdiction over the Plaintiffs, the Settlement Class and Postmates as to all  
13 matters concerning the administration, consummation, and enforcement of this Settlement  
14 Agreement;

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





1 terminate the Settlement Agreement, or (iii) impose any obligation on Postmates to increase the  
2 consideration paid in connection with the Settlement.

3           3.10 At the Final Approval Hearing, Settlement Class Counsel may also request entry  
4 of an Order approving the Settlement Class Counsel Award and for the Service Awards to the  
5 Plaintiffs. Any such Settlement Class Counsel Award or Service Award shall be paid  
6 exclusively from the Total Settlement Payment. In no event shall any Released Party otherwise  
7 be obligated to pay for any attorneys' fees and expenses or Service Awards. The disposition of  
8 Settlement Class Counsel's application for a Settlement Class Counsel Award, and for Service  
9 Awards, is within the sound discretion of the Court and is not a material term of this Settlement  
10 Agreement, and it is not a condition of this Settlement Agreement that such application be  
11 granted. Any disapproval or modification of such application by the Court shall not (i) affect  
12 the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to  
13 terminate the Settlement Agreement, or (iii) increase the consideration any Released Party pays  
14 in connection with the Settlement.

15           3.11 In no event shall any Released Party be obligated to pay settlement  
16 administration expenses beyond those provided for in this Agreement.

17           3.12 Within 10 days after entry of Judgment, Settlement Class Counsel will provide a  
18 copy of the Judgment to the LWDA.

19           **IV. SETTLEMENT CONSIDERATION**

20           4.1 The Total Settlement Amount is \$11,500,000. This is an "all in" number that  
21 will resolve all Released Claims, and which includes, without limitation, all monetary benefits  
22 and payments to the Settlement Class and Plaintiffs, Service Awards, Settlement Class Counsel  
23 Award, Settlement Administrator Expenses, and the PAGA Payment, and all claims for interest,  
24 fees, and costs. Under no circumstances shall Postmates be required to pay anything more than  
25 the Total Settlement Amount. In no event shall Postmates be liable for making any payments  
26

1 under this Settlement, or for providing any relief to Settlement Class Members, before the  
2 deadlines set forth in this Agreement.

3 4.2 The Plaintiffs and all Settlement Class Members who receive a payment of any  
4 kind from the Total Settlement Amount (including, in the case of the Plaintiffs, Service Awards)  
5 expressly acknowledge that such payments shall be considered non-wages for which an IRS  
6 Form 1099 will be issued, if required. The Plaintiffs and all Settlement Class Members who  
7 receive a payment of any kind from the Total Settlement Amount agree to timely pay in full all  
8 of the federal, state, and municipal income taxes owed on such payments.

9 4.3 The terms of this Agreement relating to the Service Awards and Settlement Class  
10 Counsel Award were not negotiated by the Parties before full agreement was reached as to all  
11 other material terms of the proposed Settlement, including, but not limited to, any terms relating  
12 to the relief to the Settlement Class. Postmates agrees to the amount of Service Awards (if any)  
13 granted by the Superior Court. The Plaintiffs and Settlement Class Counsel agree not to seek  
14 Service Awards in excess of the amounts described in Paragraph 2.32.

15 4.4 Settlement Class Counsel agrees not to seek an award of attorneys' fees, costs  
16 and expenses from the Court in excess of one third (1/3) of the Total Settlement Amount.  
17 Postmates agrees to the amount of attorneys' fees, costs and expenses (if any) granted by the  
18 Superior Court.

19 4.5 The payment of the Settlement Class Counsel Award, the Service Awards, the  
20 Settlement Administrator Expenses, the Individual Settlement Payments, and the PAGA  
21 Payment shall be made by the Settlement Administrator from the Total Settlement Amount  
22 within thirty (30) days after the Effective Date.

23 4.6 The Settlement Administrator shall pay the Settlement Class Counsel Award by  
24 check, payable to "Lichten & Liss-Riordan, P.C." Settlement Class Counsel shall provide the  
25 Settlement Administrator notice of receipt of the Settlement Class Counsel Award.

