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11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 TERRELL ABERNATHY, et al.,  
16 *Petitioners,*

17 vs.

18 DOORDASH, INC.,  
19 *Respondent.*

)  
) Case Nos. 3:19-cv-07545  
) 3:19-cv-07646  
)

) **PETITIONERS' [UNREDACTED]**  
) **REPLY IN SUPPORT OF AMENDED**  
) **MOTION TO COMPEL ARBITRATION**

) **Date:** February 10, 2020  
) **Time:** 2:00 p.m.  
) **Judge:** Hon. William H. Alsup  
)

21 \_\_\_\_\_ )  
22 CHRISTINE BOYD, et al.,  
23 *Petitioners,*

24 vs.

25 DOORDASH, INC.,  
26 *Respondent.*  
27 \_\_\_\_\_ )

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## I. INTRODUCTION

1  
2 This motion was filed by 5,789 Petitioners who are asking the Court to put an end to  
3 DoorDash’s refusal to arbitrate as required by the Mutual Arbitration Provision that DoorDash  
4 drafted (the “MAP”).

5 Remarkably, DoorDash’s “opposition” does not dispute any of the elements necessary for  
6 Petitioners to prevail. DoorDash does not dispute that every Petitioner is party to a valid arbitration  
7 agreement with DoorDash. Opp. at 1–2, 14–20, ECF No. 157. And DoorDash does not dispute  
8 that the parties’ disputes fall within the scope of the arbitration agreement (including any threshold  
9 disputes about whether the parties must arbitrate). As DoorDash has repeatedly argued in other  
10 actions, when those two conditions are met, controlling precedent requires that “the agreement  
11 must be enforced without further inquiry.” Keller Decl., Ex. HH, ECF No. 152-34 (emphasis  
12 added). DoorDash cannot ignore the unambiguous rule it has enforced so often simply because it  
13 is now the respondent instead of the petitioner.

14 And if black-letter law were not enough, DoorDash’s counsel represented to this Court that  
15 Petitioners who remain subject to an agreement to arbitrate before AAA have the right to arbitrate  
16 in that forum:

17 The Court: What he has said to me today is enough. If somebody opts out [of the  
18 new CPR agreement, so that they are subject to the AAA agreement], they are going  
19 to be compelled to go to AAA, period. And no gimmicks by DoorDash. . . . That’s  
the way I feel about it. That’s what you said. I’m going to give you a chance now.  
If you want to wiggle off of that, this is your time and place to wiggle. . . .

20 Mr. Fogelman: Your Honor, I have not been known as a wiggler.

21 Keller Decl., Ex. II, Tr. at 50:23–51:7, ECF No. 152-35.

22 The Federal Arbitration Act (“FAA”) requires that DoorDash arbitrate in the manner  
23 specified in its own agreement. 9 U.S.C. § 4. Specifically, as required by the MAP and AAA  
24 Rules, DoorDash must submit to the authority of AAA and comply with AAA’s administrative  
25 determinations regarding filing fees and other requirements to commence arbitration. This Court  
26 also should order DoorDash to pay Petitioners’ costs and attorneys’ fees regardless of the outcome  
27 of the arbitrations, as required by California Code of Civil Procedure § 1281.97. In an attempt to  
28 avoid the plain consequences of its breach, DoorDash incorrectly argues that applying § 1281.97

1 in this case would be impermissibly retroactive. But Petitioners do not seek retroactive  
2 application. DoorDash’s continuing refusal to arbitrate means it has violated § 1281.97 after that  
3 provision took effect on January 1, 2020. DoorDash fares no better when it argues that § 1281.97  
4 is preempted by the FAA, as the FAA preempts only laws that prevent agreements to arbitrate  
5 from being “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. Section 1281.97 obviously does  
6 not prevent the MAP from being “valid, irrevocable, and enforceable.” To the contrary, it upholds  
7 the enforceability of the MAP and furthers the policies of the FAA.

8 Bereft of substantive arguments, DoorDash resorts to baseless and irrelevant attacks on  
9 Petitioners’ counsel. Those attacks are false and unprofessional.

10 DoorDash “question[s] whether Keller Lenkner actually represents each” Petitioner. Opp.  
11 at 15. But as officers of this Court, Keller Lenkner attorneys have submitted sworn declarations  
12 attesting that each Petitioner signed an engagement agreement with the firm. *See* Keller Decl. ¶ 1,  
13 ECF No. 152; Reddish Decl. ¶ 1, ECF No. 153. Moreover, counsel long ago offered to share  
14 redacted engagement agreements of DoorDash’s choosing with DoorDash, or unredacted versions  
15 with a mediator (to preserve confidentiality). *See* Postman Decl. ¶ 4, *id.*, Ex. A. Rather than accept  
16 that offer and confirm that Keller Lenkner is telling the truth, DoorDash chose willful blindness,  
17 and it continues to accuse Keller Lenkner of perjury and fraud. *Id.* But attorneys may not submit  
18 filings to the Court unless, “after an inquiry reasonable under the circumstances,” “the factual  
19 contentions [therein] have evidentiary support.” FED. R. CIV. P. 11(b)(3). Keller Lenkner offered  
20 DoorDash’s counsel the opportunity to conduct a reasonable inquiry. Refusing that offer is not a  
21 basis to launch reckless accusations.

22 Stooping to lower depths, DoorDash asserts that the engagement agreements between  
23 counsel and Petitioners violate applicable ethical rules, even though DoorDash has never seen  
24 those agreements (and devoted other portions of its opposition to claiming that the agreements do  
25 not exist). Even if Petitioners were the victims of an unethical engagement agreement—and they  
26 certainly are not—that is no basis to deny them their contractual right to arbitrate.

27 DoorDash and its counsel cast more irrelevant aspersions by claiming that Petitioners’  
28 counsel are using the costs of individual arbitration to force DoorDash into a settlement, and that

1 AAA is depriving DoorDash of due process. Those assertions ignore that DoorDash chose to  
 2 prohibit Petitioners from participating in a class action, requiring them instead to pursue their  
 3 claims only in individual arbitrations before AAA. DoorDash knew full well the fees, costs, and  
 4 rules associated with the arbitral forum it selected. And AAA has applied those fees and rules  
 5 fairly and impartially. If DoorDash does not like the position it is in, it has only itself to blame.

6 Finally, DoorDash has the gall to assert that, “[f]rom day one, all [it] has wanted is an  
 7 orderly approach to vetting and arbitrating thousands of claims before it is forced to pay millions  
 8 of dollars in nonrefundable fees,” and to ask the Court to delay Petitioners’ right to arbitrate  
 9 indefinitely while DoorDash’s “investigation continues.” Opp. at 2–3. Beginning in May 2019,  
 10 Petitioners’ counsel repeatedly urged DoorDash to participate in a meet-and-confer process to  
 11 identify any Petitioners whom DoorDash believed could not proceed with arbitration. DoorDash  
 12 refused. *See* Keller Decl. ¶¶ 39, 40, ECF No. 152; *id.* Exs. X–Y, ECF Nos. 152-24–152-25. After  
 13 Petitioners filed their demands with AAA, DoorDash never asked AAA for “an orderly approach  
 14 to vetting” Petitioners claims. And when AAA invited DoorDash to raise any arguments  
 15 contesting the validity of Petitioners’ demands, DoorDash expressly refused. *See* Keller Decl.,  
 16 Exs. N–O, ECF Nos. 152-14–152-15. To suggest that DoorDash ever tried to engage in “an orderly  
 17 approach to vetting and arbitrating thousands of claims” cannot be reconciled with the record.

18 The application of controlling precedent to the undisputed facts allows only one result in  
 19 this case: the Court should compel arbitration and put an end to DoorDash’s attempts to wiggle  
 20 out of its contractual and statutory obligations to arbitrate.

## 21 II. ARGUMENT

### 22 A. DoorDash Does Not Dispute That It Breached Its Agreement to Arbitrate With 23 Regard to Every Petitioner.

24 DoorDash does not dispute any of the facts or law that establish its breach of contract,  
 25 including that every Petitioner is party to the MAP. *See* Opp. at 1–2, 14–20. And although  
 26 DoorDash’s counsel told this Court that Petitioners had not provided DoorDash with information  
 27 sufficient to identify Petitioners and their applicable arbitration agreements, DoorDash does not  
 28 dispute Petitioners’ proof that its statements to the Court were false. *See* Am. Mot. at 12–13, ECF

1 No. 151 (describing that Petitioners provided email addresses to DoorDash months ago that, once  
2 DoorDash finally searched, allowed it quickly to locate 96% of Petitioners).<sup>1</sup>

3 DoorDash also agrees that every dispute between Petitioners and DoorDash in this case  
4 must be submitted to an arbitrator and cannot be resolved by this Court. Petitioners'  
5 misclassification claims must be submitted to individual arbitrators. Am. Pet., Ex. E § XI.1.3,  
6 ECF No. 150-5. DoorDash's meritless complaints about the adequacy of Petitioners' demands  
7 must be submitted to individual arbitrators. *Id.* § XI.3. And DoorDash's disputes about the  
8 fairness of the AAA process and AAA fees must be submitted to AAA and individual arbitrators.  
9 *See* AAA Commercial Rule 8 (incorporated into the MAP by reference, Am. Pet., Ex. E § 5, ECF  
10 No. 150-5) (Once an individual arbitrator is appointed, "[t]he arbitrator shall interpret and apply  
11 the[] rules insofar as they relate to the arbitrator's powers and duties," and before an individual  
12 arbitrator has been appointed, or where a rule does not involve the "arbitrator's powers and duties,"  
13 the rules "shall be interpreted and applied by the AAA."). In short, any arguments about whether  
14 DoorDash must arbitrate or what fees it must pay to arbitrate are disputes DoorDash must submit  
15 to arbitration. *See Henry Schein, Inc. v. Archer and White Sales, Inc.*, 139 S. Ct. 524, 530 (2019)  
16 ("Just as a court may not decide a merits question that the parties have delegated to an arbitrator,  
17 a court may not decide an arbitrability question that the parties have delegated to an arbitrator.".)  
18 DoorDash has an unambiguous obligation to proceed to arbitration with each Petitioner.

19 DoorDash's failure to meet AAA's final fee deadline caused AAA to refuse to administer  
20 Petitioners' arbitration. Am. Mot. at 10. Under controlling precedent, that default is a breach of  
21 DoorDash's duty to arbitrate. *See Brown v. Dillard's, Inc.*, 430 F.3d 1004, 1010–13 (9th Cir.

