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14 *Proposed Collective Action Members*

15 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
16 **SAN FRANCISCO DIVISION**

17 JACOB McGRATH, on behalf of himself and
all others similarly situated,

18 Plaintiff,

19 vs.

20 DOORDASH, INC.,

21 Defendant.

Case No: 3:19-cv-05279-EMC

**PLAINTIFF’S REQUEST FOR LEAVE
TO FILE SUPPLEMENTAL EXHIBITS IN
SUPPORT OF MOTION FOR
RECONSIDERATION [ECF NO. 200]**

Action Filed: August 23, 2019

Judge: Edward M. Chen
Date: October 29, 2020
Time: N/A
Place: N/A

1 **PLAINTIFF’S REQUEST FOR LEAVE TO FILE SUPPLEMENTAL EXHIBITS IN**
2 **SUPPORT OF MOTION FOR RECONSIDERATION [ECF NO. 200]**

3 Pursuant to Civil. L.R. 7-3(d), Plaintiff hereby seeks leave of the Court to file
4 supplemental Exhibits in Support of Plaintiff’s Motion for Reconsideration (ECF No. 200) (“the
5 Motion”), which are submitted herewith as Exhibits A and B.

6 On November 11, 2020, Plaintiff filed a Motion for Leave to file Motion for
7 Reconsideration of Order Compelling Arbitration (ECF No. 200). The Court granted Plaintiff’s
8 Motion for leave, and deemed it the Motion for Reconsideration. (ECF No. 201).

9 As Plaintiff explains in the Motion, and relevant to this motion, the Court should,
10 respectfully, reconsider its Order granting arbitration because “it failed to consider Plaintiff’s
11 timely-lodged Objection (ECF No. 192), which objects to Defendant’s current arbitration
12 agreement roll-out that took place during this litigation.” (see ECF No. 200 at p. 5, citing to
13 *O’Connor v. Uber Technologies, Inc.*, 2013 WL 6407583, at *7 (N.D. Cal. Dec. 6, 2013) (Chen,
14 J.) (refusing to enforce arbitration agreements which were presented to putative class members
15 during the pendency of an action)). Accordingly, Defendant’s current arbitration agreement
16 administered through CPR should not be enforced in this case. (*Id.*). Furthermore, the Court
17 erred when it failed to consider Plaintiff’s timely-lodged Objection concerning Defendant’s
18 counsel presenting arbitration agreements with class waivers to Opt-In Plaintiffs (which it then
19 sought to enforce against them here), without first conferring with their undersigned counsel.
20 (see ECF No. 200 at p. 3).

21 Notwithstanding Plaintiff’s request in the Motion to invalidate **all** arbitration agreements
22 relevant to the Opt-In Plaintiffs administered through CPR which Defendant impermissibly
23 rolled-out during this litigation, Plaintiff seeks leave to submit two Exhibits which: (1) lists the
24 individuals who were presented with arbitration agreements by Defendant, without notifying the
25 undersigned counsel, despite Defendant’s knowledge of their legal representation (Exhibit A);
26 and (2) which lists the individuals who had yet to opt-into this case, but who were represented by
27

1 the undersigned counsel, and were presented with arbitration agreements by Defendant (Exhibit
2 B).

3 It is Plaintiff's position that Defense counsel had an ethical and legal obligation to confer
4 with the undersigned counsel before presenting the individuals listed in Exhibit A with an
5 arbitration agreement and class waiver. Furthermore, it is Plaintiff's position that had Defense
6 counsel timely conferred with the undersigned regarding its planned arbitration agreement roll-
7 out, Plaintiff's counsel would have had an opportunity to notify Defense counsel of its
8 representation of the individuals listed in Exhibit B.

9 Good cause exists to grant Plaintiff's request. Plaintiff previously notified the Court in his
10 Motion (see ECF 200 at p. 11), that "Plaintiff is currently reviewing Defendant's late filed
11 declaration (ECF No. 187-1) to determine: (1) which Opt-In Plaintiffs have been affected by the
12 arbitration roll out and/or (2) which Opt-In Plaintiffs Defendant had knowledge of their legal
13 representation but nonetheless presented them with a class action waiver without consulting with
14 their undersigned counsel." The purpose was to compile a list of specific examples, as reflected
15 in Exhibits A and B, in support of Plaintiff's Motion so that Plaintiff could present the result of
16 such review in a Motion for Reconsideration. (see ECF No. 200 at p. 4 fn. 3). Indeed, the
17 information reflected in Exhibits A and B is directly relevant to Plaintiff's Motion because it will
18 assist the Court in determining that violations occurred consequent to Defendant's arbitration
19 roll-out. Finally, Plaintiff has no other opportunity to provide this information to the Court, in
20 light of the Clerk's Notice that "there shall be no reply brief or hearing absent further order of the
21 Court." (ECF No. 201).

22 Exhibits A and B are limited to identifying information for the above discussed Opt-In
23 Plaintiffs, which shows when they opted into this case, when they were presented with
24 Defendant's arbitration agreement, and when they retained Plaintiff's counsel.

25 Defendant's counsel has advised Plaintiff's counsel that it opposes his request.

26 DATED: November 25, 2020

1 Respectfully submitted,

2 By: /s/Ricardo J. Prieto
3 Ricardo J. Prieto

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