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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/11/2022
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 COORDINATION PROCEEDING SPECIAL
13 TITLE [RULE 3.550]

14 POSTMATES CLASSIFICATION CASES

15 Included Actions:

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

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

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

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

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

24 Altounian v. Postmates, Inc., No. CGC-20-
25 584366 (San Francisco Superior Court)

CASE NO. CJC-20-005068

**PLAINTIFFS' UNOPPOSED MOTION
TO AMEND 1) ORDER
GRANTING FINAL SETTLEMENT
APPROVAL AND 2) FINAL JUDGMENT**

Hon. Suzanne R. Bolanos

Dept. 303

Hearing Date: July 20, 2022

Hearing Time: 11:00 a.m.

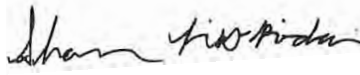
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2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on July 20, 2022, at 11:00 a.m., or on such other date or
4 time as this matter may be called, in Department 303 of San Francisco Superior Court, located at
5 400 McAllister Street, San Francisco, California, 94102, Plaintiffs, on behalf of themselves and
6 all other similarly situated settlement class members, will and hereby do, move for an order
7 amending the previously entered Final Approval Order and Final Judgment. The motion is based
8 on this Notice of Motion, the Memorandum of Points and Authorities in support thereof
9 submitted herewith, the Declaration of Shannon Liss-Riordan and exhibit thereto, submitted
10 herewith, and such other filings and arguments that may be submitted for the Court's
11 consideration, as well as all documents and records on file in this matter.

12 Plaintiffs' Motion is made pursuant to Cal. Code Civ. P. § 473(d).

13 Dated: July 11, 2022

LICHTEN & LISS-RIORDAN, P.C.

14
15 By: 
16 Shannon Liss-Riordan

17 *Attorney for Plaintiffs and the Settlement*
18 *Class*

1 Plaintiffs Jacob Rimler, Giovanni Jones, Melanie Anne Winns, Ralph John Hickey, Jr.,
2 Steven Alvarado, Kristie Logan, Damone Brown, Wendy Santana, Shericka Vincent, and Arsen
3 Altounian (“Plaintiffs”), through their undersigned counsel of record, hereby move the Court,
4 pursuant to C.C.P. § 473(d), to amend its May 6, 2022, Order Granting Final Approval of Class
5 Action Settlement, Attorneys’ Fees, Costs, and Service Awards (“Final Approval Order”) and
6 Final Judgment in order to include a complete list of all Settlement Class Members who are
7 being excluded from the Settlement and to authorize an additional Notice period for submission
8 of Claims. For the reasons explained below, Plaintiffs’ Motion, which is unopposed by
9 Defendant Postmates, LLC f/k/a Postmates, Inc., should be granted.

10 **FACTUAL AND PROCEDURAL BACKGROUND**

11 On May 6, 2022, the Court entered its Final Approval Order and entered Final Judgment.
12 Later that day, Plaintiffs filed a Declaration of Denise Islas, of Simpluris, Inc., the Settlement
13 Administrator, advising the Court that, at the request of Gibbs Law Group following the April
14 22, 2022 final approval hearing, Simpluris had undertaken additional name, email, and address
15 matching of its clients to the Settlement Class list. See Declaration of Denise Islas, filed May 19,
16 2022, (“Islas Decl.”) ¶ 3. Simpluris conducted this additional matching and determined that an
17 additional 50 Gibbs Law Group clients who requested exclusion from the Settlement are
18 Settlement Class Members. Id.

19 Immediately following the filing of this Declaration on May 6, 2022, Class Counsel
20 emailed the Court’s clerk, requesting entry of (i) an Amended Final Approval Order and (ii)
21 Amended Final Judgment, both reflecting that the additional 50 Gibbs Law Group clients be
22 excluded from the Settlement. For the Court’s convenience, Class Counsel provided a revised
23 version of Exhibit A to the Final Judgment, which contains a list of the Settlement Class
24 Members to be excluded from the Settlement. The revised list is attached hereto as **Exhibit 1** to
25 the concurrently filed Declaration of Shannon Liss-Riordan.