22  
23 <sup>1</sup> DoorDash complains that 869 Petitioners submitted witness statements that did not provide all  
24 the information the Court requested. It then cites cases holding that a court should not compel  
25 arbitration if a party has not established the existence of a valid agreement to arbitrate. Opp at 17–  
26 18. But the 869 witness statements do establish that their signatories are party to a valid agreement  
27 by establishing they drove for DoorDash. And discovery from DoorDash has confirmed that the  
28 witness statements are accurate: each signatory is a Dasher and thereby a party to the MAP. Keller  
Decl. ¶ 41, ECF No. 151; Reddish Decl. ¶ 6, ECF No. 152. The only reason the existence of an  
arbitration agreement was ever in dispute was because DoorDash incorrectly told the Court that  
Petitioners had not provided DoorDash with information DoorDash could use to find their accounts  
and agreements in its system. Now that DoorDash has searched its files using the information it  
already had in its possession, there is no dispute that each of the 869 Petitioners at issue have a  
valid agreement to arbitrate.



1 2005) (party’s failure to pay filing fees required by arbitral forum by forum’s final deadline is  
 2 breach of arbitration agreement); *Sink v. Aden Enters., Inc.*, 352 F.3d 1197, 1199–1200 (9th Cir.  
 3 2003) (same). DoorDash’s opposition does not even attempt to address these authorities, let alone  
 4 explain how DoorDash’s default at AAA was anything but a breach of the MAP.

5 **B. This Court Should Remedy DoorDash’s Breach by Compelling DoorDash to**  
 6 **Arbitrate and Pay Petitioners’ Costs and Fees.**

7 Federal law and California law impose congruent, mutually enforceable remedies for  
 8 DoorDash’s breach.

9 **1. The FAA Requires That DoorDash Be Compelled to Arbitrate Without Delay.**

10 Because DoorDash does not dispute that Petitioners are parties to a valid agreement that  
 11 covers their disputes, the FAA thus requires this Court to compel arbitration. *Howsam v. Dean*  
 12 *Witter Reynolds, Inc.*, 537 U.S. 79, 83–84 (2002); *Fordjour v. Washington Mut. Bank*, No. 07-cv-  
 13 1446-MMC (PR), 2008 WL 295092, at \*1 (N.D. Cal. Feb. 1, 2008) (“The terms of the FAA do  
 14 not allow a district court to exercise its discretion when faced with such a request; rather, the court  
 15 is required to direct the parties to proceed to arbitration on issues as to which an arbitration  
 16 agreement has been signed.”). The FAA further requires that arbitration be compelled on an  
 17 expedited basis. *Bushley v. Credit Suisse First Bos.*, 360 F.3d 1149, 1153 (9th Cir. 2004) (the  
 18 FAA is meant “to move the parties to an arbitrable dispute out of court and into arbitration as  
 19 quickly and easily as possible”) (internal quotation marks omitted). DoorDash has eloquently  
 20 summarized the simple task before this Court:

21 In such cases, as here, the court only asks (1) whether the parties entered into a  
 22 valid arbitration agreement and, if so, (2) whether the agreement contains a valid  
 23 delegation clause. If so, the agreement must be enforced without further inquiry.

24 Keller Decl., Ex. HH, ECF No. 152-34 (emphases added).

25 In view of the MAP’s unambiguous delegation clause, it is unsurprising that DoorDash’s  
 26 opposition does not bother to make the arguments it previously previewed to the Court: that it had  
 27 “a valid defense” to arbitration because Petitioners had not included an amount in controversy in  
 28 their demands or provided information that allowed DoorDash to identify the applicable arbitration  
 agreement. *Id.*, Ex. II, Tr. at 27:24–25; 31:08–09, ECF No. 152-35. DoorDash’s opposition does

1 not dispute that whether Petitioners’ demands comply with AAA rules is a matter for AAA and  
2 individual arbitrators, not this Court. Am. Mot. at 2, 18–19. And DoorDash does not dispute that  
3 AAA made an administrative determination—one that is conclusive in this Court—that Petitioners  
4 met the filing requirements to proceed with individual arbitrations. Keller Decl. ¶¶ 17–18, ECF  
5 No. 152. That DoorDash does not like the decisions of its chosen arbitral forum does not entitle it  
6 to ask this Court to assume the role the MAP expressly assigns to AAA.<sup>2</sup>

7 DoorDash’s counsel told this Court that the supposed deficiencies in Petitioners’ demands  
8 were the only reasons DoorDash did not arbitrate. *Id.*, Ex. II, Tr. at 39:21–40:25, ECF No. 152-  
9 35 (“They filed claims all at once without any arbitration agreements, without identifying what  
10 their claim is, and without identifying what the amount in controversy is . . . . [i]f they had [met  
11 the above requirements], they would have been arbitrating right now.”); *id.* at 31:05–10 (“All the  
12 client was asking for is that they comply with the AAA rules, which are very minimal. You attach  
13 an agreement to arbitrate. You identify what your claim is. And you identify what the amount in  
14 controversy is.” (emphasis added)). Indeed, DoorDash’s counsel assured the Court it would not  
15 “wiggle off” the promise to arbitrate at AAA with Petitioners who remain subject to AAA  
16 arbitration. *Id.* at 50:23–51:07. Although Petitioners disagree with DoorDash’s claim that  
17 Petitioners’ arbitration demands were deficient—and AAA ruled that they were sufficient—it is  
18 now undisputed that DoorDash was required to submit those objections to AAA and individual  
19 arbitrators. DoorDash’s complaints were no basis for it to refuse to arbitrate.

20 DoorDash also has given up on its ill-conceived attempt to force Petitioners to arbitrate at  
21 CPR instead of AAA. DoorDash previously insisted that it reserved the right to oppose Petitioners’  
22 motion to compel on the ground that some Petitioners should have to file demands with CPR.

---

23 <sup>2</sup> DoorDash also does not dispute that Petitioners long ago provided the identifying information  
24 that allowed DoorDash to locate the applicable arbitration agreement and the Dasher’s driving data  
25 for evaluating potential damages, Am. Mot. at 2, 4, 12–13, and that its counsel’s prior  
26 representations to the contrary were not accurate, *id.* at 12–13. It is also clear that DoorDash’s  
27 purported reason for needing the amount in controversy was a farce. DoorDash claimed that it  
28 needed this information so that it could decide whether it would make a settlement offer instead of  
proceeding in arbitration. Opp. at 6. But DoorDash already had the information needed to access  
each Petitioner’s driving history and pay records. Indeed, the 250 demands for arbitration that  
DoorDash paid for had the exact same categories of information as the demands at issue here, and  
DoorDash was able to calculate a settlement offer that it made to each of those claimants. Postman  
Decl. ¶ 9.

1 Postman Decl., Ex. D, Tr. at 6:19–8:22. But after this Court required CPR to provide discovery,  
 2 Petitioners obtained proof of what they suspected: CPR’s mass employment protocol was created  
 3 at DoorDash’s request and in direct response to Petitioners’ claims; DoorDash was intimately  
 4 involved in reviewing and editing the protocol; CPR would not launch the new protocol without  
 5 DoorDash’s signoff on the rules and payment terms; and there is no evidence that any other party  
 6 have a comparable level of involvement in reviewing and editing the protocol.<sup>3</sup> *See generally*  
 7 Zigler Decl. Perhaps as a result of this damning history, DoorDash now says it “is not seeking to  
 8 force any of the Petitioners in this case to use CPR.” Opp. at 3.<sup>4</sup>

9 DoorDash also cannot stall arbitration with Petitioners by pointing to alleged deficiencies  
 10 in the demands of non-parties to this Motion. DoorDash asserts that, because these other claimants  
 11 continue to confer with DoorDash to help it identify them in its records, they have conceded that  
 12 their arbitration demands were “frivolous.” Opp. at 14. That spin does not withstand scrutiny.  
 13 The non-party claimants do not concede that their claims are frivolous. They continue to dispute  
 14 DoorDash’s position, and counsel continues to press DoorDash to explain the numerous errors it  
 15 has made when searching its records. *See* Postman Decl., Ex. C (identifying individuals who  
 16 provided additional proof that they had worked for DoorDash, after DoorDash claimed they never  
 17 had); *see also* Opp. at 11–12 (DoorDash admitting that it has found at least 37 non-parties in its

18 <sup>3</sup> Discovery further confirms that it was DoorDash’s counsel who was behind the decision to send  
 19 the new, CPR arbitration agreement to Petitioners—in circumvention of their counsel and thus in  
 20 clear violation of California Rule of Professional Conduct 4.2. *See S.F. Unified Sch. Dist. ex rel.*  
 21 *Contreras v. First Student, Inc.*, 213 Cal. App. 4th 1212, 1236 (2013) (“[A]n attorney crosses the  
 22 line in advising a client about such communications [with a represented party] when the attorney  
 prepares binding legal documents that the client plans to ask the opposing party to sign.”); ABA  
 Formal Op. 11-461 (an attorney violates the rule by “assisting the client in securing from the  
 represented person an enforceable obligation . . . without the opportunity to seek the advice of  
 counsel.”).

23 <sup>4</sup> DoorDash tries to hedge its concession by suggesting that it may attempt to invoke the CPR  
 24 agreement against Petitioners in the future. Opp. at 20 n.7. But DoorDash cannot save arguments  
 25 for later when it is capable of making them now. DoorDash has all the facts it would need to  
 26 invoke the CPR agreement against Petitioners whom it believes should be bound by it.  
 DoorDash’s own records confirm which Petitioners were forced to sign the CPR agreement to  
 27 work, which submitted an opt-out form within 30 days, and which did not. Indeed, using  
 DoorDash’s data, Petitioners have identified for the Court which Petitioners belong in which  
 28 category. Reddish Decl., Exs. A–C, ECF Nos. 153-1–153-3. DoorDash made a tactical decision  
 not to rely on the CPR agreement when opposing Petitioners’ motion to compel. It cannot wait to  
 see how the Court decides the motion and then trot out unused material as another ground for  
 obstruction and delay.

1 records using information they provided after it originally could not locate Dasher accounts for  
2 them). That DoorDash does not have an accurate or efficient method of searching its own records  
3 says nothing about the non-parties' claims. And that counsel has deferred pursuing a motion to  
4 compel arbitration for a small number of claimants whose status DoorDash disputes only confirms  
5 that counsel have always been willing to address these issues in a professional manner, and have  
6 never rushed to arbitrate on behalf of individuals when DoorDash articulates a credible basis that  
7 arbitration should not occur. *See, e.g.*, Keller Decl. ¶¶ 39, 40, ECF No. 152; *id.* Exs. X–Y, ECF  
8 Nos. 152-24–152-25. In all events, the status of claims brought by non-parties who share the same  
9 counsel as Petitioners has no relevance to Petitioners' right to arbitrate. Each Petitioner has a  
10 separate right to proceed with arbitration and asks this Court to enforce that right in his or her  
11 individual capacity. Every Petitioner who establishes a right to compel arbitration is entitled to  
12 relief on the merits of his or her own claim.

