

FILED
San Francisco County Superior Court

JUL 07 2021

CLERK OF THE COURT
BY: Elizabeth
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 303

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

Plaintiff,

v.

POSTMATES, INC.

Defendant.

Case No. CGC-18-567868

ORDER RE MOTION FOR PRELIMINARY
APPROVAL OF REVISED CLASS ACTION
SETTLEMENT

Plaintiffs' motion for Preliminary Approval of Revised Class Action Settlement came on regularly for hearing on June 16, 2021 in Department 303. The appearances are as stated in the record. Having reviewed and considered the argument and written submissions and being fully advised, the matter is continued to July 21, 2021 at 2:00 p.m. Plaintiffs are directed to address the following in supplemental briefing no later than July 9, 2021.¹

¹ If the parties require more time, they may contact the clerk in Department 303.

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

2 Plaintiffs must provide the facts supporting a well-defined community of interest among the class.
3 Further, Plaintiffs must provide their own declarations setting forth the basic material facts about their
4 employment to demonstrate their adequacy to represent a settlement class.

5 **II. Notice**

6 **A. LWDA**

7 The parties are required to submit the Settlement Agreement to the LWDA at the same time it is
8 filed with the Court. (Cal. Lab. Code § 2699(1)(2).) Counsel must attest to compliance with Labor Code
9 § 2699(1)(2).

10 **B. Process**

11 The questions and concerns about the notice process are summarized in the following informal
12 list.

- 13 • Opt outs: First, the requirements imposed on counsel who wish to opt out on behalf of their clients is
14 overly burdensome. The requirement that counsel provide a copy of the retainer agreement to the
15 Court should be removed. The attestations counsel provides in a declaration should be narrowed, and
16 require only that (i) counsel advised the class member of how much they would recover under the
17 settlement and (ii) that the attorney personally inquired whether the class member would prefer to
18 accept the settlement or opt out and maintain their right to pursue individual claims. Second, the
19 parties should clarify that Class Members may opt out in the body of an email.
- 20 • Objections: The parties should clarify that Class Members may submit their objections in the body of
21 an email.
- 22 • Exclusion of an Individual: To the extent an excluded individual may notify the Settlement
Administrator that he or she is a Settlement Class Member more than thirty days after the distribution
of the Settlement Class Notice, what does “the Parties shall endeavor to include the individual in the
Settlement Class” mean?

1 • Settlement Share Disputes: The Settlement Agreement provides that the Notice will inform Class
2 Members of their right to dispute the information upon which their share of the Settlement will be
3 calculated. (*Id.* at ¶¶ 6.3, 6.4.) The Settlement Agreement should include the process by which Class
4 Members are required to dispute the information, e.g., through mail or email, and what documentation
is required and/or acceptable.

5 **C. Substance**

6 The questions and concerns about the notice substance are summarized in the following informal
7 list.

- 8 • Page 1: The first page should disclose upfront why the individual is receiving the Notice. The last
9 sentence of the first paragraph should be bolded and appear towards the top of the page and separated
10 out from the first paragraph. Second, remove “may” and change it to “will” from the following
11 sentence: “Your legal rights may be affected ... carefully.” This is more accurate, especially since
12 Class Members’ rights will be affected if they do nothing. (See also Page 3, last sentence in § 1.)
- 13 • Page 4, Section 3: The Notice provides for Attorneys’ fees and costs based on 28% of the settlement
14 amount; the Proposed Settlement calls for 33%. (See Proposed Settlement ¶ 2.38.) Second, the
15 Administration expenses are capped at \$945,000, not “estimated” to be \$945,000. (See *id.* at ¶ 2.35.)
- 16 • Pages 4-5, Section 3: The information under the heading “Calculation of Settlement Class Member
17 Awards” should be moved to Section 5 under the heading “How much will my payment be?” Second,
18 the Notice provides the Class Members with their estimated settlement share assuming a 50% claim
19 rate. The Notice should give Class Members their estimated share assuming a 100% claim rate to
20 reflect the worst case scenario of what their payment would be in order to provide Class Members all
21 the information needed to decide whether to participate or opt out of the settlement. Third, the word
“shall” should be changed to “is” in the following sentence: “The determination of each class
members’ estimated miles driven shall be based on the relevant” Fourth, “option b)” in the third
to last paragraph should inform Class Members they are entitled to receive payment by “submitting a
timely claim *and* objecting to the settlement.” In other words, it should be clear that Class Members

1 may object to the settlement, but must submit a claim form to receive payment.

