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

COORDINATION PROCEEDING SPECIAL TITLE [RULE 3.550]

POSTMATES CLASSIFICATION CASES

Included Actions:

Winns v. Postmates, Inc., No. CGC-17-562282 (San Francisco Superior Court)

Rimler v. Postmates, Inc., No. CGC-18-567868 (San Francisco Superior Court.)

Brown v. Postmates, Inc., No. BC712974 (Los Angeles Superior Court)

Santana v. Postmates, Inc., No. BC720151 (Los Angeles Superior Court)

Vincent v. Postmates, Inc., No. RG19018205 (Alameda County Superior Court)

Altounian v. Postmates, Inc., No. CGC-20-584366 (San Francisco Superior Court)

CASE NO. CJC-20-005068

CASE NO. CGC-18-567868

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Date: November 3, 2021
Time: 2:00 p.m.
Judge: Hon. Suzanne R. Bolanos

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on November 3, 2021 at 2:00 p.m., or on such other date or time as this matter may be called, in Department 303 of San Francisco Superior Court, located at 400 McAllister Street, San Francisco, California, 94102will move for an order awarding attorneys' fees, litigation expenses, and the Plaintiffs' service awards.

This Motion is brought in accordance with the Court's Preliminary Approval Order, and said Motion will be based on this notice, the accompanying points and authorities, the Declarations filed herewith, the Class Action Settlement Agreement, and the complete files and records in this action.

Because all parties have agreed to the proposed class settlement, this motion is not opposed by Defendant.

Dated: October 12, 2021

LICHTEN & LISS-RIORDAN, P.C.

By: _____
Shannon Liss-Riordan

Attorney for Plaintiffs and the Settlement Class

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I. INTRODUCTION

Pursuant to the terms of the Parties' Settlement Agreement, Plaintiffs seek 28% of the settlement fund for attorneys' fees and costs, as well as class representative service awards of $5,000 each, as described further below. To date, only one *pro se* class member has submitted an objection to the settlement out of more than 721,000 settlement class members, which weighs strongly in favor of the Court's approval.[1] Moreover, the California Supreme Court has approved a higher fee award of one-third in other multi-million dollar settlements, noting that "an award of one-third the common fund was in the range set by other class action lawsuits" and noting that contingency-based attorneys' fees in class action cases (with or without lodestar cross-check) are acceptable in California and are supported by public policy considerations. See Laffitte v. Robert Half Intern. Inc. (2016) 1 Cal. 5th 480, 488 (approving one-third fee request out of $19 million settlement).

Plaintiffs submit that their request for attorneys' fees here is further justified by the substantial monetary benefits conferred by the settlement, particularly given the uncertainty and risk as to whether this case could have proceeded as a class action at all due to Postmates' arbitration provision, which has already been enforced by numerous courts[2] as well as Plaintiffs' counsel's efficiency in obtaining this settlement, which, as described in greater detail below, was made possible by their tremendous effort aggressively litigating against Postmates and other gig economy companies for years in a host of very similar cases. See Liss-Riordan

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[1] See, e.g., Thieriot v. Celtic Ins. Co. (N.D. Cal., Apr. 21, 2011) 2011 WL 1522385, *6 ("that no members of the 390–person class objected to the proposed 33% fee award—which was also communicated in the notice—supports an increase in the benchmark rate."); Kifafi v. Hilton Hotels Ret. Plan, (D.D.C. 2013) 999 F. Supp. 2d 88, 101 (finding that the "small number of objections [five objections out of almost 23,000 class members] weighs in favor of the requested fee").

[2] See, e.g., Adams v. Postmates, Inc., (9th Cir. 2020) 823 F. App'x 535, 536; Costa v. Postmates Inc., (N.D. Cal. Oct. 3, 2019) No. 4:19-cv-03046-JST, Dkt. 39; Lee v. Postmates Inc., (N.D. Cal. Dec. 17, 2018) 2018 WL 6605659, at *6; Immediato v. Postmates, Inc. (D. Mass. March 4, 2021) 2021 WL 828381, at *4.

Decl. in support of Mot. for Attnys Fees at ⁋⁋ 9-18 (describing firm's extensive and cutting-edge litigation against a host of gig economy companies); O'Connor v. Uber Technologies, Inc., (N.D. Cal. 2015) 82 F. Supp. 3d 1133 (denying motion for summary judgment in the first, high-profile case challenging "gig economy" company's classification of its workers as independent contractors); see also Mazola v. The May Department Stores Co. (D. Mass. Jan. 27, 1999) 1999 WL 1261312, *2 (noting that the "percentage of the common fund" approach "may be appropriate for the counsel that innovated the cause of action, and took all the risks," in contrast to "counsel that takes advantage of the efforts of others who have . . . done the 'spadework'") (citing Conley v. Sears, Roebuck & Co. (D. Mass. 1998) 222 B.R. 181, 188).

Indeed, Plaintiffs' counsel submits that the very favorable terms reached here were made possible by counsel's tremendous efforts in other similar cases over the last eight years that have been closely watched throughout the "gig economy". Indeed, counsel believes it was due to their substantial experience and reputation in this area, and particular expertise (spanning more than a decade) in cases challenging independent contractor misclassification in a variety of industries, that led the defendant to agree to such a result at this point in the litigation. Moreover, Plaintiffs' counsel are known for their willingness to take cases to trial, including a number of class action wage cases that they have successfully tried to judges and juries – a rarity in this area of law.[3] Due to counsel's extensive efforts and experience, class members will be receiving substantial relief in this case without significant further delay or risks.

Plaintiffs' fee request is also consistent with fee requests approved by California courts, including the California Supreme Court, see Laffitte, *supra* (approving one-third contingency fee request from $19 million settlement fund); In re Mego Fin. Corp. Sec. Litig. (9th Cir. 2000) 213 F.3d 454, 457–58, 463 (upholding fee award of 33.3% of settlement); Bickley v. Schneider

[3] Indeed, counsel brought the first (and only, to date) misclassification case to trial against another "gig economy" company, GrubHub Inc. See Lawson v. Grubhub, Inc. (N.D. Cal. 2018) 302 F.Supp.3d 1071, *vacated and remanded* (9th Cir., Sept. 20, 2021, No. 18-15386) 2021 WL 4258826. That litigation is still ongoing as the Ninth Circuit just last week reversed the verdict in GrubHub's favor.