13 Finally, DoorDash cannot ask this Court to withhold the relief to which Petitioners are  
14 entitled simply because it wants to further delay Petitioners' arbitrations. *See* Opp. at 21.  
15 Petitioners will address DoorDash's stay request in their opposition. It is sufficient here to note  
16 that DoorDash's requests for continued delay are incompatible with the central purpose of  
17 arbitration. *See In re Cintas Corp. Overtime Pay Arbitration Litig.*, No. C-06-1781-SBA, 2009  
18 WL 1766595, at \*5 (N.D. Cal. June 22, 2009) (declining to stay arbitration because it would be  
19 "antithetical to the spirit and intent of the arbitration process").

20 **2. California Code of Civil Procedure § 1281.97 Requires That DoorDash Be**  
21 **Compelled to Arbitration in Which It Pays All Costs and Fees.**

22 DoorDash does not dispute that California Code of Civil Procedure § 1281.97 means what  
23 it says: "[I]f the fees or costs to initiate an arbitration proceeding are not paid within 30 days after  
24 the due date, the drafting party is in material breach of the arbitration agreement." And DoorDash  
25 does not dispute that where a party is in breach, § 1281.97 requires that it be ordered to arbitrate  
26 and pay the moving party's fees and costs in arbitration, regardless of the arbitration's outcome.  
27 DoorDash claims only that § 1281.97 is inapplicable because (1) it took effect on January 1, 2020,  
28 and cannot be applied retroactively, and (2) it is preempted by the FAA. Opp. at 22–25. Both

1 arguments lack merit.

2 Petitioners do not seek retroactive application of § 1281.97, but instead ask the Court to  
3 apply § 1281.97 to remedy DoorDash’s continuing breach. California law is clear that “a statute  
4 does not operate retroactively merely because some of the facts or conditions upon which its  
5 application depends came into existence prior to its enactment.” *Sitzman v. City Bd. of Ed. of City*  
6 *of Eureka*, 389 P.2d 719, 720 (Cal. 1964). Indeed, in a highly analogous case, the California  
7 Supreme Court held that modifying a preexisting and continuing legal obligation does not trigger  
8 the rule against retroactivity. *See Eichelberger v. City of Berkeley*, 293 P.2d 1, 2–5 (Cal. 1956)  
9 (statute that increased pension benefits of persons who retired prior to its effective date was not  
10 operating “retroactively” because there was a continuing obligation to make retirement payments).

11 Ultimately, determining whether a statute operates retroactively reflects a “judgment  
12 concerning the nature and extent of the change in the law and the degree of connection between  
13 the operation of the new rule and a relevant past event,” which should be guided by “familiar  
14 considerations of fair notice, reasonable reliance, and settled expectations.” *In re E.J.*, 223 P.3d  
15 31, 40–43 (Cal. 2010) (citing *Landgraf v. USI Film Products*, 511 U.S. 244, 268 (1994)). These  
16 considerations confirm that DoorDash has no basis to complain about the application of § 1281.97.  
17 DoorDash has a continuing obligation to comply with its contractual commitment to arbitrate. The  
18 company is represented by sophisticated counsel who surely were aware that the consequences of  
19 continuing to breach the MAP would change beginning January 1, 2020. And Petitioners  
20 highlighted the consequences in their motion to compel on December 23, 2019. DoorDash could  
21 have ceased its continuing violation of the MAP before January 1, 2020. And DoorDash has no  
22 basis to claim “reasonable reliance” on its ability to continue to flout its contractual obligations  
23 past that date. Had DoorDash breached its obligation to pay filing fees on November 9, 2019, but  
24 satisfied its obligation by December 31, 2019, § 1281.97 would not apply. But DoorDash  
25 continued its breach after January 1, 2020, and it should face the consequences of its choice.

26 DoorDash also cannot use preemption to evade § 1281.97. The FAA does not “reflect a  
27 congressional intent to occupy the entire field of arbitration.” *Volt Info. Scis., Inc. v. Bd. of*  
28 *Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 477 (1989). Rather, the preemptive effect

1 of the FAA flows from the statute’s command that a written agreement to arbitrate “shall be valid,  
2 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation  
3 of any contract.” 9 U.S.C. § 2. State statutes that prevent arbitration agreements from being “valid,  
4 irrevocable, and enforceable” conflict with, and are preempted by, the FAA unless they fall within  
5 the so-called “saving clause” in Section 2. *See Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d  
6 425, 431–32 (9th Cir. 2015). The saving clause allows state laws to render arbitration agreements  
7 invalid so long as they apply equally to “any contract”—in other words, so long as they are not  
8 uniquely hostile to arbitration. *See id.* at 431–40.

9 Section 1281.97 does not even plausibly prevent any arbitration agreement from being  
10 “valid, irrevocable, and enforceable.” To the contrary, its whole purpose is to ensure that  
11 agreements to arbitrate are enforced. Thus, there is no conflict between § 1281.97 and the FAA,  
12 and no cause to analyze whether § 1281.97 fits within the “saving clause.” Stated differently, the  
13 FAA says nothing about state laws unless they render an agreement to arbitrate invalid, revocable,  
14 or unenforceable. Indeed, the cases DoorDash cites to describe the preemptive effect of the FAA  
15 involved a state law that prevented an agreement to arbitrate from being “valid, irrevocable, and  
16 enforceable.” *See Kindred Nursing Ctrs. Ltd P’ship v. Clark*, 137 S. Ct. 1421, 1424–25 (2017)  
17 (holding that FAA preempted Kentucky rule that invalidated arbitration provision); *Marmet Health*  
18 *Care Ctr., Inc. v. Brown*, 565 U.S. 530, 530–31 (2012) (holding that FAA preempted West Virginia  
19 rule that invalidated arbitration agreements that applied to certain claims); *AT&T Mobility LLC v.*  
20 *Concepcion*, 563 U.S. 333, 352 (2011) (holding that FAA preempted California’s *Discover Bank*  
21 rule that invalidated arbitration provision); *Doctor’s Assocs., Inc. v. Casaratto*, 517 U.S. 681, 687–  
22 89 (1996) (holding that FAA preempted Montana statute that invalidated arbitration agreements  
23 that failed to provide sufficient notice of the arbitration provision).

24 Even if one ignored the text of the FAA, it is absurd to suggest that a statute that promotes  
25 compliance with arbitration agreements is hostile to their enforcement or stands as an obstacle to  
26 the FAA’s objectives.<sup>5</sup> For instance, many states have analogs to Sections 4 of the FAA. *E.g.* Cal.

27 <sup>5</sup> DoorDash also cannot argue that § 1281.97 is inconsistent with the MAP. The MAP does not  
28 purport to limit remedies that otherwise would be available to the parties; to the contrary, the MAP  
incorporates AAA rules, which in turn require that Petitioners have access to all available  
remedies. *See* Employment Due Process Protocol (stating that AAA will administer an

1 Civ. Proc. Code. § 1281.2. Yet no court has ever held that a state that makes it even easier than  
2 the FAA to grant a motion to compel has somehow undermined the strong federal policy favoring  
3 arbitration. DoorDash’s assertion that the California Legislature intended to aggressively enforce  
4 arbitration agreements in order to deter the use of such agreements is unsupported and implausible.  
5 DoorDash points to no evidence to support this claim, and the Legislature would have had no  
6 reason to think § 1281.97 would deter adoption of arbitration agreements unless most parties who  
7 adopt arbitration agreements do so with the intention of later violating them. Tortured speculation  
8 does not satisfy DoorDash’s burden to establish that a validly enacted state law is preempted. *See*  
9 *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 649 (9th Cir. 2014) (“Defendants, who bear the  
10 burden of proof in establishing the affirmative defense of preemption, submitted no evidence to  
11 show that the break laws in fact would decrease the availability of routes . . .”).

12 **C. DoorDash’s Claim That Petitioners Have Not Retained Counsel Is False, and Does**  
13 **Not Have Evidentiary Support Based on Reasonable Inquiry.**

14 With no legal argument for why Petitioners’ motion to compel should be denied, DoorDash  
15 resorts to reckless and unprofessional attacks on Petitioners’ counsel. Although these attacks need  
16 not be dignified with extended analysis, they cannot go unanswered.

17 First, DoorDash suggests that Petitioners’ counsel have committed fraud on this Court and  
18 perjury by representing that they have been engaged by Petitioners to bring these claims. *See* Opp.  
19 at 16–17. That is a grave charge for which one should expect an officer of this Court to have at  
20 least some basis. Yet DoorDash points to no evidence that is probative of this point. Instead,  
21 DoorDash breathlessly notes that Petitioners—like DoorDash itself—appear to have retained  
22 multiple law firms. *See id.*<sup>6</sup> Dual representations are a feature of almost every mass action, and  
23 they naturally occur when a defendant has imposed widespread harm on hundreds of thousands of  
24 people and required them to retain counsel individually rather than be represented in a class.

25 employment arbitration only if the arbitrator is “empowered to award whatever relief would be  
26 available in court under the law”), *available at* [https://www.adr.org/sites/default/files/](https://www.adr.org/sites/default/files/document_repository/Employment%20Due%20Process%20Protocol_0.pdf)  
[document\\_repository/Employment%20Due%20Process%20Protocol\\_0.pdf](https://www.adr.org/sites/default/files/document_repository/Employment%20Due%20Process%20Protocol_0.pdf).

27 <sup>6</sup> Troxel Law, LLP is Keller Lenkner’s co-counsel. Postman Decl. ¶ 13. Pioneer Town Media is  
28 a company that manages advertising for Troxel Law, LLP. *Id.* There is nothing sinister about  
having co-counsel, or about a vendor sending engagement agreements on behalf of counsel using  
a DocuSign account registered in the vendor’s name.

1 DoorDash also analyzes Petitioners’ declarations—and the corresponding certificates of  
2 completion for the signatures on those declarations—and argues that they do not establish the  
3 existence of an engagement agreement with counsel. But the declarations were not created or  
4 submitted for the purpose of establishing Keller Lenkner’s engagements with Petitioners, so their  
5 silence on that matter is irrelevant. Petitioners’ declarations respond to the Court’s direction to  
6 describe Petitioners’ relationship with DoorDash; they do not say anything about Petitioners’  
7 relationship with their counsel.<sup>7</sup>

8 Finally, DoorDash submits the declaration of an “expert” witness who concludes that “it  
9 does not appear that Keller Lenkner represents all persons they purport to represent.” ECF No.  
10 157–1 at 7 (capitalization removed). That is a false assertion of fact, not an opinion. Mr. Zitrin  
11 has no expertise or knowledge regarding the factual question of whether Petitioners signed  
12 engagement agreements with undersigned counsel. His declaration is not admissible expert  
13 testimony. *See* FED. R. EVID. 702(b); *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*,  
14 509 U.S. 209, 242 (1993) (an expert opinion must be supported “by sufficient facts to validate it  
15 in the eyes of the law.”).