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











1 he or she is a Settlement Class Member, he or she must notify the Settlement Administrator by  
2 mail, email, or telephone within thirty (30) days after the distribution of the Settlement Class  
3 Notice. The Parties will meet and confer regarding any such individuals in an attempt to reach  
4 an agreement as to whether any such individual should be regarded as a Settlement Class  
5 Member. If the Parties so agree, such an individual will have all of the same rights as any other  
6 Settlement Class Member under this Agreement. In the event that the Parties agree that the  
7 individual is a Settlement Class Member, the Individual Settlement Payment to such individual  
8 shall be disbursed from the Dispute Resolution Fund, as long as sufficient money is left in the  
9 Dispute Resolution Fund. Under no circumstances will any action under this paragraph increase  
10 the Total Settlement Amount.

#### 11 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

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

1 Class Member (or their Legally Authorized Representative who is not the Settlement Class  
2 Member's counsel), even if the Settlement Class Member is represented by counsel.

3 7.2 The Settlement Administrator shall promptly log each request for exclusion that  
4 it receives and provide copies of the log and all such requests for exclusion to Settlement Class  
5 Counsel and counsel for Postmates upon request. The Settlement Administrator shall  
6 automatically notify Settlement Class Counsel and counsel for Postmates if and when the  
7 number of timely-submitted requests for exclusion reaches 250.

8 7.3 The Settlement Administrator shall prepare a list of all persons who timely and  
9 properly requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the  
10 Final Approval Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

11 7.4 All Settlement Class Members who are not included in the Opt-Out List  
12 approved by the Court shall be bound by this Settlement Agreement, and all their claims shall  
13 be dismissed with prejudice and released as provided for herein, even if they never received  
14 actual notice of the Action or this proposed Settlement.

15 7.5 In the event that a Settlement Class Member submits a request for exclusion that  
16 the parties do not believe was timely and/or properly submitted, the Court shall determine  
17 whether the request for exclusion was timely and properly submitted.

18 7.6 The Plaintiffs agree not to request exclusion from the Settlement Class.

19 7.7 Settlement Class Members may request exclusion from the Settlement. Any  
20 such Settlement Class Member may also object to the PAGA portion of the Settlement.

21 7.8 Notwithstanding the submission of a timely request for exclusion, Settlement  
22 Class Members will still be bound by the settlement and release of the PAGA Claims or  
23 remedies under the Judgment pursuant to Arias v. Superior Court (2009) 46 Cal. 4th 969.  
24 Requests for exclusion do not apply to the PAGA Claims, and will not be effective to preclude  
25 the release of the PAGA Claims.









1 have existed (whether or not previously or currently asserted in any action), constituting the  
2 Settlement Class Members' Released Claims.

3 9.5 With respect to those claims that could be asserted under the FLSA, an  
4 Authorized Claimant's timely and valid submission of a signed Claim Form shall be deemed as  
5 that Authorized Claimant's Consent to Join and release of all such matters and claims. The  
6 timely and valid submission of a signed Claim Form shall fully, finally and forever settle and  
7 release all such matters and claims as of the Effective Date.

8 9.6 With respect to the General Released Claims, as described in Paragraph 2.16,  
9 each Plaintiff shall be deemed to have expressly, knowingly, and voluntarily waived and  
10 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he or she  
11 may otherwise have had pursuant to Section 1542 of the California Civil Code and all similar  
12 federal, state, and local laws, rights, rules, and legal principles of any other jurisdiction that may  
13 be applicable herein. In connection with the release, Plaintiffs acknowledge that they are aware  
14 that they may hereafter discover claims presently unknown and unsuspected or facts in addition  
15 to or different from those which they now know or believe to be true with respect to matters  
16 released herein. Nevertheless, Plaintiffs acknowledge that a portion of the consideration  
17 received herein is for a release with respect to unknown damages and complaints, whether  
18 resulting from known injuries and consequences or from unknown injuries or unknown  
19 consequences of known or unknown injuries, and state that it is the intention of Plaintiffs in  
20 agreeing to this release fully, finally, and forever to settle and release all matters and all claims  
21 that exist, hereafter may exist, or might have existed (whether or not previously or currently  
22 asserted in any action), constituting the General Released Claims.

23 9.7 Each Plaintiff further acknowledges, agrees, and understands that: (i) he or she  
24 has read and understands the terms of this Agreement; (ii) he or she has been advised in writing  
25 to consult with an attorney before executing this Agreement; (iii) he or she has obtained and  
26 considered such legal counsel as he or she deems necessary; (iv) he or she has been given

1 twenty-one (21) days to consider whether or not to enter into this Agreement (although he or  
2 she may elect not to use the full 21 day period at his option).