26 On May 18, 2022, the clerk responded to Class Counsel via email, advising Plaintiffs to
27 submit a formal filing requesting the amendment.
28

1 On May 23, 2022, Class Member/Objector Sophia Lopez, who had previously submitted
2 an Objection to the Settlement, filed a Motion to Vacate Judgment. Following submission of
3 that Motion, counsel engaged in intense negotiations and ultimately reached an agreement to
4 resolve the Motion. See Liss-Riordan Decl. ¶ 2. Ms. Lopez has agreed that allowing Settlement
5 Class Members a renewed opportunity to submit claims would address one of her principal
6 concerns with the Settlement, and so she is withdrawing her motion to vacate (and will not
7 appeal the Court’s approval order) so long as the Court approves this agreement. See id. ¶ 3.
8 Under this revised agreement, and given the length of time that has elapsed between the initial
9 Notice period in this Settlement and the date of final approval, and in the interest of maximizing
10 the claim rate so as to benefit the maximum number of Settlement Class Members, Settlement
11 Class Members would receive an additional 30-day period to submit claims to participate in the
12 settlement. See id. ¶ 4. The proposed Notice, which is attached as **Exhibit 2** to Liss-Riordan
13 Decl., informs Settlement Class Members who have not yet submitted claims that they will be
14 given a final additional opportunity to do so. See id. ¶ 5. Class Counsel will cover the cost of
15 this additional notice from the fees previously awarded by the Court so as not to diminish the
16 settlement fund and to maximize the benefit to the Settlement Class. See id. ¶ 6.

17 Counsel have further agreed that Ms. Lopez will receive a service award for her role in
18 negotiating this improvement to the settlement and her counsel will share in the attorneys’ fees
19 previously awarded to Settlement Class Counsel. See id. ¶ 7. This agreement will not affect the
20 total amount of attorneys’ fees awarded and merely concerns the allocation of fees among
21 counsel. See id. ¶ 8. As such, it will not diminish the settlement fund for the Settlement Class.

22 **ARGUMENT**

23 **I. The Court Has Jurisdiction to Amend the Final Approval Order and Final** 24 **Judgment**

25 Under the terms of the Final Judgment entered on May 6, 2022, this Court retains
26 jurisdiction “with respect to all matters related to the administration and consummation of the
27 Settlement, and any and all claims, asserted in, arising out of, or related to the subject matter of
28

1 the lawsuit, including but not limited to all matters related to the Settlement, this Judgment, and
2 the determination of all controversies relating thereto.” See Final Judgment at 1.

3
4 Moreover, pursuant to C.C.P. § 473(d), this Court may correct clerical errors in a
5 judgment. See, e.g., Ames v. Paley (2001) 89 Cal. App. 4th 668, 673–674 (“[B]ecause the trial
6 court intended to enter judgment pursuant to the settlement agreement, to the extent the judgment
7 failed to conform to the terms of the settlement agreement, the trial court retained the inherent
8 power to correct the judgment *nunc pro tunc*”); Russell v. Superior Court (1967) 252 Cal.App.2d
9 1, 8 (clerical error includes correction of that which was agreed to and ordered in open
10 court); Boyd v. Lancaster (1939) 32 Cal.App.2d 574, 579 (*nunc pro tunc* order corrects
11 deficiencies in judgments actually made so to make them conform to the truth). See also
12 Dorland v. Dorland, (1960) 78 Cal.App.2d 664, 670–71 (“Where, as in the instant case, the
13 amendment does not affect substantial rights of the defendant, but consists in the rectifying of a
14 clerical mistake appearing on the face of the record, courts have consistently displayed liberality
15 in permitting amendment. It would be a reproach to the efficiency of our legal system if it did
16 not sensibly provide a summary method by which to correct obvious and formal mistakes...”)
17 (internal quotations and citation omitted).