16 DoorDash’s assertions are particularly reckless given that Petitioners’ counsel offered to  
17 let DoorDash choose a sample of its engagement agreements to review, or to show its agreements  
18 to a neutral mediator who would confirm that Keller Lenkner had been engaged by its clients  
19 without breaching confidentiality. Postman Decl. ¶ 4; *id.*, Ex. A. DoorDash’s counsel never  
20 engaged in any good-faith attempt to resolve the issue. An “inquiry reasonable under the  
21 circumstances” required DoorDash to take Keller Lenkner’s offer of proof before leveling such  
22 serious accusations of misconduct. *See* FED. R. CIV. P. 11.<sup>8</sup>

23 <sup>7</sup> Tellingly, when DoorDash asked counsel to share the certificates of completion, the proffered  
24 reason was to ensure that the signatures were authentic. Postman Decl. ¶ 12, *id.*, Ex. B. Although  
25 counsel pointed out that DoorDash had no basis to suggest that the declarations were fabricated,  
26 they agreed to share a sample of 400 certificates because they have nothing to hide. *Id.* Now that  
DoorDash has reviewed the certificates and cannot dispute that each signature is authentic, it is  
reduced to the even more implausible claim that Petitioners provided Keller Lenkner with an  
authentic declaration but nonetheless are not represented by Keller Lenkner.

27 <sup>8</sup> Similarly, counsel offered to provide declarations for every Petitioner to the Court and DoorDash  
28 in the same form as ECF No. 5-2, which states under penalty of perjury that the Petitioner retained  
Keller Lenkner to represent him or her in arbitration against DoorDash. *See* Keller Decl., Ex. II,  
Tr. at 21:10–15, ECF No. 152-35 (“We have every witness statement in a box. If DoorDash or



1 **D. DoorDash’s Attacks on Counsel Are Baseless and Irrelevant.**

2 DoorDash’s remaining attacks on Keller Lenkner are not only wholly unsupported, but also  
3 legally irrelevant.

4 DoorDash repeatedly asserts that Petitioners’ counsel filed Petitioners’ claims with no  
5 intention of litigating them, and instead intend only to use the pressure of AAA filing fees to force  
6 DoorDash into a settlement. DoorDash offers no evidence to support that assertion, because none  
7 exists. Counsel have devoted extensive resources to litigating Petitioners’ claims and will continue  
8 to do so. *See* Keller Decl., Ex. II, Tr. at 7:01–04, ECF No. 152-35. That DoorDash faces  
9 significant costs reflects the company’s choice to engage in widespread misclassification and  
10 require that its couriers bring every claim individually instead of in a class action. DoorDash’s  
11 complaint thus reduces to a claim that Petitioners’ counsel are representing too many Dashers at  
12 once, and that as a result, the Court should conclude that they are acting unfairly and unethically.  
13 Another court in this District rightly rejected the same argument from the same counsel on behalf  
14 of Postmates. *See* Keller Decl. ¶ 48, Ex. DD, Order Compelling Arbitration at 7, *Adams v.*  
15 *Postmates Inc.*, No. 4:19-cv-03042-SBA (N.D. Cal. Oct. 22, 2019), ECF No. 152-30 (noting that  
16 although “Postmates expends considerable energy accusing Petitioners of using the cost of the  
17 arbitration process as a means of coercing Postmates into settling their claims expeditiously,” “the  
18 possibility that Postmates may now be required to submit a sizeable arbitration fee in response to  
19 each individual arbitration demand is a direct result of the mandatory arbitration clause and class  
20 action waiver that Postmates has imposed upon each of its couriers”).

21 Retired Judge Shira Scheindlin—who now oversees the CPR Employment-Related Mass  
22 Claims Protocol that DoorDash attempted to foist on Petitioners—recognized this point as well, in  
23 response to questions about DoorDash’s assertions in this very case:

24 The judge said she believes workers who file arbitration demands en masse are only  
25 following the rules imposed upon them by employers, who are, in turn, capitalizing  
26 on U.S. Supreme Court decisions endorsing arbitration. Scheindlin said she is  
27 aware that some employers and defense firms claim that plaintiffs’ lawyers are  
28 abusing the system, filing unwarranted claims to pressure companies with millions  
of dollars in filing fees. But it is defendants, she said, that made the rules.

29 \_\_\_\_\_  
Your Honor would like me to, we can file them electronically. We can give physical copies.”).  
DoorDash never took counsel up on that offer, either. Postman Decl. ¶ 11.

1 “The situation that’s been created really leaves a plaintiff with no other choice,”  
 2 she said. “The choice is to abandon your claim or bring it one by one in arbitration.  
 3 I’d like to hear from (employers) what they think the third choice is ... You made  
 4 this bed, now you have to sleep in it.”<sup>9</sup>

5 DoorDash also attempts to argue that it is unreasonable for Petitioners to insist on  
 6 arbitration at AAA because AAA has had difficulty processing even 250 arbitrations. Once again,  
 7 that assertion is misleading and irrelevant. At every turn, it is DoorDash that has attempted to stall  
 8 the process. *See generally*, Griffin Decl.<sup>10</sup> But more fundamentally, DoorDash’s repeated  
 9 suggestions that AAA cannot handle these arbitrations and that its “due process” rights are being  
 10 violated, *see* Opp. at 1, 3, 4, 16, 18, ignore that DoorDash drafted the contract and designated AAA  
 11 as its arbitration forum of choice. The AAA rules and fee schedule were available for DoorDash’s  
 12 review before it incorporated them into its MAP, and the fee schedule states on its face that an  
 13 individual filing fee is required from the respondent as soon as the claimant meets his or her filing  
 14 requirements. *See* Employment/Workplace Fee Schedule at 2 (“The employer or company’s share  
 15 of the filing fees is due as soon as the employee or individual meets his or her filing requirements,  
 16 even if the matter settles.”), available at [https://www.adr.org/sites/default/files/  
 17 Employment\\_Fee\\_Schedule1Nov19\\_0.pdf](https://www.adr.org/sites/default/files/Employment_Fee_Schedule1Nov19_0.pdf). AAA has applied its rules and fee schedule to the  
 18 letter. That DoorDash regrets its choice of arbitral forum does not permit it to refuse to arbitrate.

19 More remarkable still, DoorDash asserts that Keller Lenkner knowingly filed thousands of  
 20 arbitrations after AAA demonstrated it was unable to process 250:

21 Despite the fact that AAA had struggled to make progress on the initial 250  
arbitrations, Keller Lenkner began filing thousands of additional arbitration  
 22 demands with AAA. On August 26, Keller Lenkner filed 2,250 identical demands,

23 <sup>9</sup> Alison Frankel, Ex-Judge Atop Controversial Mass Arbitration Program: Give It a Chance to  
 24 Work, Reuters (Dec. 23, 2019), available at [https://www.reuters.com/article/us-otc-massarb/ex-  
 25 judge-atop-controversial-mass-arbitration-program-give-it-a-chance-to-work-idUSKBN1YR1ZI](https://www.reuters.com/article/us-otc-massarb/ex-judge-atop-controversial-mass-arbitration-program-give-it-a-chance-to-work-idUSKBN1YR1ZI)

26 <sup>10</sup> To take just several examples: DoorDash requested multiple extensions and then still failed to  
 27 meet the payment deadline for its filing fees. Griffin Decl. ¶ 5. DoorDash refused to use a  
 28 streamlined, master arbitrator strike list, unnecessarily forcing AAA to produce hundreds of  
 individual strike lists. *Id.* ¶ 6. And DoorDash requested that AAA cap the number of individual  
 arbitrations it assigned to a single arbitrator. *Id.* ¶7. AAA has stated that it can process many  
 arbitrations and will shift to more streamlined processes for selecting arbitrators and administering  
 individual arbitrations if necessary. Postman Decl. ¶ 10. What DoorDash disingenuously  
 describes as a breakdown in the AAA process in fact reflects AAA’s (temporary) accommodation  
 of DoorDash’s insistence on unnecessary complexity.

1 and on September 27, Keller Lenkner filed another 4,000. Dkt. 35-5 ¶¶ 7-8.  
2 (emphasis added).”)

3 Opp. at 6 (emphasis added). But even accepting DoorDash’s false assertion that AAA is unable  
4 to process 250 arbitrations, DoorDash misstates the chronology. DoorDash refused to pay the  
5 filing fees for 250 arbitrations until September 5. Postman Decl. ¶¶ 7–8. Keller Lenkner filed  
6 2,250 demands before the 250 arbitrations had even commenced, and filed 4,000 additional  
7 demands just three weeks later, Keller Decl. ¶¶ 8, 10, ECF No. 152, during which time AAA had  
8 already scheduled administrative calls and begun to prepare strike lists for the first 250 matters. It  
9 is simply not accurate to assert that Petitioners’ demands were filed after “AAA had struggled to  
10 make progress on the initial 250 arbitrations.” Opp. at 6.

11 In all events, DoorDash’s displeasure with the arbitral forum it selected is no basis to deny  
12 Petitioners their right to bring a claim at all. And since DoorDash has demonstrated that it will  
13 drag its feet and avoid Petitioners’ claims for as long as it is allowed to do so, that is all the more  
14 reason that Petitioners should insist on moving forward without delay.

15 Finally, DoorDash and its counsel continue their baseless smears by asserting that  
16 Petitioners’ engagement agreements with counsel—which they have never seen—contain  
17 unethical terms. No one can seriously believe that DoorDash is raising these points to protect  
18 Petitioners’ rights. To the contrary, DoorDash somehow contends that its baseless attacks should  
19 cause Petitioners to lose their right to prompt arbitration. There is no authority for the proposition  
20 that DoorDash can avoid its obligation to arbitrate with Petitioners by raising wholly  
21 unsubstantiated allegations about Petitioners’ engagement agreement with their lawyers.

22 Try as it might, DoorDash cannot distract from what the law requires. It is undisputed that  
23 every Petitioner is party to a valid arbitration agreement with DoorDash that requires the parties  
24 to arbitrate their disputes. DoorDash breached its obligation to arbitrate and should be compelled  
25 to comply with its agreement, abide by AAA’s determinations, and pay Petitioners’ arbitration  
26 costs and fees.