Nat. Carriers, Inc. (N.D. Cal. Oct. 13, 2016) 2016 WL 6910261 (awarding one-third of $28 million settlement fund); Marshall v. Northrop Grumman Corporation (C.D. Cal., Sept. 18, 2020) 2020 WL 5668935, *appeal dismissed* (9th Cir., Feb. 16, 2021) 2021 WL 1546069 (awarding one-third of $12.375 million settlement fund); Waldbuesser v. Northrop Grumman Corp. (C.D. Cal., Oct. 24, 2017) 2017 WL 9614818 (awarding one-third of $16.75 million settlement fund); see also Marchbanks Truck Service, Inc. v. Comdata Network, Inc. (E.D. Pa., July 14, 2014) 2014 WL 12738907 (awarding one-third of $130 million settlement fund plus costs); Lusby v. GameStop Inc. (N.D. Cal. Mar. 31, 2015) 2015 WL 1501095, *9 (in wage and hour action, awarding fees in the amount of one-third of common fund); Singer v. Becton Dickinson and Co. (S.D. Cal. June 1, 2010) 2010 WL 2196104, *8 (same); Burden v. SelectQuote Insurance Services (N.D. Cal. Aug. 2, 2013) 2013 WL 3988771, *4 (same); Barbosa v. Cargill Meat Solutions Corp. (E.D. Cal. 2013) 297 F.R.D. 431, 450 (same); Barnes et al., v. The Equinox Group, (N.D. Cal. Aug 2, 2013) 2013 WL 3988804, *4; (same); Hightower v. JPMorgan Chase Bank, N.A. (C.D. Cal. 2015) 2015 WL 9664959, *11 (approving 30% fee request in part because "the risk of no recovery for Plaintiffs, as well as for Class Counsel, if they continued to litigate, were very real"); Garner v. State Farm Mut. Auto. Ins. Co. (N.D. Cal. Apr. 22, 2010) 2010 WL 1687829, *2 (approving 30% fee request and emphasizing "Class Counsel prosecuted this case on a purely contingent basis, agreeing to advance all necessary expenses, knowing that they would only receive a fee if there were a recovery"); In re Nuvelo, Inc. Sec. Litig. (N.D. Cal. July 6, 2011) 2011 WL 2650592, *2 (approving 30% fee request and noting "[i]t is an established practice to reward attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all"); Kanawi v. Bechtel Corp. (N.D. Cal. Mar. 1, 2011) 2011 WL 782244, *2 (approving 30% fee request and reasoning "[s]uch a practice encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney"). Here, given the large size of the settlement, Plaintiffs are seeking

28% of the common fund rather than the standard 33% approved by many California courts, including those cited above.

Plaintiffs emphasize the importance of contingency fee awards in encouraging plaintiffs' attorneys to file and litigate – efficiently – cases of importance, particularly those on behalf of lower-wage workers, and particularly those cases that are risky and uncertain. Because not every such case results in a fee award, fees that are awarded on a contingency basis from common fund settlements are essential for the continued prosecution of cases like this one and the ability of firms to maintain a practice representing low wage workers on contingency who are not able to afford paying attorneys' fees. See Fleury v. Richemont N. Am., Inc. (N.D. Cal. Apr. 14, 2009) 2009 WL 1010514, *3 ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.... [i]f this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing") (internal citation omitted). As set forth at length in the accompanying Declaration of Shannon Liss-Riordan, it is through the award of contingency fees from cases that have succeeded, or resolved at an early stage successfully, that have made possible Plaintiffs' counsel's practice on behalf of low wage workers.

Plaintiffs also request class representative service awards of $5,000 for each of the named plaintiffs in these cases, which have been consolidated for settlement purposes. In addition to their important contributions to these cases, their requests are also justified because merely associating their names with a high-profile lawsuit such as this one created a tremendous risk of being black-balled in the "gig economy" industry and beyond. The requested enhancements are also reasonable and in line with incentive awards approved by California courts. *See*, *e.g.*, *Garner v. State Farm Mut. Auto. Ins. Co.,* (N.D. Cal. 2010) 2010 WL 1687832,

at *17 n.8 ("Numerous courts in the Ninth Circuit and elsewhere have approved Service awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class") (collecting cases); *Meewes v. ICI Dulux Paints,* (L.A. Cnty. Super. Ct. Sept. 19, 2003) No. BC265880 (approving service awards of $50,000, $25,000 and $10,000 to the named Plaintiffs); *Hickcox-Huffman v. US Airways, Inc.* (N.D. Cal., Apr. 11, 2019) 2019 WL 1571877, at *2 (approving $10,000 incentive payment for class action representative plaintiff as "fair and reasonable"); *Noroma v. Home Point Financial Corporation* (N.D. Cal., Nov. 6, 2019) 2019 WL 5788658, at *10 (awarding incentive payments of $10,000 and $5,000 respectively to named plaintiffs); *Pointer v. Bank of America, N.A.* (E.D. Cal., Dec. 21, 2016) 2016 WL 7404759, at *20 (approving $10,000 incentive payment); *Murillo v. Pacific Gas & Elec. Co.* (E.D. Cal., July 21, 2010) 2010 WL 2889728, at *12 (same); *Groves v. Maplebear dba Instacart* (Sept. 2, 2020 L.A. Sup. Ct.) BC695401 (approving incentive payments ranging from $20,000 to $1,000 for named plaintiffs).

II. LEGAL STANDARD

Many of the Labor Code sections asserted by Plaintiffs contain mandatory payments of attorneys' fees and costs to successful plaintiffs.[4] Further, California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the propriety of awarding attorneys' fees to a party who has recovered or preserved a monetary fund for the benefit of himself or herself and others. Laffitte v. Robert Half Intern. Inc. (2016) 1 Cal. 5th 480, 488–89. In the context of class action litigation, attorneys' fees may properly be awarded pursuant to the common fund doctrine when a class settlement agreement establishes a

[4] For example, Labor Code section 1194 states: "[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation… is entitled to recover...reasonable attorneys' fees, and costs of suit." Similarly, Labor Code section 2802 states: "All awards made by a court for reimbursement of necessary expenditures…shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Thus, some award of attorneys' fees is mandatory. Kim v. Euromotors West (2007) 149 Cal. App. 4th 170, 177.

relief fund from which the attorneys' fees are to be drawn. Id. Under the terms of this class action settlement agreement, Plaintiffs move for an award of attorneys' fees and costs in the amount of 28% of the settlement fund, or $8,960,000. See Agreement at ¶¶ 2.38. This request is in line with (and somewhat below) the historic benchmark for fees in common fund cases, and in line with the Supreme Court's decision in Laffitte, approving a one-third of common fund fee award. See Laffitte, *supra,* at 485. As set forth further below, this Court has *significant* discretion regarding whether or not to use a lodestar cross-check at all in determining the reasonableness of a requested percentage fee. Id. at 506. However, the lodestar cross-check here supports the requested fee award as counsel have invested significant time and resources in this case and various factors support a generous multiplier.

III. DISCUSSION

A. The California Supreme Court Has Endorsed the Use of a Percentage Approach to Award Attorneys' Fees in Class Action Wage and Hour Cases

In Laffitte, *supra*, the California Supreme Court joined the "overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." Id. at 503. In so doing, the Court described the "recognized advantages of the percentage method," including "ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." Id. The vast majority of Ninth Circuit and other federal courts are in accord. See Aichele v. City of Los Angeles (C.D. Cal. Sept. 9, 2015) 2015 WL 5286028, *5 ("Many courts and commentators have recognized that the percentage of the available fund analysis is the preferred approach in class action fee requests because it more closely aligns the interests of the counsel and the class, *i.e.*, class counsel

directly benefit from increasing the size of the class fund and working in the most efficient manner.").[5]

One of the principal advantages of the percentage approach for awarding attorneys' fees in class action litigation is that it is result-oriented, thereby promoting the more efficient use of attorney time and resources, rather than encouraging attorneys to prolong litigation in order to inflate their recoverable hours. See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig. (1st Cir. 1995) 56 F.3d 295 ("[U]sing the [percentage of fund] method . . . enhances efficiency, or, put in the reverse, using the lodestar method in such a case encourages inefficiency. Under the latter approach, attorneys not only have a monetary incentive to spend as many hours as possible (and bill for them) but also face a strong disincentive to early settlement"). Similarly, the percentage method better approximates the workings of the marketplace by ensuring that attorneys receive compensation for the true value of their services and skills. Id. at 307 ("Another point is worth making: because the [percentage of fund] technique is result-oriented rather than process-oriented, it better approximates the workings of the marketplace . . . the market pays for the result achieved") (quoting In re Continental Ill. Sec. Litig. (7th Cir. 1992) 962 F.2d 566, 572).