3 9.8 Subject to Court approval, the Plaintiffs and all Settlement Class Members who  
4 have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be  
5 bound by this Settlement Agreement, and all of the Released Claims shall be dismissed with  
6 prejudice and released, even if they never received actual notice of the Action or this Settlement

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

8 10.1 The Settlement Administrator or its authorized agents in consultation with the  
9 Parties and subject to the supervision, direction, and approval of the Court, shall calculate the  
10 allocation of and oversee the distribution of the Total Settlement Amount.

11 10.2 The Total Settlement Amount shall be applied as follows:

12 10.2.1 To pay the costs and expenses incurred in connection with providing  
13 Settlement Class Notice to potential Settlement Class Members, locating Settlement Class  
14 Members' last-known postal mail addresses and processing any objections, requests for  
15 exclusion or challenges to calculations of Estimated Miles;

16 10.2.2 After the Effective Date as provided in Paragraph 2.10, and subject to the  
17 approval and further order(s) of the Court, to pay Plaintiffs Service Awards based on  
18 contributions and time expended assisting in the litigation, up to the amounts described in  
19 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  
22 ordered by 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  
25 LWDA;



1 cancelled, terminated, and void *ab initio*, unless all Parties, in their sole discretion within thirty  
2 (30) days from the date such ruling becomes final, provide written notice to all other Parties  
3 hereto of their intent to proceed with the Settlement under the terms of the Judgment as it may  
4 be modified by the Court or any appellate court.

5       11.2 Postmates shall have the right to withdraw from the Settlement if the number of  
6 Settlement Class Members who attempt to exclude themselves from the Settlement Class equals  
7 or exceeds 250. If Postmates chooses, pursuant to its sole and absolute discretion, to exercise  
8 this right, it must do so within fourteen (14) days of receipt of the Opt-Out List as provided in  
9 Paragraphs 7.2 & 7.9, by providing written notice to Settlement Class Counsel.

10       11.3 In the event that: (i) the Settlement is not approved, is overturned, or is  
11 materially modified by the Court or on appeal, (ii) the Judgment does not become Final, or  
12 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective for any  
13 reason, then: (a) the Parties stipulate and agree that the Settlement, this Agreement, the  
14 Settlement Class Information, the Opt-Out List, and all documents exchanged and filed in  
15 connection with the Settlement shall be treated as inadmissible mediation communications  
16 under Cal. Evid. Code §§ 1115 et seq., (b) the Settlement shall be without force and effect upon  
17 the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with the  
18 exception of this Paragraph, which shall remain effective and enforceable; (c) the Parties shall  
19 be deemed to have reverted *nunc pro tunc* to their respective status prior to execution of this  
20 Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in  
21 connection with the Settlement, including the certification of the Settlement Class, shall be  
22 vacated without prejudice to any Party's position on the issue of class certification, the issue of  
23 amending the complaint, or any other issue, in this Action or any other action, and the Parties  
24 shall be restored to their litigation positions existing on the date of execution of this Agreement;  
25 and (e) the Parties shall proceed in all respects as if the Settlement Agreement and related  
26 documentation and orders had not been executed, and without prejudice in any way from the

1 negotiation or fact of the Settlement or the terms of the Settlement Agreement. The Settlement  
2 Agreement, the Settlement, all documents, orders, and evidence relating to the Settlement, the  
3 fact of their existence, any of their terms, any press release or other statement or report by the  
4 Parties or by others concerning the Settlement Agreement, the Settlement, their existence, or  
5 their terms, and any negotiations, proceedings, acts performed, or documents executed pursuant  
6 to or in furtherance of the Settlement Agreement or the Settlement shall not be admissible in  
7 any proceeding, and shall not be offered, received, or construed as evidence of a presumption,  
8 concession, or an admission of liability, of unenforceability of any arbitration agreement, of the  
9 certifiability of a litigation class, or of any misrepresentation or omission in any statement or  
10 written document approved or made, or otherwise used by any Person for any purpose  
11 whatsoever, in any trial of this Action or any other action or proceedings. Plaintiffs, Settlement  
12 Class Counsel and the Settlement Administrator shall return to counsel for Postmates all copies  
13 of the Settlement Class Information and Opt-Out Lists and shall not use or disclose the  
14 Settlement Class Information or Opt-Out List for any purpose or in any proceeding.