### 27 III. CONCLUSION

28 Petitioners’ amended motion to compel arbitration should be granted.

1  
2 Dated: January 23, 2019

Respectfully submitted,

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11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

14 TERRELL ABERNATHY, et al.,

15 *Petitioners,*

16 vs.

17 DOORDASH, INC.,

18 *Respondent.*

) Case Nos. 3:19-cv-07545  
) 3:19-cv-07646

) **[UNREDACTED] DECLARATION OF**  
) **AARON ZIGLER**  
) **IN SUPPORT OF PETITIONERS'**  
) **REPLY IN SUPPORT OF**  
) **AMENDED MOTION**  
) **TO COMPEL ARBITRATION**

19 **Judge:** Hon. William H. Alsup

20 \_\_\_\_\_  
21 CHRISTINE BOYD, et al.,

22 *Petitioners,*

23 vs.

24 DOORDASH, INC.,

25 *Respondent.*

) **Date:** February 10, 2020  
) **Time:** 2:00 p.m.  
) **Judge:** William H. Alsup

1 I, Aaron M. Zigler, declare based on personal knowledge as follows:

2 1. I certify that the statements made in this instrument are true and correct. I make the  
3 following statement based upon my own personal knowledge and if called upon as a witness, I  
4 could and would testify competently thereto.

5 2. I am a lawyer first admitted to practice in 2001. I am currently admitted to practice  
6 in the highest courts of the States of Missouri, Illinois, New York and California; the Second,  
7 Seventh and Ninth Federal Circuit Courts of Appeal; and in several Federal district courts,  
8 including the Northern District of California.

9 3. I am a Partner at Keller Lenkner LLC, counsel for Petitioners in this matter.

10 4. This declaration is submitted in support of Petitioners' Amended Motion to Compel  
11 Arbitration.

12 5. Following this Court's November 25, 2019 hearing and the issuance of Petitioners'  
13 subpoena, I was tasked with obtaining relevant discovery from International Institute for Conflict  
14 Prevention and Resolution, Inc., the arbitral forum designated in DoorDash's new arbitration  
15 agreement and known as CPR. This assignment included participating in efforts to resolve CPR's  
16 objections to Petitioners' subpoena, as well as preparing for and taking the deposition of CPR's  
17 President and CEO, Allen Waxman.

18 6. On December 24, 2019, CPR produced 513 pages of documents reflecting or  
19 concerning its discussions with Gibson, Dunn & Crutcher LLP and DoorDash about the  
20 Employment-Related Mass Claims Protocol. On December 26, 2019, CPR produced an additional  
21 17 pages of documents. CPR designated each of these documents "confidential" under the  
22 Protective Order in this case. I personally reviewed each of these documents in preparing for Mr.  
23 Waxman's deposition.

24 7. On December 27, 2019, I took the deposition of CPR CEO Allen Waxman in New  
25 York at the office of his counsel. Mr. Waxman was represented by Kimberly Lunetta, Samantha  
26 Padilla, and Sara DeStefano of Morgan, Lewis & Bockius, LLP and Anna Hershenberg of CPR.  
27 DoorDash was represented at the deposition by Jesenka Mrdjenovic of Gibson Dunn. A copy of  
28 the transcript of Mr. Waxman's deposition is attached as Exhibit O to the Declaration of Joshua

1 Lipshutz, ECF No. 157-5.

2 8. The documents produced by CPR and the testimony of Mr. Waxman confirmed that  
3 CPR's Employment-Related Mass Claims Protocol was created for DoorDash, at DoorDash's  
4 request, and with the input of DoorDash and its lawyers in response to the arbitration demands filed  
5 by Petitioners.

6 9. As CPR's CEO Allen Waxman testified during his deposition: "Gibson Dunn had  
7 reached out to us and raised an issue that they had in particular relating to [arbitration] fees. We  
8 responded by developing a protocol and welcomed their input on the protocol from a practical  
9 application standpoint." Waxman Dep. Tr. at 119:17-21.

10 10. CPR is an ADR provider that has historically focused on business-to-business  
11 disputes. It holds itself out as the "leading independent resource helping business and their lawyers  
12 resolve disputes more efficiently." Tr. 14:22-15:20.

13 11. On March 20, 2019, Keller Lenkner notified DoorDash that it represented over  
14 3,000 clients who intended to pursue misclassification claims in arbitration before with AAA.

15 12. Shortly thereafter, Michael Holecek of Gibson Dunn reached out to CPR on behalf  
16 of an "Uber like" client. May 17, 2019 Corr. from H. Erickson to N. Hanft, CPR\_000007, attached  
17 to this Declaration as Exhibit A. Helena Erickson, Senior VP of CPR, was receptive to Mr.  
18 Holecek's call, advising him that CPR "would be willing to discuss discounted fees for a large book  
19 of business." *Id.* She reported internally that Mr. Holecek's client was "dissatisfied with the AAA's  
20 due process protocol requirements and requirements for companies paying filing fees and scared to  
21 death about being inundated with mass arbitration filings" and was "looking for solutions" to these  
22 concerns. *Id.*

23 13. Nothing happened until Mr. Holecek reached out again in September—three weeks  
24 after Petitioners had filed 2,500 arbitration demands against DoorDash with AAA.

25 14. Mr. Holecek called Ms. Erickson and explained that he represented DoorDash,  
26 which was facing thousands of arbitration demands and was looking to change to a new arbitration  
27 provider. Sept. 18, 2019 Corr. from M. Holecek to H. Erickson, CPR\_000009, attached to this  
28 Declaration as Exhibit B.

1           15. Ms. Erickson reiterated that CPR previously “negotiated deals for a ‘volume’ of  
2 cases.” Sept. 18, 2019 Corr. from H. Erickson to A. Waxman, CPR\_000012, attached to this  
3 Declaration as Exhibit C.

4           16. They spoke again two days later, with Mr. Holecek elaborating that DoorDash was  
5 seeking to change its arbitration provider prospectively to address the threat of 20,000  
6 misclassification claims. Sept. 20, 2019 Corr. from H. Erickson to A. Waxman, CPR\_000050,  
7 attached to this Declaration as Exhibit D.

8           17. The next business day, Mr. Holecek was on the phone with Mr. Waxman discussing  
9 the misclassification claims against DoorDash. Tr. 125:6-129:6. By that Friday, Ms. Erickson was  
10 floating ideas to Mr. Holecek for new CPR rules to handle these claims. Sept. 27, 2019 Corr. from  
11 H. Erickson to A. Waxman, CPR\_000514 attached to this Declaration as Exhibit E; Tr. at 251:24-  
12 252:04.

13           18. The next week, Mr. Waxman sent a one-and-a-half-page draft proposal for  
14 discussion with two members of his Board. Oct. 2, 2019 Corr. from A. Waxman to T. Sabatino  
15 and J. Kiernan, CPR\_000087, attached to this Declaration as Exhibit F; Tr. 133:23-134:12. Mr.  
16 Waxman had told the Board that he wanted to “explore a way to work on this because it is the kind  
17 of problem that demands CPR innovation, would further our mission, and could be an important  
18 source of funding going forward.” *Id.* Mr. Waxman also understood that Gibson Dunn had other  
19 similarly situated clients, and he was “certainly hoping for additional opportunities with Gibson  
20 Dunn and hopefully others as well.” Tr. at 216:06-217:06.

21           19. That Sunday night, Mr. Waxman sent his “first draft” to Mr. Holecek (titled Multi-  
22 Claims Protocol – Draft for Gibson.docx) with “some of the financials that would make this  
23 possible for us.” Mr. Waxman wrote: “We think we can be helpful” and “[w]e believe that this  
24 protocol . . . can effectively and efficiently assist in getting the matter resolved.” Oct. 6, 2019,  
25 Corr. from A. Waxman to M. Holecek, CPR\_000107, attached to this Declaration as Exhibit G.

26           20. The next day Mr. Waxman and Ms. Erikson were on the phone with Greg Farano,  
27 Head of Litigation for DoorDash, and Mr. Holecek to discuss their concerns about CPR’s draft  
28 protocol. Tr. at 170:06-14. The following Monday morning, CPR had a new three-and-a-half-page



1 draft for Mr. Holecek that Mr. Waxman “th[ought] ... captur[ed] the various concepts [they] ha[d]  
2 discussed.” Oct. 14, 2019 Corr. from A. Waxman to M. Holecek, CPR\_000189, attached to this  
3 Declaration as Exhibit H. The next day, Mr. Holecek responded with edits. Oct. 15, 2019 Corr.  
4 from M. Holecek to A. Waxman, CPR\_000198, attached to this Declaration as Exhibit I. According  
5 to DoorDash, Gibson Dunn participated in six substantive calls with CPR regarding the protocol,  
6 three of which included DoorDash’s in-house counsel. ECF No. 144 at 5.

7 21. The following week, Mr. Waxman emailed a new version of the protocol to Mr.  
8 Holecek and Josh Lipshutz of Gibson Dunn and Mr. Farano of DoorDash, stating:

9 Michael, Josh and Greg—please see the latest version of the protocol for our  
10 discussion below. We believe we have addressed all of Michael’s comments from  
11 the prior draft to the extent feasible for us. We can talk about fees albeit we are  
12 still finalizing our analysis on this. We look forward to the discussion tomorrow.

13 Oct. 24, 2019 Corr. from A. Waxman to M. Holecek, CPR\_000222, attached to this Declaration as  
14 Exhibit J.

15 22. This collaboration continued throughout October. *See, e.g.*, Oct. 28, 2019 Corr.  
16 from A. Waxman to M. Holecek, CPR\_000247 attached to this Declaration as Exhibit K; Oct. 29,  
17 2019 Corr. from A. Waxman to M. Holecek, CPR\_000259 attached to this Declaration as Exhibit  
18 L; October 30, 2019 Corr. from A. Waxman to M. Holecek, CPR\_000277 attached to this  
19 Declaration as Exhibit M.

20 23. Despite DoorDash’s and Gibson Dunn’s active participation in the drafting of the  
21 protocol, CPR did not discuss the protocol at any point with any lawyer representing drivers  
22 asserting misclassification claims. Tr. at 111:11-112:15; 115:09-15.

23 24. Towards the end of the month Gibson Dunn and DoorDash exhibited a sense of  
24 urgency in finalizing the protocol so that it could be rolled out immediately after Petitioners’  
25 arbitrations were administratively closed by AAA.