Cases which result in *no* recovery also demonstrate why the percentage approach is essential to plaintiff-side firms that engage in contingency practice on behalf of low-wage workers: for every successful case, there are always others that will be vigorously pursued for

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[5] See also Knight v. Red Door Salons, Inc. (N.D. Cal. Feb. 2, 2009) 2009 WL 248367, *5 ("use of the percentage method in common fund cases appears to be dominant") citing Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290 F.3d 1043, 1047; In re Activision Sec. Litig. (N.D. Cal. 1989) 723 F. Supp. 1373, 1374–77 (collecting authority and describing benefits of the percentage method over the lodestar method); Morales v. Conopco, Inc. (E.D. Cal., 2016) 2016 WL 6094504, *7 ("Because of the ease of calculation and the pervasive use of the percentage of recovery method in common fund cases, the court thus adopts this method."); Swedish Hospital Corp. v. Shalala (D.C. Cir. 1993) 1 F.3d 1261, 1271 ("a percentage of the fund method is the appropriate mechanism for determining the attorney fees award in common fund cases"); Camden I Condominium Association v. Dunkle (11th Cir. 1991) 946 F.2d 768, 774 ("we believe that the percentage of the fund approach is the better reasoned in a common fund case").

years only to result in no recovery or diminished recovery for the class or counsel. See Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 20-21. Indeed, Plaintiffs' counsel has spent years litigating other cases on behalf of workers without compensation, at considerable expense. Id. In the practice of their contingency work, Plaintiffs' counsel's firm has also advanced millions of dollars in out-of-pocket expenses, much of which have not been repaid, to pursue litigation on behalf of workers in various types of employment cases, including wage, tips, misclassification, and discrimination cases. Id. at ¶ 20.

To name just a few examples:

- Plaintiffs' counsel has litigated many cases in the gig economy as described further below, sometimes over the course of many years and for thousands of hours, only to see their efforts erased with the stroke of a pen. In O'Connor v. Uber Techs. Inc., Civ. A. No. 13-3826-ECM (N.D. Cal.), Class counsel Lichten & Liss-Riordan PC litigated a class action on behalf of Uber drivers for misclassification and related Labor Code violations, defeating Uber's two summary judgment motions and engaging in months of extensive briefing regarding arbitration issues and class certification, resulting in the certification of a class of hundreds of thousands of drivers. On the eve of trial, counsel reached a $100 million settlement to resolve the claims of the certified class as well as PAGA claims against the company. After a number of competing counsel filed objections to the settlement, the court did not approve it. Several months later, the Ninth Circuit decertified the class, leaving all but a tiny fraction of the proposed settlement class bound by individual arbitration agreements. Counsel eventually settled on behalf of a much smaller class of drivers, but the firm's lodestar in that settlement exceeded the fee award (and hundreds of thousands of Uber drivers missed out on a chance at recovery) because of the Ninth Circuit's decision, underscoring the incredible risk under which Plaintiffs' contingency practice operates.

- Over the last eight years, Plaintiffs' counsel has litigated many other cases against "gig economy" companies for misclassifying workers as independent contractors for which the firm has received, and are likely to receive, no or very little compensation. For example, in two such cases Taranto, et al. v. Washio, Inc., (SF. Sup.) No. CGC-15-546584 and Iglesias v. Homejoy, Inc. (N.D. Cal.) No. 15-cv-01286-EMC, the companies shut down during the litigation, leaving the workers with no or little payment for their claims and Plaintiffs' counsel with no or little reimbursement for fees and expenses.

- Plaintiffs' counsel spent several years litigating on behalf of Boston and Chicago cab drivers, alleging that they have been misclassified as independent contractors under state law. In the litigation on behalf of the Boston cab drivers, the trial court ruled that the plaintiffs were likely to succeed on the merits of their claims and entered an injunction against the transfer of assets by the owner of Boston Cab Dispatch, an order that was

worth more than $200 million, which was affirmed on appeal. See Sebago v. Tutunjian (2014) 85 Mass. App. Ct. 1119. That result was, however, unexpectedly reversed on appeal to the Massachusetts Supreme Judicial Court, Sebago v. Boston Cab Dispatch, Inc. (2015) 471 Mass. 321, and that entire litigation, including many hundreds of hours of attorney time, went uncompensated. Similarly, the litigation on behalf of Chicago cab drivers was unsuccessful, and the firm was not compensated for that work either. See Enger v. Chicago Carriage Cab Co. (N.D. Ill. 2014) 77 F. Supp. 3d 712, *aff'd*, (7th Cir. 2016) 812 F.3d 565.

- Likewise, Plaintiffs' counsel's firm has advanced many hundreds of thousands of dollars in expert expenses and incurred thousands of hours of unpaid attorney time for cases challenging discrimination in promotional exams for police officers in Massachusetts. Although the firm was successful at trial in an earlier case challenging entry level exams for firefighters and police officers, see Bradley v. City of Lynn (D. Mass. 2006) 443 F. Supp. 2d 145, a follow-up case that spanned nearly a decade of work, Lopez v. City of Lawrence, Massachusetts (D. Mass. June 11, 2010) 2010 WL 2429708, *1, was lost, and the judgment against the plaintiffs was affirmed on appeal, see (1st Cir. May 18, 2016) 2016 WL 2897639.

Id. at ¶ 20.

These cases demonstrate why a percentage-of-the-fund approach is essential to plaintiff-side firms that engage in contingency practice on behalf of low-wage workers; for every successful case, there are always others that will be vigorously pursued for years only to result in no recovery for the class or counsel. In sum, a plaintiffs-side contingency practice on behalf of low wage workers who could not afford to pay out-of-pocket for counsel, such as Plaintiffs' counsel's firm, is made possible by the nature of contingency fee work. Thus, in considering the fairness and reasonableness of the proposed attorneys' fees in this case, the Court should consider the nature of Plaintiffs' counsel's practice, which is only made possible by this contingency fee structure.

