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11 Attorneys for Plaintiff Postmates Inc.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14  
15 Postmates, Inc.,

16 Plaintiff,

17 v.

18 10,356 Individuals,

19 Defendants.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Postmates Inc. (“Postmates”) files this Complaint to enforce its  
2 contractual agreements with independent couriers to resolve disputes through individual  
3 arbitration, free from interference by unconstitutional state laws that impermissibly  
4 target arbitration contracts for unfavorable treatment. Postmates does not seek damages  
5 from Defendants or to discourage independent couriers from pursuing legitimate claims  
6 against Postmates in individual arbitration. Nor does it seek to evade its obligation to  
7 pay arbitration filing fees for properly instituted arbitrations. Rather, Postmates seeks  
8 to forestall abusive litigation tactics by certain plaintiffs’ attorneys who repeatedly file  
9 thousands of arbitration demands at the same time, including on behalf of individuals  
10 who are not actually represented by these attorneys or indisputably have no claims; insist  
11 that millions of dollars in arbitration filing fees be paid up front; and demand that all  
12 arbitrations be administered together and proceed simultaneously—all to use the threat  
13 of massive arbitration filing fees as leverage to extract the highest possible payout from  
14 corporate defendants. Postmates and independent couriers agreed to resolve all disputes  
15 in individual arbitration, and both this de facto class arbitration tactic and newly enacted  
16 California Senate Bill 707 (“SB 707”)—codified at California Code of Civil Procedure  
17 sections 1281.97, 1281.98, and 1281.99—interfere with and undermine the parties’  
18 agreement and the Federal Arbitration Act, 9 U.S.C. §§ 1–16 (“FAA”).

19 Accordingly, Postmates requests declaratory and injunctive relief determining  
20 that any attempt by Defendants—who are 10,356 purported users of the Postmates  
21 platform—to pursue de facto class arbitration against Postmates violates the parties’  
22 agreement to resolve disputes in individual arbitration, and that those purported users  
23 may not enforce SB 707 against Postmates because it is preempted by the FAA and  
24 unconstitutional.

## 25 INTRODUCTION

26 1. Postmates brings this lawsuit to enforce its contractual agreements with  
27 10,356 individuals to resolve disputes in individual arbitration, free from interference by  
28 unconstitutional state laws that impermissibly target arbitration agreements for

1 unfavorable treatment.

2 2. Postmates operates an online and mobile app-based platform, through  
3 which consumers connect with local merchants and (if consumers request delivery)  
4 independent couriers to facilitate the purchase, fulfillment, and (when applicable) local  
5 delivery of purchased products from merchants to consumers.

6 3. Postmates requires each independent courier to execute a contract  
7 governing the parties' relationship before the courier may access the Postmates platform  
8 and begin receiving delivery opportunities.

9 4. That contract, known as the Fleet Agreement, is governed by the FAA and  
10 includes a Mutual Arbitration Provision that requires couriers who do not opt out of the  
11 provision to resolve all disputes with Postmates in *individual* arbitration. The Mutual  
12 Arbitration Provision expressly prohibits class, collective, and representative arbitration  
13 proceedings.

14 5. The Supreme Court has recognized that the "traditional individualized  
15 arbitration" envisioned by Congress when it enacted the FAA offers parties numerous  
16 benefits, "not least the promise of quicker, more informal, and often cheaper resolutions  
17 for everyone involved." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621, 1623 (2018).  
18 As a result, the Supreme Court has repeatedly emphasized that "private arbitration  
19 agreements [must be] enforced according to their terms," *AT&T Mobility LLC v.*  
20 *Concepcion*, 563 U.S. 333, 344 (2011)—"including terms providing for individualized  
21 proceedings," *Epic Sys.*, 138 S. Ct. at 1619.

22 6. Defendants are 10,356 individuals who allege that they used the Postmates  
23 platform to identify delivery opportunities. They contend that they have executed the  
24 Fleet Agreement, that their claims fall within the scope of the Mutual Arbitration  
25 Provision, and that they have been misclassified as independent contractors rather than  
26 employees.

27 7. Rather than resolve their disputes in individual arbitration as required by  
28 the Mutual Arbitration Provision, these individuals initiated, through their purported

1 counsel at Keller Lenkner LLC, a de facto class arbitration against Postmates by  
2 simultaneously filing 10,356 boilerplate arbitration demands with the American  
3 Arbitration Association (“AAA”) on February 15, 2020 (the “AAA Arbitration”).<sup>1</sup>

4 8. The demands are virtually identical, assert generic claims, and seek  
5 identical forms of relief. They provide no individualized information about the work  
6 the individuals purportedly performed while using the Postmates platform.