26 25. On October 28, 2019—the day of DoorDash’s final deadline to pay filing fees to  
27 AAA for 2,250 demands—Mr. Holecek emailed AAA to state that DoorDash would not pay the  
28 filing fees necessary for any Petitioners’ demands to proceed. The next day, October 29, 2019, Mr.  
Waxman informed two of his board members: “We spoke to DoorDash last evening. They may

1 want to launch as early as later today albeit this may have to be tempered by our getting everything  
2 up on the website in a timely fashion.” Oct. 29, 2019 Corr. from A. Waxman to T. Sabatino and J.  
3 Kiernan, CPR\_000255 attached to this Declaration as Exhibit N.

4 26. That evening, however, AAA extended DoorDash’s fee deadline to November 7,  
5 2019; the following Thursday. Mr. Holecek then, when prompted for a status update, emailed Mr.  
6 Waxman that “[o]ur timing is stable right now, and I don’t anticipate having to do anything before  
7 Thursday.” Oct. 30, 2019 Corr. from M. Holecek to A. Waxman, CPR\_000291, attached to this  
8 Declaration as Exhibit O.

9 27. There was just one final obstacle preventing CPR from publishing the Mass Claims  
10 Protocol: the fee DoorDash would pay CPR. CPR would not publish the protocol without an  
11 agreement on DoorDash’s “payment terms.” Oct. 31, 2019 Corr. from A. Waxman to M. Holecek,  
12 CPR\_000297, attached to this Declaration as Exhibit P; Tr. 220:23-221:1; 229:24-230:3. On  
13 October 31, 2019, Mr. Farano wrote to Mr. Waxman agreeing to CPR’s terms on behalf of  
14 DoorDash. Oct. 31, 2019 Corr. from G. Farano to A. Waxman, CPR\_000303, attached to this  
15 Declaration as Exhibit Q. On November 4, 2019, Mr. Waxman notified Mr. Holecek that CPR had  
16 posted the final protocol. Nov. 4, 2019 Corr. from A. Waxman to M. Holecek, CPR\_000310,  
17 attached to this Declaration as Exhibit R.

18 28. On November 8, 2019, AAA administratively closed Petitioners’ files due to  
19 DoorDash’s failure to pay the required filing fees. ECF No. 151 at 10. The very next day—a  
20 Saturday—DoorDash rolled out its new arbitration agreement to Dashers, including Petitioners,  
21 when they reported for work by logging into the DoorDash app. *Id.* at 11. This new agreement  
22 requires Dashers to arbitrate under CPR’s Employment-Related Mass Claims Protocol. *Id.*

23 29. Although the discovery from CPR tells a compelling story of how and why the Mass  
24 Claims Protocol was created, there are still questions that are unanswered.

25 30. During his deposition, Mr. Waxman refused to answer a number of questions on the  
26 advice of counsel. For example, I asked Mr. Waxman to identify other parties who commented on  
27 the protocol and Mr. Waxman refused to answer on the advice of counsel. Tr. at 156:20-22; 187:17-  
28 192:20; 194:8-195:5; 206:12-25.

1           31. I asked Mr. Waxman about the availability of the neutrals available to CPR, to  
2 understand CPR's capability to handle a large volume of claims. Mr. Waxman refused to answer  
3 on the advice of counsel. Tr. at 55:21-57:15.

4           32. I asked Mr. Waxman how the Mass Claim Protocol's expected fee structure would  
5 impact CPR's revenue. Mr. Waxman refused to answer on the advice of counsel. Tr. 232:15-23.

6           33. I asked Mr. Waxman to confirm CPR's descriptions of the subject areas of its  
7 arbitrations and the identities of its major donors, listed on its 2019 "Annual Review." Mr. Waxman  
8 refused to answer on the advice of counsel. Tr. 62:2-65:3.

9           34. Although CPR's website and Annual Review tout Gibson Dunn as a donor, Mr.  
10 Waxman also refused to answer on the advice of counsel questions concerning the amount of  
11 money paid to CPR by Gibson Dunn or DoorDash. Tr. at 65:4-24.

12           35. I asked Mr. Waxman to describe the other Rules, Protocols or Guidance he had  
13 worked on at CPR, to understand whether the Employment-Related Mass Claims Protocol was  
14 consistent with CPR's prior practices. Mr. Waxman refused to answer on the advice of counsel.  
15 Tr. at 34:16-36:20.

16           36. I asked Mr. Waxman to describe the process that was followed the last time CPR  
17 modified its arbitration Rules. Tr. 43:3-43:16. Mr. Waxman refused to answer on the advice of  
18 counsel. Tr. 43:17-22.

19           37. Mr. Waxman also refused to answer on the advice of counsel questions concerning  
20 how long prior CPR processes took to develop, who was involved in developing those processes,  
21 and who advocated for any changes. Tr. 44:19-47:9.

22           38. I asked Mr. Waxman to describe his employment history, to lay a foundation for  
23 questions concerning CPR's interest in a "book of business." Tr. 47:1249:9. Mr. Waxman refused  
24 to answer on the advice of counsel. *Id.*

25           39. I pressed Mr. Waxman's counsel to explain the basis for her instructions not to  
26 answer, in an effort to resolve our dispute. Tr. 78:25-81:15. We took a break in the deposition,  
27 and I sought to determine if the Court could be reached to resolve the dispute. Upon consulting the  
28 Court's website I learned that the Court was unavailable that day.

1           40. Mr. Waxman refused to answer on the advice of counsel any questions concerning  
2 actions taken after the November 4, 2019 launch of the Mass Claims Protocol. This included  
3 questions concerning additional conversations with Gibson Dunn or DoorDash, Tr. 241:16-242:8,  
4 Judge Scheindlin's involvement as the newly announced head of arbitrations subject to the  
5 Protocol, Tr. 248:2-21, and any other businesses that may have adopted CPR's Mass Claims  
6 Protocol, Tr. 249:18-250:13.

7           41. Mr. Waxman also testified that he did not remember Keller Lenkner "coming up"  
8 when CPR was creating the Mass Claims Protocol. Tr. at 253:24-254:06.

9           42. Following my review of Mr. Waxman's transcript, I reached out to his counsel in a  
10 further attempt to resolve our discovery dispute. I proposed that Petitioners would agree not to  
11 seek to compel further discovery if CPR would produce: 1) documents sufficient to show the  
12 amount of all payments from Gibson Dunn and DoorDash to CPR since 2017; 2) all drafts of the  
13 Mass Claims Protocol; 3) all documents reflecting invitations to comment or comments on the  
14 protocol; 4) all documents (*e.g.* forwards and replies) relating to CPR\_303; the email from Mr.  
15 Farano agreeing to CPR's terms; 5) all documents (*e.g.* forwards and replies) relating to CPR\_310;  
16 the email announcing that the Mass Claims Protocol was live; and 6) all documents mentioning  
17 Ashley Keller, Travis Lenkner, Warren Postman or Keller Lenkner.

18           43. In the course of those discussions, it became clear that responsive documents  
19 created after November 4, 2019 had not been produced. I requested production of those documents.

20           44. Although Ms. Lunetta agreed to produce documents that reflect communications  
21 between CPR, Gibson Dunn, and DoorDash; and communications internally that reflect  
22 conversations with DoorDash or Gibson Dunn regarding the protocol after November 4, 2019, she  
23 refused to produce communications with anyone other than Gibson Dunn and DoorDash. She  
24 would not produce all drafts of the protocol. She would not produce additional comments on the  
25 protocol. Jan 19, 2020 Corr. from K. Lunetta to A. Zigler, attached to this Declaration as Exhibit.  
26 S.

27           45. As of the execution of this declaration, no additional documents from CPR have  
28 been produced.

1 I affirm that the foregoing is true under penalty of perjury.

2

3 Signed on January 23, 2020.

4

/s/ Aaron M. Zigler

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Aaron M. Zigler

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# **Exhibit**

# **A**

---

**From:** Helena Erickson [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A53AEF00207B4B1E916EEA858FCF73D4-HELENA ERIC]  
**Sent:** 5/17/2019 2:16:05 PM  
**To:** Noah Hanft [nhanft@cpradr.org]  
**Subject:** Potential Business

Just got off the phone with <https://www.gibsondunn.com/lawyer/holecek-michael/> who has an Uber like client with many contracts with independent contractors and who is dissatisfied with the AAA's due process protocol requirements and requirements for companies paying filing fees and scared to death about being inundated with mass arbitration filings. He's looking for solutions. While noting that we adhere to the DDP, I said we would be willing to discuss discounted filing fees for a large book of business, suggested other ways of lowering costs such as single arbitrator and CPR selection. I mentioned the AKC program. He questioned whether we would ever do a flat fee for the full case load. I said that is something we haven't to my knowledge been asked before, we wouldn't reject out of hand but that would be above my pay grade and that at a minimum, the fee would have to be big enough to hire staff to cover the book of business. He was thrilled that we were even open for discussion unlike the AAA. He's going to take a look at our employment procedures as well as the AKC program and then may be discuss further.

Helena Tavares Erickson, Esq.  
Senior Vice-President, Dispute Resolution Services & Corporate Secretary  
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# **Exhibit**

# **B**



---

**From:** Holecek, Michael [MHolecek@gibsondunn.com]  
**Sent:** 9/18/2019 11:41:57 AM  
**To:** Helena Erickson [herickson@cpradr.org]  
**Subject:** RE: Introduction

Helena,

It was nice speaking with you again on the phone. As I mentioned, I represent DoorDash, Inc., and we are looking to change our arbitration administrator from AAA to a new company. We are looking for a way to solve the issue of mass arbitration demands. Our current administrator charges us a separate \$1900 filing fee for every arbitration demand, even if thousands of identical arbitration demands are filed at the same time. Most of those arbitrations never proceed, and yet we still face the prospect of being billed for millions of dollars of filing fees. We are looking for an alternative arrangement – such as a cap on filing-fee expenses, a fixed monthly retainer, and hourly arrangement, or some other type of alternative fee-schedule arrangement.

You mentioned that it may be possible to speak with Alan next Monday at noon eastern. That time works for me. If a different time works better for you and Alan, please let me know.

Best,  
Michael

**Michael J. Holecek**

**GIBSON DUNN**

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333 South Grand Avenue, Los Angeles, CA 90071-3197  
Tel +1 213.229.7018 \* Fax +1 213.229.6018  
MHolecek@gibsondunn.com \* www.gibsondunn.com

**From:** Helena Erickson <herickson@cpradr.org>  
**Sent:** Wednesday, May 15, 2019 10:18 AM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Subject:** RE: Introduction

[External Email]

Michael, Just to let you know, I have meetings scheduled from 2-4 my time – in case you want to speak before then.