B. Counsel's Request for 28% of the Fund for Attorneys' Fees is Presumptively Reasonable

As noted above, courts in California have consistently approved a request for one-third of the common fund. See, e.g., In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig. (1998) (Sup. Cr. Alameda Cty.) 1998 WL 1031494, *9 (awarding 30 percent of common fund as attorneys' fee and collecting California cases where fee awards constituted 30 to 45 percent of

common fund); see also cases cited *supra*, p. 3. "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." Chavez v. Netflix, Inc. (2008) 162 Cal. App. 4th 43, 65, n.11 (citation omitted); see also Cotchett, Pitre & McCarthy v. Universal Paragon Corp. (2010) 187 Cal. App. 4th 1405, 1421 (contingency fees typically range from 33 to 40 percent of class benefit); see also Laffitte, *supra,* 1 Cal.5th at 485 (approving a one-third of common fund settlement.); Romero v. Producers Dairy Foods, Inc. (E.D. Cal., 2007) 2007 WL 3492841, *4 (in wage and hour action, stating "fee awards in class actions average around one-third of the recovery" and awarding fees in that amount) (citing 4 Newberg and Conte, Newberg on Class Actions § 14.6 (4th ed. 2007)); In re Mego Fin. Corp. Sec. Litig. (9th Cir. 2000) 213 F.3d 454, 457–58, 463 (upholding fee award of 33.3% of settlement); see also Lusby, 2015 WL 1501095 at *9 (in wage and hour action, awarding fees in the amount of one-third of common fund); Singer, 2010 WL 2196104 at *8 (same); Burden, 2013 WL 3988771 at *4 (same); Barbosa, 297 F.R.D. at 450 (same); Barnes, 2013 WL 3988804 at *4 (same). Here, in recognition of the large size of the settlement, Class counsel has agreed to seek less than the typical 33% and instead seek an award of 28% of the common fund. See Agreement at ¶ 2.38. A percentage of the fund method of awarding fees is appropriate even in large settlements like this one. See, e.g., Hefler v. Wells Fargo & Company (N.D. Cal., Dec. 18, 2018) 2018 WL 6619983, at *13, *aff'd sub nom.* Hefler v. Pekoc (9th Cir. 2020) 802 Fed. Appx. 285 (awarding 20% of the $480 million common fund); Rodman v. Safeway Inc. (N.D. Cal., Aug. 23, 2018) 2018 WL 4030558, at *6 (awarding 28% of the common fund of $42.3 million); In re: Cathode Ray Tube (Crt) Antitrust Litig., (N.D. Cal. Jan. 28, 2016) 2016 WL 721680, *43 (awarding 30% of $576 million common fund; "there is solid authority that a 25% award is presumptively reasonable; that many cases — including megafunds — award fees in the 25–33% range"); Vizcaino v. Microsoft Corp., (9th Cir. 2002) 290 F.3d 1043, 1050 (approving award of 28% of common fund of $96.8 million dollar settlement fund, which resulted in lodestar multiplier of 3.65).

Indeed, "a 33% contingent fee of the total recovery is on the low end of what is typically negotiated *ex ante* by plaintiffs' firms taking on large, complex cases analogous to [this one]." Young v. Cty. of Cook (N.D. Ill. Sept. 20, 2017) 2017 WL 4164238, at *6. As such, "one-third of the common fund is a reasonable reflection of the hypothetical market price of [class counsel's] services in this case…[and], there is no need to cross-check this percentage against the lodestar." Id. (awarding fees of one-third of $32.5 million common fund).

Indeed, some courts have expressly "reject[ed] the notion that fees should be calculated "using a declining marginal percentage scale" in "large class-action settlement[s]" because "class members negotiating *ex ante* would prefer a flat one-third rate that encouraged an aggressive push for a high recovery over a declining marginal percentage rate that could lead attorneys to accept a low-value settlement at an early stage in the litigation."). Id. at *2, *5. As such, Plaintiffs submit the request for attorneys' fees of 28% of the common fund is reasonable and is actually less than the fair market value of what is typically negotiated *ex ante* in wage-and-hour class actions like this one. Indeed, many plaintiffs' attorneys are charging even more than one-third in their fee agreements for wage and hour clients; a number have been charging 40% in recent years. See Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶ 21.

C. Other Factors Support Plaintiffs' Request for Fees

There is no definitive set of factors California courts require to be considered in determining the reasonableness of an attorneys' fees award; however, federal courts assessing fee requests under California standards have utilized factors including: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. See Hendricks v. Starkist Co. (N.D. Cal., Sept. 29, 2016) 2016 WL 5462423, *11 (citing Vizcaino, 290 F.3d at 1048-50). Other courts have additionally considered (6) reactions from the class; and, if it so chooses, (7) a lodestar cross-check. See Barnes v. The Equinox Group, Inc. (N.D. Cal. 2013) 2013 WL 3988804, *4.

1. The Monetary and Non-Monetary Results Achieved by this Settlement Support Plaintiffs' Request

"When determining the value of a settlement, courts consider the monetary and non-monetary benefits that the settlement confers." Taylor v. Meadowbrook Meat Company, Inc. (N.D. Cal., 2016) 2016 WL 4916955, *5. Here, the settlement provides $32,000,000 to the settlement class of approximately 721,000 Postmates delivery drivers. After deductions for a payment to the Labor and Workforce Development Agency ("LWDA") ($3,000,000), the Settlement Administrator ($945,000), Class Counsel ($8,960,000), and service awards to the named Plaintiffs ($65,000), the balance of the settlement will be distributed to class members who have submitted claim forms in proportion to the total number of miles spent providing delivery services during the class period (with delivery miles receiving double-weight for those who opted out of arbitration or filed arbitrations). See Agreement at ¶¶ 2.4, 5.7. Importantly, *no funds will revert to Postmates* – any unclaimed funds will be redistributed to class members who have submitted a claim and whose second share would be greater than $50, and any leftover funds following this residual distribution will go to *cy pres*, the Workers' Rights Clinic of Legal Aid at Work. Id. at ¶¶ 5.8.

Significantly, Plaintiffs and their counsel have achieved this substantial relief for Class Members relatively quickly, which would not have been possible without their significant experience litigating independent contractor misclassification cases, including their widely recognized work in cases against gig economy companies. See Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 8-16. As discussed herein and in counsel's declaration, counsel's extensive experience litigating wage and hour cases and particular specialization in misclassification cases in the gig economy, demonstrates contributed to counsel's ability to leverage a favorable result in this case. See Sproul v. Astrue (S.D. Cal. Jan. 30, 2013) 2013 WL 394056, *2 ("Courts are loathe to penalize experienced counsel for efficient representation…"). Id. at ¶¶ 6-18.

2. The Risks of Litigating this Case Were Substantial

There are many risks inherent in litigating a class action – class certification, arbitration provisions, a decision on the merits, and potential appeals are all issues that can result in no recovery whatsoever to class members or class counsel. See Parkinson v. Hyundai Motor Am. (C.D. Cal. 2010) 796 F. Supp. 2d 1160, 1166 ("The most important factor is the risk of nonpayment, which was significant in this contingency class action"). For this reason, courts routinely find that this factor supports a higher fee request.[6]

In this case, Plaintiffs, class members, and their counsel faced all of these risks, every one of which could have resulted in no recovery whatsoever. Perhaps most notable was the risk that Plaintiffs' claims would be compelled to individual arbitration and they would therefore be unable to even attempt to represent a class, particularly in light of recent caselaw from the U.S. Supreme Court. See Epic Systems Corp. v. Lewis (2018) 138 S.Ct. 1612. Indeed, many courts have already found Postmates' arbitration agreement to be enforceable with respect to class claims under the Labor Code. See *supra*, n.2. While Plaintiffs would have been able to pursue representative PAGA claims under Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.