18 **II. The Court Should Revise the Final Approval Order and Final Judgment to** 19 **Accurately Reflect the Identity of All Opt-Outs**

20 As described above, the current version of the Final Approval Order and Final Judgment
21 contains a clerical error in that it misstates the number of opt-outs and their identities.
22 Accordingly, pursuant to its ability to do so under the Final Judgment and Section 473(d) of the
23 California Code of Civil Procedure, this Court should enter an Amended Final Approval Order
24 reflecting that the total number of Settlement Class Members who submitted valid requests for
25 exclusion is 1,032, rather than 982, as indicated in the current version of the Final Approval
26 Order and enter an Amended Final Judgment reflecting that the total number of Settlement Class
27 Members who submitted valid requests for exclusion is 1,032, rather than 982, as indicated in the
28 current version of the Final Judgment, and incorporating the revised list of excluded individuals
to the Amended Final Judgment.

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III. The Court Should Authorize an Additional 30 Day Notice Period and Approve the Revised Proposed Judgment

Pursuant to their agreement, Plaintiffs request that the Court enter the proposed amended Final Approval Order and Final Judgment. This amended order will authorize the administrator Simpluris to issue a final Notice and allow Settlement Class Members who have not yet participated in the Settlement one last 30-day period in which to submit a Claim.

The amended order will also allow Ms. Lopez to receive a service award of \$5,000 (the same amount awarded to the class representatives in this Settlement) in recognition for her efforts in bringing about this benefit in the form of an additional Notice period to the Settlement Class. Ms. Lopez has devoted significant time to working with her counsel in order to achieve this benefit. See Declaration of Sophia Lopez (describing Ms. Lopez’s work on her Objection, Motion to Vacate, and subsequent negotiations with Class Counsel); see also Declaration of Allen Graves (“Graves Decl.”) ¶¶ 33-34 (same) . Ms. Lopez took on many of the same risks taken on by the Plaintiffs in this matter in making her name public to assert her objection. See Kang v. Wells Fargo Bank, N.A., (N.D. Cal. April 15, 2022), 2022 WL 1128721, at *9 (approving service award for objector who obtained settlement improvements that benefited the class).

The amended order will also allow Ms. Lopez’s counsel to share in the fees awarded to Class Counsel. As noted above, the total fee will not increase and so will not have any impact on class members. The agreement to resolve this dispute will also benefit the class insofar as the appeal would have otherwise led to lengthy delays in settlement payments to class members. In recognition of the significant time and effort that Ms. Lopez and her counsel devoted to the Objection and subsequent Motion to Vacate, and the resulting benefit to the class, both in the form of an extended claims period and the avoidance of delayed payments, the Court should authorize counsel for Ms. Lopez, The Graves Firm, to share in the attorneys’ fees previously awarded to Class Counsel, as other courts have done. See, e.g., Rodriguez v. Disner (Rodriguez II), (9th Cir. 2012) 688 F.3d 645, 658 (recognizing that objector’s counsel is entitled to share in

1 attorneys' fees from common fund); Marshall v. Northrop Grumman Corp., (C.D. Cal. Sept. 18,
2 2020) 2020 WL 5668963, at *3-4 (awarding fees to objector counsel); In re Leapfrog
3 Enterprises, Inc., Securities Litigation, 2008 WL 5000208, *2 (N.D. Cal. 2008). Counsel for Ms.
4 Lopez, Allen Graves, has submitted a Declaration describing his work and time dedicated to this
5 Objection and Motion to Vacate. See Graves Decl. ¶¶ 23-32.

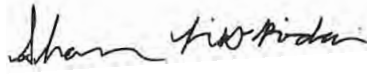
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7 Accordingly, as an additional notice period will confer a benefit to the Settlement Class,
8 the Court should approve this additional opportunity for class members to share in the settlement
9 fund and should enter the proposed revised Final Approval Order and Final Judgment, which
10 have previously been transmitted to the Court by email and are attached as **Exhibits 3 and 4**,
11 respectively, to the Declaration of Shannon Liss-Riordan.

12 CONCLUSION

13 For the foregoing reasons, the Court should enter the proposed agreed-upon Final
14 Approval Order and Final Judgment.

15
16 DATED: July 11, 2022

17 LICHTEN & LISS-RIORDAN, P.C.
18 SHANNON LISS-RIORDAN
19 ANNE KRAMER

20 By: 
21 Shannon Liss-Riordan

22 *Attorneys for Plaintiffs and the Settlement Class*
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