Helena Tavares Erickson, Esq.  
Senior Vice-President, Dispute Resolution Services & Corporate Secretary  
CPR: International Institute for Conflict Prevention and Resolution  
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**From:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Sent:** Tuesday, May 14, 2019 9:03 PM  
**To:** Helena Erickson <herickson@cpradr.org>; Orłowski, Victoria R. <VOrłowski@gibsondunn.com>; Olivier Andre <oandre@cpradr.org>  
**Subject:** RE: Introduction

Thank you very much, Helena. (And thank you, Victoria, for making the introduction).  
Helena, I will call you tomorrow. I look forward to speaking with you.  
Best,  
Michael

**Michael J. Holecek**

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Tel +1 213.229.7018 \* Fax +1 213.229.6018  
MHolecek@gibsondunn.com \* www.gibsondunn.com

**From:** Helena Erickson <herickson@cpradr.org>  
**Sent:** Tuesday, May 14, 2019 6:00 PM  
**To:** Orłowski, Victoria R. <VOrłowski@gibsondunn.com>; Olivier Andre <oandre@cpradr.org>  
**Cc:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Subject:** Re: Introduction

[External Email]  
That would be me. I am available after 10 am. 646 753 8237.

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**From:** Orłowski, Victoria R. <VOrłowski@gibsondunn.com>  
**Sent:** Tuesday, May 14, 2019 8:15:04 PM  
**To:** Olivier Andre  
**Cc:** Helena Erickson; Holecek, Michael  
**Subject:** Introduction

Olivier,

I hope this finds you well.  
I'm in Miami getting ready to come back to New York and then go back to Miami again later this week -- long story....

A colleague of mine based out of California, Michael Holecek, is curious about CPR arbitration in the domestic US context.

He's got a very specific (and pretty concerning) issue he is dealing with.

He is hoping someone at CPR may be able help fashion a solution and prevent some attempted abuse of process.

Who is a good contact for him to talk to? I've copied him here.

Many thanks,

Victoria

Victoria Orlowski

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# **Exhibit**

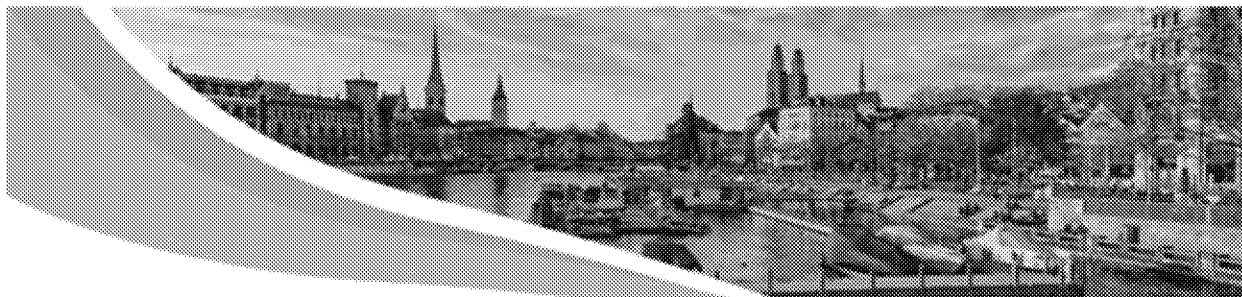
# **C**



**From:** Helena Erickson [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A53AEF00207B4B1E916EEA858FCF73D4-HELENA ERIC]  
**Sent:** 9/18/2019 11:51:54 AM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]  
**Subject:** RE: Introduction

Allen – do you want to resend with correct spelling?

Helena Tavares Erickson, Esq.  
Senior Vice-President, Dispute Resolution Services & Corporate Secretary  
CPR: International Institute for Conflict Prevention and Resolution  
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ARBITRATION IN THE PHARMACEUTICAL AND LIFE SCIENCES SECTORS - ZURICH



 CPR | SEPTEMBER 17, 2019 | LALIVE | ZURICH, SWITZERLAND | 6:00 - 8:30 PM | LALIVE 

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**From:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Sent:** Wednesday, September 18, 2019 11:42 AM  
**To:** Helena Erickson <herickson@cpradr.org>  
**Subject:** RE: Introduction

Helena,

It was nice speaking with you again on the phone. As I mentioned, I represent DoorDash, Inc., and we are looking to change our arbitration administrator from AAA to a new company. We are looking for a way to solve the issue of mass arbitration demands. Our current administrator charges us a separate \$1900 filing fee for every arbitration demand, even if thousands of identical arbitration demands are filed at the same time. Most of those arbitrations never proceed, and yet we still face the prospect of being billed for millions of dollars of filing fees. We are looking for an alternative arrangement – such as a cap on filing-fee expenses, a fixed monthly retainer, and hourly arrangement, or some other type of alternative fee-schedule arrangement.

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MHolecek@gibsondunn.com • www.gibsondunn.com

---

**From:** Helena Erickson <[herickson@cpradr.org](mailto:herickson@cpradr.org)>  
**Sent:** Wednesday, May 15, 2019 10:18 AM  
**To:** Holecek, Michael <[MHolecek@gibsondunn.com](mailto:MHolecek@gibsondunn.com)>  
**Subject:** RE: Introduction

[External Email]

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**Sent:** Tuesday, May 14, 2019 9:03 PM  
**To:** Helena Erickson <[herickson@cpradr.org](mailto:herickson@cpradr.org)>; Orłowski, Victoria R. <[VOrłowski@gibsondunn.com](mailto:VOrłowski@gibsondunn.com)>; Olivier Andre <[oandre@cpradr.org](mailto:oandre@cpradr.org)>  
**Subject:** RE: Introduction

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**Michael J. Holecek**

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MHolecek@gibsondunn.com \* www.gibsondunn.com

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**Sent:** Tuesday, May 14, 2019 6:00 PM  
**To:** Orłowski, Victoria R. <VOrłowski@gibsondunn.com>; Olivier Andre <oandre@cpradr.org>  
**Cc:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Subject:** Re: Introduction

[External Email]

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**From:** Orłowski, Victoria R. <VOrłowski@gibsondunn.com>  
**Sent:** Tuesday, May 14, 2019 8:15:04 PM  
**To:** Olivier Andre  
**Cc:** Helena Erickson; Holecek, Michael  
**Subject:** Introduction

Olivier,

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He's got a very specific (and pretty concerning) issue he is dealing with.

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Who is a good contact for him to talk to? I've copied him here.

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Victoria

Victoria Orłowski

GIBSON DUNN

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# **Exhibit**

# **D**

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**From:** Helena Erickson [herickson@cpradr.org]  
**Sent:** 9/20/2019 6:35:31 PM  
**To:** Allen Waxman [awaxman@cpradr.org]  
**CC:** Anna Hershenberg [ahershenberg@cpradr.org]  
**Subject:** Call with Michael

I spoke with Michael from Gibson Dunn, who send the regards of your old friend Kevin Rosen with whom he works. He clarified a number of points.

This would be prospective. It is NOT about the tips claims (which indeed are not expected in the future given the new policy) but about threatened claims over the alleged misclassification of the Dashers as independent contractors. They have already been threatened by 3 plaintiffs' firms with 20,000 alleged claims.

DoorDash has 500,000 Dashers in all 50 states and a couple of foreign countries (he's going to check on whether they have to sign the arbitration clauses). 300,000 are in California. Most are in or near a major metropolis. See [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB5](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5) for California's newest bill/law that provides when independent contractors are employees.

Plaintiffs' counsel in the prior DD cases or in other clients' similar cases, filed either by filing a single demand with an attached spreadsheet of plaintiffs or by providing a zip file of 1000 identical (but for the claimant's name) demands.

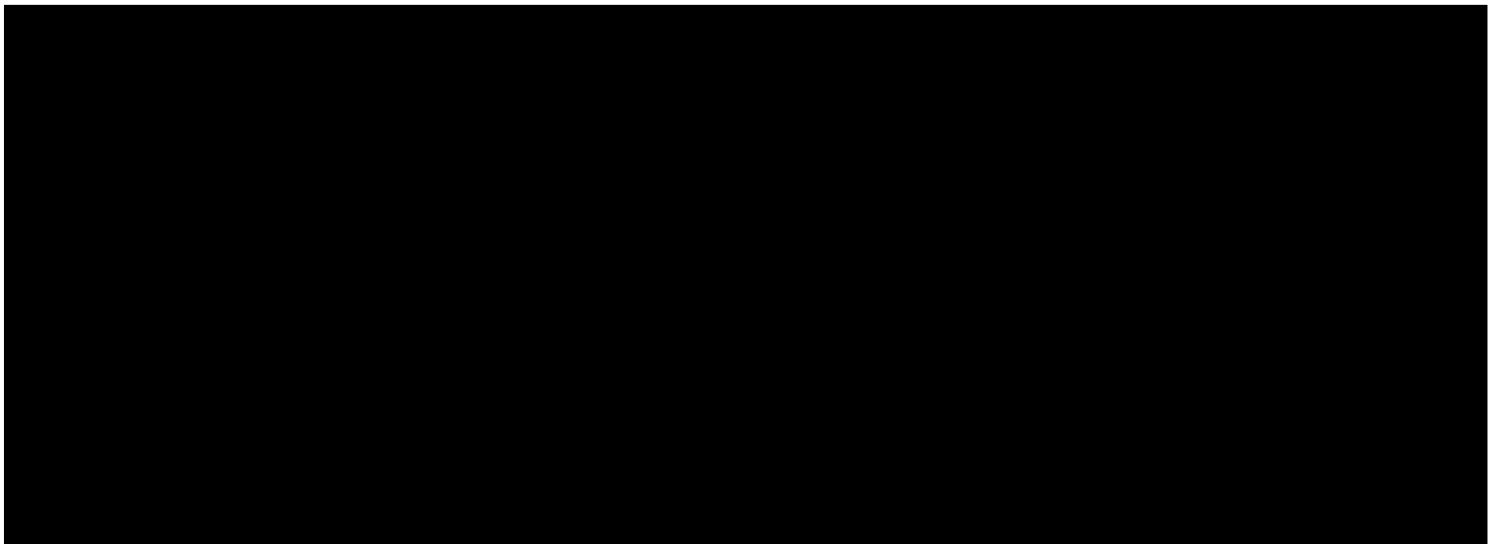
AAA assigned a single case number and a single case manager in each instance and then held a single conference call, although they were assured that each matter would be assigned a separate arbitrator. In other words – they docketed only 1 matter.

In the 1000 case instance, plaintiffs' firm was a four man entity that used the filing fee (that would have to be paid by DD) to try to "extort" a settlement. The plaintiffs' firm was only able to actually pursue a few of the cases. [Query if that is ethical – a lawyer can't take on more than he can handle.]

DD has arbitrated single cases filed by individual plaintiffs and there have been some optouts who filed court cases.