[6] See Hightower v. JPMorgan Chase Bank, N.A. (C.D. Cal. 2015) 2015 WL 9664959, *11 (approving 30% fee request in part because "the risk of no recovery for Plaintiffs, as well as for Class Counsel, if they continued to litigate, were very real"); Garner v. State Farm Mut. Auto. Ins. Co. (N.D. Cal. Apr. 22, 2010) 2010 WL 1687829, *2 (approving 30% fee request and emphasizing "Class Counsel prosecuted this case on a purely contingent basis, agreeing to advance all necessary expenses, knowing that they would only receive a fee if there were a recovery"); In re Nuvelo, Inc. Sec. Litig. (N.D. Cal. July 6, 2011) 2011 WL 2650592, *2 (approving 30% fee request and noting "It is an established practice to reward attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all"); Kanawi v. Bechtel Corp. (N.D. Cal. Mar. 1, 2011) 2011 WL 782244, *2 (approving 30% fee request and reasoning "[s]uch a practice encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney"); Bellinghausen v. Tractor Supply Company (N.D. Cal. 2015) 306 F.R.D. 245, 261 (noting that "when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award"); Hensley v. Eckerhart (1983) 461 U.S. 424, 448 (noting that "[a]ttorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate").

4th 348, 386, *cert. denied*, (2015) 135 S. Ct. 1155, Postmates would have challenged that those claims were manageable on a representative basis. Furthermore, although the Dynamex decision was codified into statutory law through the legislature's enactment of Assembly Bill 5, that result was thrown into doubt by the successful campaign by Postmates and other gig economy companies to pass a ballot referendum, Proposition 22, which specifies that Postmates' delivery drivers can be lawfully classified as independent contractors under California law if certain conditions are met. See Cal. Bus. & Prof. Code, § 7448, et seq. Gig economy defendants, including Uber (which now owns Postmates) have argued that Proposition 22 abated AB5 and therefore wipes out any pending claims of misclassification by its drivers, even for the time period prior to December 17, 2020, when Proposition 22 went into effect. While the Ninth Circuit recently rejected that argument in Lawson v. Grubhub, Inc. (9th Cir., Sept. 20, 2021) 2021 WL 4258826, that ongoing six-year-old case shows the delays and never-ending risks of these cases, as the defendant in that case has now vowed to continue fighting the misclassification issue, as well as penalties that may be assessed, back in the district court in litigation that could still continue for a number of years. While another court recently ruled Proposition 22 to be unconstitutional, Castellanos v. State, (Cal. Super.) 2021 WL 3730951, at *1, that decision is now on appeal. In short, these issues are very much live and unresolved; depending on the ultimate fate of Proposition 22 and other arguments that gig companies continue to raise in opposition to misclassification claims, there is a very real possibility that Plaintiffs could have no claims at all and no right to any recovery whatsoever.

Moreover, even if Dynamex did apply and the PAGA claim proceeded expeditiously (without an appeal), there would be the significant risk that any potential penalties would have been greatly reduced by the Court to a fraction of what might have been recovered as damages, given a potential finding that Postmates classified class members as independent contractors in good faith or that the higher penalty amounts were confiscatory. Courts have abundant

discretion to reduce PAGA penalties. See Cal. Lab. Code § 2699 (e)(2).[7] Even without the risks outlined above, absent this settlement, class members would run the risk of losing on the merits at trial or on appeal.

3. Counsel Have Unrivaled Background in this Field of Law

Prosecuting class actions requires an "extraordinary commitment of time, resources, and energy from Class Counsel," and, many times, settlements "simply [are not] possible but for the commitment and skill of Class Counsel." *Garner*, 2010 WL 1687829, at *2. This is particularly so where a "case was wholly without precedent, raised numerous novel and complex issues of both law and fact, and required a considerable effort from Class Counsel simply to be in a position to file suit, let alone to litigate this case successfully." *Id.*

Here, Counsel's work on the cutting edge of wage-hour class actions, with a specialty in cases involving independent contractor misclassification and arbitration clauses in the gig economy, made this settlement possible. See Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 6-18. As described in her Declaration, Attorney Shannon Liss-Riordan has been recognized as the preeminent plaintiff-side lawyer nationally challenging the gig economy for its misclassification of workers. She has been featured by many major publications and has received widespread recognition for her accomplishments representing low wage workers in a variety of industries.[8] Ms. Liss-Riordan's firm is well known as one of the preeminent

[7] See also Harris v. Radioshack Corp. (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645, *3-4; Fleming v. Covidien Inc. (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *3-4; Makabi v. Gedalia (Cal. Ct. App. Mar. 2, 2016) 2016 WL 815937, at *2 & n.3 (unpublished).

[8] These publications include San Francisco Magazine (Exhibit A to Liss-Riordan Declaration), the Los Angeles Times (Exhibit B), the Wall Street Journal (Exhibit C), the ABA Journal (Exhibit D), the Recorder (Exhibit E), Mother Jones (Exhibit F), Politico (Exhibit G), the Boston Globe (Exhibits H and I), and Law360 (Exhibit J). Last year she was selected by Benchmark Litigation as the national Labor & Employment Employee-Side Attorney of the Year. Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶ 7. San Francisco Magazine wrote a profile on her several years ago stating "Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader sued General Motors." *See* Ex. A to Liss-Riordan Decl.

employee-side firms engaged nationwide in this area of practice. For example, Plaintiffs' counsel, Shannon Liss-Riordan, was the first to challenge misclassification in the gig economy industry in the landmark case, O'Connor v. Uber (N.D. Cal.) Civ. A. No. 13-3826, filed in August 2013, more than eight years ago. There, Plaintiffs defeated two separate summary judgment motions filed by Uber, under the more difficult Borello standard for misclassification. See O'Connor v. Uber Techs., Inc. (N.D. Cal. 2015) 82 F. Supp. 3d 1133 (denying summary judgment to Uber on misclassification issue; O'Connor v. Uber Techs., Inc. (N.D. Cal. 2015) Civ. A. No. 13-3826, Dkt. 499 (denying partial summary judgment on Plaintiffs' claim under Cal. Lab. Code § 351). Counsel also litigated the enforceability of Uber's arbitration clause, winning a significant victory that Uber's arbitration clause was not enforceable and thereafter obtaining certification of a class of hundreds of thousands of drivers. O'Connor v. Uber Technologies, Inc. (N.D. Cal., Sept. 1, 2015) 2015 WL 5138097, at *1; O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2015) 311 F.R.D. 547. That ruling was overturned on appeal, see O'Connor v. Uber Technologies, Inc. (9th Cir. 2018) 904 F.3d 1087, after the court declined to approve the $100 million settlement she had negotiated. See Liss-Riordan Decl. ISO Mot. for Attny's Fees at ¶¶ 8, 10, 20. More recently, the firm has litigated another class action on behalf of Uber drivers and obtained certification of a class of Uber drivers who opted out of arbitration. See James v. Uber Technologies Inc. (N.D. Cal. 2021) 338 F.R.D. 123, 129.