15       11.4 Postmates does not agree or consent to certification of the Settlement Class for  
16 any purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement  
17 is terminated pursuant to its terms, or the Effective Date for any reason does not occur, all  
18 Orders certifying the Settlement Class for purposes of effecting this Settlement Agreement, and  
19 all preliminary and/or final findings regarding the Settlement Class shall be void *ab initio* and  
20 automatically vacated upon notice to the Court, the Action shall proceed as though the  
21 Settlement Class had never been certified pursuant to this Settlement Agreement and such  
22 findings had never been made, and the Action shall revert *nunc pro tunc* to the procedural status  
23 quo as of the date and time immediately before the execution of the Settlement Agreement, in  
24 accordance with this Settlement Agreement.

1           **XII. ADDITIONAL PROVISIONS**

2           12.1 In the event that one or more of the Parties to this Settlement Agreement  
3 institutes any legal action, arbitration, or other proceeding against any other party to enforce the  
4 provisions of this Settlement Agreement or to declare rights and/or obligations under this  
5 Settlement Agreement, the prevailing party shall be entitled to recover from the unsuccessful  
6 party reasonable attorneys' fees and costs, including expert witness fees incurred in connection  
7 with any enforcement actions.

8           12.2 Unless otherwise specifically provided here, all notices, demands, or other  
9 communications given hereunder shall be in writing and shall be deemed to have been duly  
10 given as of the third business day after mailing by United States registered or certified mail,  
11 return receipt requested, addressed as follows:

12           To Plaintiffs and the Settlement Class:

13                   Shannon Liss-Riordan, Esq.  
14                   Lichten & Liss-Riordan, P.C.  
15                   729 Boylston Street  
16                   Suite 2000  
17                   Boston, MA 02116

18           To Defendants:

19                   Theane Evangelis, Esq.  
20                   Gibson, Dunn & Crutcher LLP  
21                   333 South Grand Avenue  
22                   Los Angeles, CA 90071-3197

23           12.3 All of the Exhibits to this Settlement Agreement are an integral part of the  
24 Settlement and are incorporated by reference as though fully set forth herein.

25           12.4 The Parties agree that the recitals are contractual in nature and form a material  
26 part of this Settlement Agreement.

27           12.5 The Plaintiffs and Settlement Class Counsel acknowledge that an adequate  
28 factual record has been established that supports the Settlement and hereby waive any right to  
conduct further discovery to assess or confirm the Settlement. Notwithstanding the prior

1 sentence, the Parties agree to reasonably cooperate with respect efforts to identify the last-  
2 known addresses of Settlement Class Members.

3 12.6 Unless otherwise noted, all references to “days” in this Agreement shall be to  
4 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend  
5 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

6 12.7 This Agreement supersedes all prior negotiations and agreements and may be  
7 amended or modified only by a written instrument signed by counsel for all Parties or the  
8 Parties’ successors-in-interest.

9 12.8 The Parties reserve the right, subject to the Court’s approval, to agree to any  
10 reasonable extensions of time that might be necessary to carry out any of the provisions of this  
11 Agreement. Such extensions must be in writing to be enforceable.

12 12.9 The Settlement Agreement, the Settlement, the fact of the Settlement’s existence,  
13 any of terms of the Settlement Agreement, any press release or other statement or report by the  
14 Parties or by others concerning the Settlement Agreement or the Settlement, and any  
15 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance  
16 of the Settlement Agreement or the Settlement: (i) may not be deemed to be, may not be used as,  
17 and do not constitute an admission or evidence of the validity of any Released Claims or of any  
18 wrongdoing or liability of Postmates; (ii) may not be deemed to be, may not be used as, and do  
19 not constitute an admission or evidence of any fault, wrongdoing, or omission by Postmates in  
20 any trial, civil, criminal, arbitration, or administrative proceeding of the Action or any other  
21 action or proceedings in any court, administrative agency, arbitral forum or other tribunal;  
22 (iii) may not be used as evidence of any waiver of, unenforceability of, or as a defense to any  
23 Postmates arbitration agreement; and (iv) may not be used as evidence in any class certification  
24 proceeding.

25 12.10 The Released Parties shall have the right to file the Settlement Agreement, the  
26 Final Approval order and Judgment, and any other documents or evidence relating to the

1 Settlement in any action that may be brought against them in order to support a defense or  
2 counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith  
3 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion  
4 or similar defense or counterclaim.

