

1 SHANNON LISS-RIORDAN (SBN 310719)
(sliss@llrlaw.com)
2 ANNE KRAMER (SBN 315131)
(akramer@llrlaw.com)
3 LICHTEN & LISS-RIORDAN, P.C.
4 729 Boylston Street, Suite 2000
Boston, MA 02116
5 Telephone: (617) 994-5800
Facsimile: (617) 994-5801
6

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

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

MICHELE L. MARYOTT, SBN 191993
mmaryott@gibsondunn.com
3161 Michelson Drive
Irvine, CA 92612-4412
Telephone: 949.451.3800
Facsimile: 949.475.4668

Attorney for Defendant Postmates Inc.

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

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