- 2 • Page 7, Section 4: This section, which explains what Class Members release by not opting out, is
3 overly complicated. For example, are the first two paragraphs on page 7 necessary? Is this information
4 not encompassed in the robust release listed on page 6? Second, the second sentence in the fourth
5 paragraph should be removed, and the third sentence should be set out as its own paragraph.
- 6 • Pages 7-8, Section 5: The Class Members' estimated settlement share should be included in this
7 section.
- 8 • Page 8, Section 6: Under the heading "IMPORTANT," the Notice should explain in more clear terms
9 when and why unclaimed funds will be directed (or donated) to Legal Aid at Work. Further, this
10 section should inform Class Members that they may be entitled to receive a second distribution check.
- 11 • Page 9, Section 7: This section should provide all the conditions placed on Class Members if they
12 wish their counsel to opt-out on their behalf.
- 13 • Page 9, Section 8: The last sentence in the last full paragraph on page 9 should remind class members
14 that they must submit a Claim Form to receive payment. For example, the parties should consider
15 revising the sentence to include the following: "You can submit an objection even if you also
16 submitted a Claim form, *but you must submit a Claim Form to receive your settlement share.*"
- 17 • Page 10, Section 9: In the last sentence, the phrase "at their own expense" should be removed.
- 18 • Page 11, Section 10: All documents contained on the settlement website should be listed, i.e., the
19 operative complaint, notice, settlement agreement, preliminary approval order, all papers filed in
20 connection with preliminary approval motions (including all orders and tentative rulings) to the class.
- 21 • Any revisions to settlement terms should be reflected in the notice.

17 **III. Allocation and Distribution of Funds and the Dispute Resolution Fund**

18 To the extent the plan for allocation of settlement proceeds doubles the points of Class Members
19 who retained an attorney to represent them in filing a demand for arbitration against Postmates
20 challenging their classification, even if the demand has not been filed, (see Plaintiff's January 21, 2020
21 Supp. Brief, 22-23), the Court is not comfortable requiring Class Members to submit a retainer agreement

1 to the Settlement Administrator as proof. The parties should propose a way for those Class Members who
2 retained an attorney to represent them in filing a demand for arbitration, but who did not ultimately file a
3 demand, to demonstrate that they are entitled to double points.

4 With respect to the redistribution of funds, the Settlement Agreement provides that residual funds
5 from uncashed checks (and any remaining funds in the Dispute Resolution Fund) will only be distributed
6 to class members for whom a second payment would be at least \$50. (See Proposed Settlement, ¶ 5.8.)
7 This calculation is not dependent, then, on the number of class members who received an initial check of
8 \$50. Rather, it is dependent on the amount of residual funds of uncashed checks and funds remaining in
9 the Dispute Resolution Fund, and whether that amount can provide, for at least some class members, a
10 redistribution of at least \$50. It seems to the Court that it is possible that very few Class Members will
11 meet the \$50 minimum because the amount of residual funds is far too low. This means that only some,
12 and likely very few, of the Class Members will be entitled to the full Net Settlement Amount, which
13 includes the funds earmarked for the Dispute Resolution Fund, after attorneys' fees, service awards, and
14 costs are deducted. The parties should explain why the plan for redistribution is fair to the class as a
15 whole.

16 To the extent the parties seek to keep the Dispute Resolution Fund, the Court will require an
17 accounting from the Settlement Administrator of the funds that were paid out from the Dispute Resolution
18 Fund and why, before final approval. This term should be included in the Settlement Agreement.

19 **IV. Miscellaneous Issues**

- 20 • Proposed Settlement ¶ 3.6.2: Plaintiffs should file a motion or submit a stipulation and order for the
21 Judge to sign with respect to the filing of the Second Amended Complaint.
- 22 • Proposed Settlement ¶ 7.3: The Settlement Administrator will have to provide receipt of opt-outs *and*
objections to the Court.

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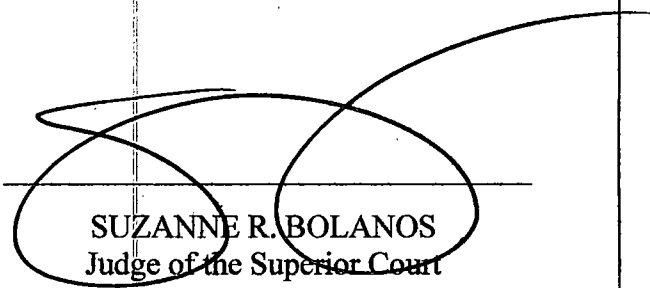
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IT IS SO ORDERED.

Dated: July 1, 2021



SUZANNE R. BOLANOS
Judge of the Superior Court