Plaintiffs' counsel, Lichten & Liss-Riordan P.C., has also litigated dozens of high-profile cases against other gig economy companies like Lyft, GrubHub, Instacart, DoorDash, Handy, and many others, both in California and across the country. See Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶¶ 8-16. The firm has achieved significant victories in these cases and is largely responsible for developing the law in this area. Indeed, Plaintiffs' counsel defeated summary judgment against Lyft, see Cotter v. Lyft, Inc. (N.D. Cal. 2015) 60 F. Supp. 3d 1067, and Postmates' direct competitor in the food delivery arena, GrubHub. See Lawson v. Grubhub, Inc. (N.D. Cal. July 10, 2017) 2017 WL 2951608, at *1. The firm was the first, and

only to date, to pursue the misclassification claims all the way to trial. See Lawson v. Grubhub, Inc. (N.D. Cal. 2018) 302 F. Supp. 3d 1071, *vacated and remanded* (9th Cir., Sept. 20, 2021, No. 18-15386) 2021 WL 4258826. Just last month, the Ninth Circuit vacated the verdict in GrubHub's favor. See Liss-Riordan Decl. ISO Mot. for Attny's Fees at ¶ 10. This litigation in particular was illustrative of what alternative Postmates faced if it opted not to settle these claims and to fight them out in court -- namely, a years-long battle against a tenacious firm that is not afraid to take these cases to trial or on appeal.

In sum, counsel's skill and extensive experience in this area of law allowed her to leverage a relatively early settlement in this case, as did her relentless approach, filing multiple cases that brought class and PAGA claims against Postmates in Rimler, Lee, Albert, and companion arbitration cases. Indeed, the same defense counsel representing Postmates (Gibson Dunn & Crutcher) has gone up against Ms. Liss-Riordan in numerous other hotly contested cases against other gig economy companies like Uber and GrubHub, and they are well aware of her relentless pursuit of these cases and willingness to take these issues to trial and on appeal, in litigation that has frequently gone on for many years. Counsel's extensive experience and work on other cases against Postmates' competitors, coupled with a willingness to take on and aggressively pursue risky cases like this one, justifies Plaintiffs' fee request.

The other counsel involved in this settlement are likewise known to be aggressive advocates, as described in detail in their accompanying declarations. Their collective pressure on Postmates contributed to Postmates' willingness to settle this case for.such a high amount. These other cases brought extra pressure to bear on Postmates, as the company was faced with the prospect of litigating this battle on multiple fronts, across state and federal courts and in arbitration and against numerous different firms. This pressure was crucial to getting Postmates to the table and motivating Postmates throughout this process to reach a deal rather than face the prospect of continued litigation on many fronts. See Liss-Riordan Decl. ISO Mot. for Attny's Fees at ¶ 42.

4. Counsel Incurred a Substantial Financial Burden in Litigating this Case on a Contingency Fee Basis

The contingent nature of litigating a class action and the financial burden assumed typically justifies a higher percentage of the fund as well since counsel litigates with no payment and no guarantee that the time or money expended will result in any recovery.[9] As with virtually all work handled by Plaintiffs' counsel's firm, counsel accepted this case on a fully contingent arrangement, with no payment up front, and have borne the expenses, costs, and risks associated with litigating this case. Plaintiffs' attorneys who accept cases on contingency often spend years litigating cases (typically while incurring significant out-of-pocket expenses for experts, transcripts, document production, mediator fees, and so forth), without receiving any ongoing payment for their work. Sometimes fees and expenses are recovered; other times, nothing is recovered. As discussed *supra*, Plaintiffs' counsel has litigated many cases for years, at times winning in the trial court, only to lose on appeal and receive nothing for thousands of hours of work. As noted in Vizcaino and other cases, substantial fee awards encourage counsel to take on risky cases on behalf of clients who cannot pay hourly rates and would therefore not otherwise have realistic access to courts. That access is particularly important for the effective enforcement of public protection statutes, such as the wage laws at issue here. Thus, "private suits provide a significant supplement to the limited resources available to [government enforcement agencies] for enforcing [public protection] laws

[9] Bower v. Cycle Gear Inc. (N.D. Cal. 2016) 2016 WL 4439875, *7 (awarding 30% of common fund for fees and noting that counsel had litigated the action for almost two years with no payment and no guarantee of recovery); see also Hendricks, 2016 WL 5462423, at *12 (finding that enhancement from 25% benchmark was warranted because class counsel carried a substantial financial burden both in advancing out-of-pocket costs and in representing plaintiff and the class members on a contingency basis); see also Hightower v. JPMorgan Chase Bank, N.A. (C.D. Cal. 2015) 2015 WL 9664959, *10 ("any law firm undertaking representation of a large number of affected employees in wage and hour actions inevitably must be prepared to make a tremendous investment of time, energy, and resources with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.") (internal quotations omitted) (citing Vizcaino, 290 F.3d at 1051 ("attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose").

and deterring violations." Reiter v. Sonotone Corp. (1979) 442 U.S. 330, 344. By incentivizing plaintiffs' attorneys to take on risky, high-stakes, and important litigation, and devote themselves to it aggressively and fully, fee awards serve an important purpose and extend the access of top legal talent to constituencies such as low-wage workers who would otherwise never be able to confront large corporations such as Postmates, who are themselves represented by top-rated and top-billing attorneys. The fees awarded in this case will be used to support future cases on behalf of workers in California, as well as providing compensation for counsel for past and future cases where the risks result in no reward.

5. The Reaction of the Class (or Lack Thereof) Supports Plaintiffs' Fee Request

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc. (C.D. Cal. 2004) 221 F.R.D. 523, 528–29. Here, more than 711,000 Class Members were sent notice of the settlement on multiple occasions, and to date, only one *pro se* class member has objected. While the deadline has not passed yet for class members to lodge objections, this factor to date weighs in favor of Plaintiffs' request. See In re Cendant Corp., Derivative Action Litig. (D.N.J. 2002) 232 F. Supp. 2d 327, 338 ("the extremely small number of complaints that have arisen regarding the proposed attorneys' fees in the Settlement Agreement [six objections out of more than 200,000 class members]…weighs in favor of approval of the requested attorneys' fees."); Kifafi, 999 F. Supp. 2d at 101 (the "small number of objections [five objections out of almost 23,000 class members] weighs in favor of the requested fee").

6. A Lodestar Cross-Check, if Applied, Supports Plaintiffs' Fee Request

California courts have the discretion to employ (or decline to employ) a "lodestar cross-check" on a request for a percentage of the fund fee award. Laffitte, 1 Cal. 5th at 505. However, as noted before, the California Supreme Court in Laffitte has now made clear that this cross-check is not required. Id. Plaintiffs submit that a cross-check is not necessary in this

case, as it is recognized that the lodestar cross-check can reward unnecessary overbilling, inflation of timekeeping records, and inefficient litigation. See Albion Pac. Prop. Res., LLC v. Seligman (N.D. Cal. 2004) 329 F. Supp. 2d 1163, 1170-71 (noting that "[a] fee applicant should neither be rewarded for hiring expensive legal counsel nor penalized for hiring more efficient legal counsel. Thus, if a fee applicant can demonstrate that its attorneys billed fewer hours than reasonably competent counsel would have billed, the fee applicant should be reimbursed at an above-average hourly rate").