5 12.11 The Parties to the Settlement Agreement agree that the Total Settlement Amount  
6 and the other terms of the Settlement were negotiated at arm's length and in good faith by the  
7 Parties, resulted from an arm's-length mediation session facilitated by Tripper Ortman, and  
8 reflect a settlement that was reached voluntarily based upon adequate information and sufficient  
9 discovery and after consultation with experienced legal counsel.

10 12.12 The Plaintiffs and Settlement Class Counsel have concluded that the Settlement  
11 set forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the  
12 Plaintiffs asserted against Postmates, including the claims on behalf of the Settlement Class, and  
13 that it promotes the best interests of the Settlement Class.

14 12.13 To the extent permitted by law, all agreements made and orders entered during  
15 the course of the Action relating to the confidentiality of information shall survive this  
16 Settlement Agreement.

17 12.14 The Parties agree that Plaintiffs and Settlement Class Counsel are not required to  
18 return any documents or data produced by Postmates until the final resolution of the Action.  
19 Within sixty (60) days following the Effective Date, Settlement Class Counsel shall return to  
20 Postmates all documents and data produced in the Action or in connection with the Parties'  
21 mediation, or confirm in writing that all such documents have been destroyed.

22 12.15 The waiver by one Party of any breach of this Settlement Agreement by any  
23 other Party shall not be deemed a waiver of any other prior or subsequent breach of this  
24 Settlement Agreement.

25 12.16 This Settlement Agreement, including its Exhibits, constitutes the entire  
26 agreement among the Parties, and no representations, warranties, or inducements have been

1 made to any Party concerning this Settlement Agreement or its Exhibits, other than the  
2 representations, warranties, and covenants contained and memorialized in this Settlement  
3 Agreement and its Exhibits.

4 12.17 This Settlement Agreement may be executed in one or more counterparts. All  
5 executed counterparts and each of them shall be deemed to be one and the same instrument  
6 provided that counsel for the Parties to this Settlement Agreement shall exchange among  
7 themselves original signed counterparts.

8 12.18 This Settlement Agreement may be signed with a facsimile signature and in  
9 counterparts, each of which shall constitute a duplicate original.

10 12.19 The Parties hereto and their respective counsel agree that they will use their best  
11 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement.

12 12.20 This Settlement Agreement shall be binding upon and shall inure to the benefit of  
13 the successors and assigns of the Parties hereto, including any and all Released Parties and any  
14 corporation, partnership, or other entity into or with which any Party hereto may merge,  
15 consolidate, or reorganize.

16 12.21 This Settlement Agreement has been negotiated among and drafted by  
17 Settlement Class Counsel and Postmates' Counsel. Named Plaintiffs, Settlement Class  
18 Members, and Postmates shall not be deemed to be the drafters of this Settlement Agreement or  
19 of any particular provision, nor shall they argue that any particular provision should be  
20 construed against its drafter or otherwise resort to the *contra proferentem* canon of construction.  
21 Accordingly, this Settlement Agreement should not be construed in favor of or against one Party  
22 as the drafter, and the Parties agree that the provisions of California Civil Code § 1654 and  
23 common law principles of construing ambiguities against the drafter shall have no application.  
24 All Parties agree that counsel for the Parties drafted this Settlement Agreement during extensive  
25 arm's-length negotiations. No parol or other evidence may be offered to explain, construe,  
26

1 contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances  
2 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 or to enforce any of the terms  
8 of this Settlement Agreement, shall be commenced and maintained only in the Superior Court of  
9 California, San Francisco County, which shall retain jurisdiction over all such actions and  
10 disputes.

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

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

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

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

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



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Dated: January \_\_, 2020

By: \_\_\_\_\_  
Robert Rieders  
General Counsel  
POSTMATES INC.

Dated: January \_\_, 2020

By: \_\_\_\_\_  
Jacob Rimler  
NAMED PLAINTIFF

Dated: January \_\_, 2020

By: \_\_\_\_\_  
Giovanni Jones  
NAMED PLAINTIFF

Dated: January \_\_, 2020

By: \_\_\_\_\_  
Dora Lee  
NAMED PLAINTIFF

Dated: January \_\_, 2020

By: \_\_\_\_\_  
Kellyn Timmerman  
NAMED PLAINTIFF

Dated: January \_\_, 2020

By: \_\_\_\_\_  
Joshua Albert  
NAMED PLAINTIFF