7 9. Keller Lenkner has insisted—consistent with its prior practice of seeking  
8 to arbitrate thousands of individuals’ claims against Postmates in a de facto class  
9 manner—that all arbitration filing fees be paid up front before any arbitrations may  
10 commence, that all arbitrations be administered together, and that all arbitrations  
11 proceed at the exact same time.<sup>2</sup> And consistent with Keller Lenkner’s demands, the  
12 AAA has collectively assessed over \$4 million in initial administrative filing fees under  
13 its “Group Administrative Filing Fee Schedule” (as opposed to its fee schedule for  
14 individual arbitrations), and otherwise has administered the demands collectively.

15 10. The parties never agreed to arbitrate in this manner, and it is evident that  
16 Keller Lenkner’s strategy is designed solely to extract a ransom-style settlement  
17 regardless of the merits of the underlying demands. Because “arbitration is a matter of  
18 contract,” *AT&T Techs., Inc. v. Comm’s Workers of Am.*, 475 U.S. 643, 648 (1986), the  
19 Court should declare that the pending arbitrations may not be conducted in a de facto  
20 class manner and enjoin the 10,356 individuals from proceeding with the pending AAA  
21 Arbitration.

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22  
23 <sup>1</sup> Postmates uses the phrase “de facto class arbitration” to describe Keller Lenkner’s  
24 scheme because, like class arbitration, Keller Lenkner’s scheme sacrifices the principal  
25 advantages of traditional individual arbitration, and is not the individual arbitration  
envisioned by the FAA or the Fleet Agreement.

26 <sup>2</sup> In fact, Keller Lenkner is attempting to have far more than 10,356 arbitration demands  
27 against Postmates administered collectively. This is the fourth time Keller Lenkner has  
28 filed hundreds or thousands of virtually identical arbitration demands against Postmates  
simultaneously, with the apparent expectation that the demands would be administered  
collectively. Those other simultaneous filings are the subject of other litigation. See  
*Adams v. Postmates Inc.*, No. 3:19-cv-03042 (N.D. Cal.); *Adams v. Postmates Inc.*, No.  
19-17362 (9th Cir.); *McClenon v. Postmates Inc.*, No. 1:19-cv-06415 (N.D. Ill.).

1 11. The Court also should enjoin the 10,356 individuals from enforcing the  
2 newly enacted California Code of Civil Procedure Sections 1281.97, 1281.98, and  
3 1281.99, otherwise known as “SB 707.”

4 12. On February 24, 2020, the AAA assessed initial filing fees against  
5 Postmates, and stated that Postmates’ “portion of [the] filing fees is due on or before  
6 March 16, 2020.” The AAA also stated that “these matters are subject to California  
7 Code of Civil Procedure [Sections] 1281.97 and 1281.98,” and that it would close the  
8 cases if Postmates’ portion of the filing fees is not received by April 15, 2020.

9 13. SB 707 provides that a party who drafts an arbitration agreement places  
10 itself at risk of severe punishment by courts for failing to pay certain fees, irrespective  
11 of the amount of the unpaid fee, the extent of the delay in paying, or the reason for the  
12 failure to pay. SB 707 states that a drafting party’s failure to pay arbitration fees—either  
13 the initial fees or any other fees that come due during arbitration—“within 30 days after  
14 the due date” is “in material breach of the arbitration agreement, is in default of the  
15 arbitration, and waives its right to compel arbitration.” Cal. Code Civ. Proc.  
16 § 1281.97(a).

17 14. SB 707 is preempted by the FAA because it stands as an obstacle to the  
18 FAA’s objectives by directly targeting and discouraging the drafting of arbitration  
19 agreements by engrafting onto arbitration agreements—and no other type of contract—  
20 a highly restrictive and onerous definition of material breach, and then punishing that  
21 breach by mandating default, sanctions, waiver of arbitration, and even contempt of  
22 court without any opportunity to justify the breach or argue its non-materiality.

23 15. SB 707 also violates the United States and California Constitutions’  
24 Contracts Clauses because it substantially impairs the parties’ expectations as to what  
25 constitutes a material breach, and is neither an appropriate nor reasonable way to achieve  
26 a legitimate public purpose. SB 707 is designed to ensure that parties to mandatory  
27 arbitration agreements pay their arbitration filing fees. But by its terms, SB 707 is both  
28 overinclusive and underinclusive. It is overinclusive because it applies to drafting

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