Here, counsel calculate their combined lodestar at approximately $5,279,774.69, yielding a multiplier of approximately 1.7 that would be applied to reach the percentage of the fund requested. See Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶ 44. As set forth further below, the lodestar cross-check supports the requested fee of 28% of the common fund.

a. Counsel's Hours Worked are Reasonable

In order to calculate counsel's lodestar for purposes of the cross-check, Plaintiffs have submitted declarations attesting to the estimated number of hours Lichten & Liss-Riordan P.C., has spent on this litigation and anticipate spending on the litigation in the coming months. See Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 26-40. Similarly, counsel for the other Plaintiffs have submitted declarations outlining their hours spent on the litigation, which collectively contributed toward Postmates agreeing to this settlement.[10]

As detailed in counsels' declaration, counsel spent substantial time investigating claims against Postmates, drafting several PAGA letters and complaints, reviewing documents from clients and other drivers, briefing substantive issues (including multiple motions to compel arbitration), analyzing data and preparing for mediation, interviewing the named plaintiffs and other class members at length on multiple occasions, mediating the case over two sessions, and guiding the case through the settlement approval process (including responding to several

[10] See Mostafavi Decl. at ⁋ 31; Bainer Decl. at ⁋ 14-15; Wheeler Decl. at ⁋⁋ 4-5; Marker Decl. at ⁋ 21 and Exhibit B thereto; A. Moss Decl. at ⁋⁋ 8-9; D. Moss Decl. ⁋⁋ 7, 9.

Motions to Intervene, filing several rounds of supplemental briefing in response to requests from Judge Massullo and this Court, negotiating changes to the settlement, and significant time spent working with the Settlement Administrator regarding settlement administration issues. See Liss-Riordan Decl. ISO of Mot. for Attnys' Fees at ¶ 24. Additionally, lead counsel estimates substantial additional time preparing for the final approval hearing and continuing to work with the Settlement Administrator to facilitate administration of the settlement. See Liss-Riordan Decl. ISO of Mot. for Attnys' Fees at ¶¶ 25, 40. Because this case has been efficiently litigated, there is no need for the Court to comb through records to eliminate duplicative billing. To the extent that the hours set forth here may be lower than what has been billed in other similar cases, Plaintiffs' counsel submit that this fact further justifies a generous lodestar multiplier to reward their competence and proficiency. Counsel should not be punished for their efficiency, where these efforts have led to an exceptional result for the class. See Bayat v. Bank of the W. (N.D. Cal. Apr. 15, 2015) 2015 WL 1744342, *9 ("The Court also believes that some positive multiplier is appropriate in this case given the efficiency with which class counsel litigated this action and the contingent nature of the recovery"); Albion Pac. Prop. Res., LLC v. Seligman 71 (N.D. Cal. 2004) 329 F. Supp. 2d 1163, 1170- (noting that "[a] fee applicant should neither be rewarded for hiring expensive legal counsel nor penalized for hiring more efficient legal counsel. Thus, if a fee applicant can demonstrate that its attorneys billed fewer hours than reasonably competent counsel would have billed, the fee applicant should be reimbursed at an above-average hourly rate"); Sproul v. Astrue (S.D. Cal. Jan. 30, 2013) 2013 WL 394056, *2 ("Courts are loathe to penalize experienced counsel for efficient representation under contingency agreements…"). Indeed, courts have recognized that "awarding compensation based on hours spent is likely to increase the time devoted." In re First Fidelity Bancorporation Sec. Litig. (D.N.J. 1990) 750 F. Supp. 160, 162; see also Lealao v. Beneficial California, Inc. (2000) 82 Cal. App. 4th 19, 52 [97 Cal. Rptr. 2d 797, 823] ("[T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the

class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar methodology… Considering that our Supreme Court has placed an extraordinarily high value on settlement … it would seem counsel should be rewarded, not punished, for helping to achieve that goal, as in federal courts.") (internal citations omitted). Thus, if Plaintiffs' counsel has achieved an excellent result for the class in an efficient manner, that should be rewarded with a substantial premium on their fees.

b. Counsel's Hourly Rates are Reasonable

In their lodestar calculations, Plaintiffs' counsel have used the following hourly rates for counsel and staff:

For Lichten & Liss-Riordan PC, Shannon Liss-Riordan (partner) - $950; Adelaide Pagano (partner) - $600; Michelle Cassorla (associate) - $500; Anne Kramer (associate) - $450; Zachary Rubin (associate) - $450; Law Clerks - $275; Paralegals and Staff - $225. See Liss-Riordan Decl. ISO of Mot. for Attnys' Fees at ¶¶ 26-40.[11]

Ms. Liss-Riordan's rate is in line with, if not lower, than the rates that have been approved for other top lawyers. Indeed, four years ago a court recognized as reasonable the rate of $1,048.47 charged by partners at Gibson Dunn, Postmates' counsel in this case. See MSC Mediterranean Shipping Co. Holding S.A. v. Forsyth Kownacki LLC (S.D.N.Y. Mar. 30, 2017) 2017 WL 1194372, at *3; see also U.S. Bank N.A. v. Dexia Real Estate Capital Mkts. (S.D.N.Y. Nov. 30, 2016) 2016 WL 6996176, at *8 (five years ago, approving rates of up to $1,055 per hour for seasoned partners). See also Gutierrez v. Wells Fargo Bank, N.A. (N.D. Cal. May 21, 2015) 2015 WL 2438274, *5 (six years ago, in consumer class action, finding reasonable rates of between $475-$975 for partners); Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan (N.D. Cal. Dec. 22, 2018) 2018 WL 6726963, *1 (three years ago, approving

[11] The other firms have requested similar rates for their attorneys and staff, supported by their respective declarations, which establish that their requested hourly rates have been approved by other courts and are in line with the rates of other wage and hour attorneys practicing before state and federal courts in California.

the requested hourly rate of $900 for partner in ERISA case); Civil Rights Educ. & Enf't Ctr. v. Ashford Hosp. Tr., Inc. (N.D. Cal. Mar. 22, 2016) 2016 WL 1177950, *5 (five years ago, approving an hourly rate of $900 for highly experienced partner); Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc. (N.D. Cal. Dec. 6, 2016), No. 14-cv-4086–NC, Order Granting Final Approval and Attorneys' Fees (Dkt. No. 139) (five years ago, approving hourly rates of $900 and $895 for senior partners).

Ms. Liss-Riordan's work warrants this rate because of her exceptional qualifications and status as one of the nation's top litigators in wage and hour litigation. As described in her declaration, she pioneered misclassification litigation across the gig economy, and has relentlessly litigated these cases, creating the bulk of the caselaw in this area along the way. Last year, she was recognized by Benchmark Litigation as the nation's top Employment Attorney. See Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶ 7. In this litigation against Postmates, Ms. Liss-Riordan, along with the other attorneys working with her and under her direction, were able to draw from the wealth of experience that she and her firm have developed over the last two decades in this area of wage law, and her particular expertise in independent contractor misclassification cases. Ms. Liss-Riordan's national prominence in this field, breadth of experience, success in litigating employment misclassification cases in new and emerging industries, and comparison to defense counsel's rates, justifies an hourly rate of $950, if not more.[12] The rates asserted for the firm's other attorneys and staff are likewise reasonable and in line with rates approved by other California courts. See Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶¶ 26-39.

Similarly, as set forth in the accompanying declarations of the other counsel involved in this case, the rates asserted by the other Plaintiffs' counsel, whose respective cases helped bring

[12] Ms. Liss-Riordan has been awarded $900 per hour for her work over recent years in a recent lodestar fee award for a case she won (not a settlement approval). See Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶ 26. In other settlements over the last several years, courts have awarded fees based upon lodestar rates of $800 and $850 for her work. Id.

extreme pressure to bear on Postmates and helped to bring the defendant to the table and who assisted with the negotiation and review of the proposed settlement, are eminently reasonable and in line with the rates approved by California courts.

c. Applying a Multiplier to Counsel's Lodestar Is Reasonable

Based on the requested rates, Plaintiffs estimated their lodestar at $5,279,774.69. Thus, the multiplier that would apply to obtain the requested $8,960,000 fee would be 1.7. Courts in the Ninth Circuit have "routinely awarded" multipliers in "the 1x to 4x range", Perks v. v. Activehours, Inc. (N.D. Cal., Mar. 25, 2021) 2021 WL 1146038, at *8, and courts will often award higher multipliers where the circumstances warrant it because of the excellent results obtained, complexity of the case, and risks involved. See, e.g., Craft v. County of San Bernardino (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1123 (awarding 25% of common fund, equivalent to a 5.2 multiplier) (collecting cases); see also Stevens v. SEI Investments Company (E.D. Pa., Feb. 28, 2020) 2020 WL 996418, at *13 (holding that "multiples ranging from 1 to 8 are often used in common fund cases" and awarding fees equivalent to a multiplier of 6.16); Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 255 [110 Cal.Rptr.2d 145]. Indeed, multipliers in the range of 5 to 10 are not uncommon, and some courts have even been known to award higher multipliers. See, e.g., In re Merry–Go–Round Enterprises, Inc. (Bankr. D.Md. 2000) 244 B.R. 327 (40% award for $71 million fund awarded, resulting in a cross-check multiplier of 19.6); Stop & Shop Supermarket Co. v. SmithKline Beecham Corp. (E.D. Pa.) 2005 WL 1213926 ($100 million class fund in antitrust case, with fee award that amounted to a multiplier of 15.6).

In sum, the requested multiplier here is warranted, based on the excellent results obtained for the class that go far beyond any settlement reached with a gig economy company before; the PAGA penalties of $4 million that will be paid to the state far exceed other settlements that have been routinely approved; and the substantial monetary relief being paid to the class is far and away the largest such settlement against one of these companies to date. The

cases cited above make clear that such a multiplier is appropriate in view of the excellent results achieved for the class.

D. Plaintiffs' Request For Class Representative Service Enhancements Is Reasonable

Under California law, named plaintiffs are generally entitled to a service award for initiating litigation on behalf of absent class members, taking time to prosecute the case, and incurring financial and personal risk. See Clark v. American Residential Services LLC (2009) 175 Cal. App. 4th 785. Such awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." In re Cellphone Fee Termination Cases (2010) 186 Cal. App. 4th 1380, 1393–94, *as modified* (July 27, 2010). "[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F. Supp. 294, 299 (internal citation omitted).

Here, these factors all weigh in favor of granting the requested service awards. The Named Plaintiffs worked for Postmates during the pendency of this litigation and some continue to work for Postmates. That they were willing to risk retaliation and their financial security to bring this case speaks to their dedication to achieving a result on behalf of their fellow drivers, to say nothing of the reputational risk of suing one's employer. See Rimler Decl. ¶ 9; Jones Decl. ¶ 9; Lee Decl. ¶ 9; Timmerman Decl. ¶ 9; Albert Decl. ¶ 9; Winns Decl. ¶ 14; Hickey Decl. ¶ 13; Logan Decl. ¶ 14; Alvarado Decl. ¶ 15; Vincent Decl. ¶ 9; Santana Decl. ¶ 16;

Brown Decl. ¶ 3; Altounian Decl. ¶ 8.[13] Likewise, the Named Plaintiffs have all had high-profile cases bearing their names reported on in the media and public eye, and each and every one of the named plaintiffs have had their names appear on public filings, easily accessible by future employers. Additionally, the class representatives here spent substantial time working with the attorneys on this case, providing documents and reviewing settlement strategy and settlement papers on behalf of the class. All of the Named Plaintiffs have attested to the amount of the time they have spent on the litigation and the work they performed in their respective cases. See Rimler Decl. ¶ 8; Jones Decl. ¶ 8; Lee Decl. ¶ ¶ 6, 8; Timmerman Decl. ¶¶ 6,8; Albert Decl. ¶ 8; Winns Decl. ¶ 13; Hickey Decl. ¶ 12; Logan Decl. ¶ 13; Alvarado Decl. ¶ 15; Vincent ¶¶ 8-9; Santana Decl. at ¶¶ 9-10, 13, 15; Brown Decl. ¶ 8; Altounian Decl. ¶ 6.

Numerous courts in California have approved incentive payments in line with and far exceeding the relatively modest $5,000 awards requested here. See, e.g., Ross v. U.S. Bank Nat. Ass'n (N.D. Cal., Sept. 29, 2010) 2010 WL 3833922, at *2 (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); Glass v. UBS Financial Services, Inc., (N.D. Cal. Jan. 26, 2007) 2007 WL 221862 at * 17 ("requested payment of $25,000 to each of the named plaintiffs is appropriate" in wage and hour settlement); Garner, 2010 WL 1687832, at *17 n.8 ("Numerous courts in the Ninth Circuit and elsewhere have approved Service awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class") (collecting cases); Hasty v. Elec. Arts, Inc., (San Mateo Cnty. Super. Ct. Sept. 22, 2006) Case No. CIV 444821 (approving an award of $30,000 to the class representative in a wage and hour class action); Meewes v. ICI Dulux Paints, (L.A. Cnty. Super. Ct. Sept. 19, 2003) Case No. BC265880 (approving service awards of $50,000, $25,000 and $10,000 to the named Plaintiffs).

[13] Damone Brown and Arsen Altounisan have been added to the class representatives seeking service awards, as the parties have now agreed to include their cases in the settlement.

Notably, the requested service enhancements, totaling $65,000, comprise a miniscule fraction of the overall settlement amount – just 0.2%. See, e.g., Monterrubio v. Best Buy Stores, (E.D. Cal. 2013) *L.P.*, 291 F.R.D. 443, 462 (finding total incentive payments of .62% of settlement reasonable); Congdon v. Uber Technologies, Inc. (N.D. Cal., May 31, 2019) 2019 WL 2327922, at *10, *appeal dismissed* (9th Cir., July 12, 2019) 2019 WL 4854343 (noting that "incentive award represents just 0.25% of the total recovery, which is reasonable in light of the expenses and risks named plaintiffs have incurred in this action"). Likewise, there is no "drastic disparity" in the size of each payment relative to the settlement shares of class members, some of whom will be receiving many thousands of dollars in their settlement payment. For these reasons, the requested service enhancements should be approved.

IV. CONCLUSION

Based upon the foregoing, and the papers filed in support of this Motion, Plaintiffs respectfully request that the Court grant their request for attorneys' fees and class representative service awards.

Dated: October 12, 2021

LICHTEN & LISS-RIORDAN, P.C.

By: _____
Shannon Liss-Riordan

Attorney for Settlement Class