He does not believe that his client would care if a single docket number or DD-1, 2, 3, etc. were assigned to his matter. What he cares about are the filing fees being used to extort a settlement. He had looked at our website and was very interested in the NA Rules because he saw them as a way to avoid the filing fees. I pointed out that in the event that CPR was called upon to select the arbitrator as he was contemplating, absent an agreement, there would be a fee of \$3000/case for a single arbitrator case.

Some Potential issues/questions to myself:



Helena Tavares Erickson, Esq.  
Senior Vice-President, Dispute Resolution Services & Corporate Secretary  
CPR: International Institute for Conflict Prevention and Resolution  
30 East 33<sup>rd</sup> St., 6<sup>th</sup> Floor  
New York, NY 10016  
T: +212-949-6490 x 237  
F: +212-949-8859  
[www.cpradr.org](http://www.cpradr.org)

ARBITRATION IN THE PHARMACEUTICAL AND LIFE SCIENCES SECTORS - ZURICH



SEPTEMBER 17, 2019 | LALIVE | ZURICH, SWITZERLAND | 6:00 - 8:30 PM

LALIVE



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For more information about CPR's Administered Arbitration Rules, click [here](#).

# **Exhibit**

# **E**

---

**From:** Helena Erickson  
**Sent:** Friday, September 27, 2019 5:23 PM  
**To:** Allen Waxman  
**Subject:** Re: Catch up

Spoke with GB. He's good with NA Rules and 40+ on Panel. Focusing on how will arbitrators do so many cases. I said have you considered test cases and his reaction was that might work since there is no binding precedent but he'll have to prep his client because he's going to see Collective Action lightbulbs right away. I said we'd do more thinking on it, so I think we are in a good position to float your proposal.

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---

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Friday, September 27, 2019 5:04:09 PM  
**To:** Helena Erickson <herickson@cpradr.org>  
**Subject:** Accepted: Catch up  
**When:** Wednesday, October 2, 2019 11:30 AM-12:00 PM.  
**Where:**

# **Exhibit**

# **F**

---

**From:** Allen Waxman [awaxman@cpradr.org]  
**Sent:** 10/2/2019 6:21:42 PM  
**To:** Thomas Sabatino [tjsabatino@gmail.com]; 'Kiernan, John S.' [jskiernan@debevoise.com]  
**CC:** Helena Erickson [herickson@cpradr.org]  
**Subject:** RE: DRS  
**Attachments:** Multi-Claims Protocol - Draft 10-2-19.docx

I am looking forward to our call tomorrow.

Helena and I have been working back and forth on a draft protocol that would help guide our work with a multiple individual claim scenario. See the attached. This can help guide our discussion.

Thanks

---

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Saturday, September 28, 2019 2:21 PM  
**To:** Thomas Sabatino <tjsabatino@gmail.com>; 'Kiernan, John S.' <jskiernan@debevoise.com>  
**Cc:** Helena Erickson <herickson@cpradr.org>; Laura DeLuca <LDeLuca@cpradr.org>  
**Subject:** DRS

*Tom and John – hope you are doing well.*

*Just got back from Europe last evening – Zurich, Oslo, and Barcelona. Had some great events, made a number of pitches to prospects and met with EAB. All in all, a great two weeks in some not too bad venues!*

*While I was away, a friend of mine from Gibson, Dunn (member firm) referred a matter to us for potential handling. It involves their client Door Dash, which runs one of these delivery services, like Seamless and others. They engage thousands of delivery people, who they classify as independent contractors. Many of them are now challenging this classification under a recent California decision – Dynamex Operations West, Inc v. Superior Court of Los Angeles, which broadens the definition of what qualifies as an employment relationship. Even so, the governing law under the contract is defined as the place where the contractor performs most of her services, so the individual claims will likely turn on the applicable law and the weighing of various factors.*

*In their contracts with their individual delivery service providers, they have an “opt out” arbitration clause and a class/collective action waiver. The contracts seem to meet our due process protocols. The contracts rely upon the AAA rules and provisions.*

*Door Dash has been threatened by plaintiff lawyers with the filing of thousands of individual claims. AAA is charging \$1900 per case; a fact that plaintiffs have used to try and force an upfront settlement. Door Dash has asked AAA for some relief; AAA has refused although they have said they are working on a fee schedule for mass filing of claims. None has yet been generated. Thus far, Door Dash has paid for the filing fees on about 250 so as to allow them to proceed*

*Door Dash and Gibson, Dunn are frustrated, and are interested in changing the Door Dash contracts going forward to move away from AAA, and want to explore application of our non-administered rules in these circumstances so as to avoid a filing fee altogether. We have been discussing with them the challenges of arbitrator selection, nonetheless, and the overall challenge of handling a mass filing of individual arbitration claims. Gibson understands, and wants to brainstorm with us.*

*I would like to explore a way to work on this because it is the kind of problem that demands CPR innovation, would further our mission, and could be an important source of funding going forward. We have canvassed our panel to*



*determine how many might be interested in handling these matters. Over 40 have thus far expressed interest. Gibson does not think plaintiffs will actually pursue that many claims. Even so, it is daunting for any arbitral provider, and Helena and I have been thinking about various protocols to make this more feasible, and to increase our efficiencies while maintaining due process controls.*

*Ultimately, it may not be possible for us to engage, but I think it might be useful if we spoke later this week if you are available. I am out for the holidays on Monday and Tuesday, but let us know if you would be available Wednesday – Friday. I am copying Laura for this purpose as well.*

*Thanks*

*--Allen*

# **Exhibit**

# **G**

---

**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 10/6/2019 7:55:31 PM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]  
**CC:** Helena Erickson [herickson@cpradr.org]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** Door Dash  
**Attachments:** Multi-Claims Protocol - Draft for Gibson.docx

Mike – I hope you have been well, and your trial went ok.

I understand we may be talking tomorrow about the Door Dash matter.

We think we can be helpful. Helena and I have been working with other leaders in our organization on pulling together a protocol for how CPR might proceed in handling multiple, simultaneously-filed claims of 50 or more. We believe we have identified an innovative solution that makes arbitration work for all involved in a fair and efficient matter.

Attached is our first draft of a protocol. We think it enables the parties in good faith to try and resolve their disputes in an efficient fashion by using test arbitration cases and mediation. If this fails, the parties can then opt out or proceed with the remaining arbitrations. We at CPR believe that this provides a fair and preferable alternative to litigation.

We also have proposed some of the financials that would make this possible for us, but are happy to discuss further with you.

We believe that this protocol coupled with our panel of neutrals, non-administered rules and cost-structure can effectively and efficiently assist in getting the matter resolved.

We look forward to discussing with you (perhaps tomorrow afternoon), and look forward to hearing your thoughts.

Thanks

-Allen

# **Exhibit**

# **H**

---

**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 10/14/2019 11:37:37 AM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]  
**CC:** Helena Erickson [herickson@cpradr.org]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** Protocol  
**Attachments:** Multi-Claims Protocol Draft for Gibson(4).docx

Michael – hope you had a nice weekend.

Attached is our latest provisional protocol. I think this captures the various concepts we have discussed. In the end, we think that the appellate procedure is probably not worth the time delay given that there are 10 test cases. Having 10 cases should bring sufficient credibility to the mediation process, and we could foresee ways that an appellate review of ten cases could unnecessarily complicate matters. Happy to discuss further.

We think that the protocol addresses the issue raised the other day by allowing the parties in the mediation to set forth a process for presenting and resolving individual claims. If there is a threshold that needs to be reached, the parties can agree upon that with the mediator, but we don't think the arbitrations need be stayed in the meantime because it will take time for those arbitrations to proceed in any event, and this will incentivize all parties to work through the process efficiently. Happy to discuss this as well.

We still need to vet aspects of this protocol with our leadership so it is not final, but should allow us to continue the dialogue. We also have placeholders on the financial fees, and can finalize those as the protocol progresses.

Let us know if you have any questions.

Thanks

# **Exhibit**

# **I**

---

**From:** Holecek, Michael [MHolecek@gibsondunn.com]  
**Sent:** 10/15/2019 5:12:41 PM  
**To:** Allen Waxman [awaxman@cpradr.org]  
**CC:** Helena Erickson [herickson@cpradr.org]  
**Subject:** RE: Door Dash  
**Attachments:** Multi-Claims Protocol Draft for Gibson(4).docx  
**Flag:** Flag for follow up

Allen and Helena,

Thanks again for sending this revised protocol. We continue to think that we are on the same page and that the protocol could work for DoorDash. In the attached draft, I've interlineated a few comments, questions, and recommendations. If it is easy for you to email me responses, that works fine. Alternatively, if it is easier for you to discuss these issues over the phone, that works as well. We can find a time later this week for a call.

Thanks again.

**Michael J. Holecek**

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Los Angeles, CA 90071-3197  
Tel +1 213.229.7018 \* Fax +1 213.229.6018  
MHolecek@gibsondunn.com \* www.gibsondunn.com

---

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Sunday, October 6, 2019 4:56 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Cc:** Helena Erickson <herickson@cpradr.org>  
**Subject:** Door Dash

[External Email]

Mike – I hope you have been well, and your trial went ok.

I understand we may be talking tomorrow about the Door Dash matter.

We think we can be helpful. Helena and I have been working with other leaders in our organization on pulling together a protocol for how CPR might proceed in handling multiple, simultaneously-filed claims of 50 or more. We believe we have identified an innovative solution that makes arbitration work for all involved in a fair and efficient matter.

Attached is our first draft of a protocol. We think it enables the parties in good faith to try and resolve their disputes in an efficient fashion by using test arbitration cases and mediation. If this fails, the parties can then opt out or proceed with the remaining arbitrations. We at CPR believe that this provides a fair and preferable alternative to litigation.

We also have proposed some of the financials that would make this possible for us, but are happy to discuss further with you.

We believe that this protocol coupled with our panel of neutrals, non-administered rules and cost-structure can effectively and efficiently assist in getting the matter resolved.

We look forward to discussing with you (perhaps tomorrow afternoon), and look forward to hearing your thoughts.

Thanks

-Allen

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# **Exhibit**

# **J**

---

**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 10/24/2019 5:50:27 PM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]; Lipshutz, Joshua S. [JLipshutz@gibsondunn.com]; Gregg Farano [gregg.farano@doordash.com]; Helena Erickson [herickson@cpradr.org]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** RE: DoorDash/CPR call  
**Attachments:** Mass-Claims Provisional Protocol--DD.docx

Michael, Josh and Gregg – please see the latest version of the protocol for our discussion below.

We believe we have addressed all of Michael comments from the prior draft to the extent feasible for us. We can talk about fees albeit we are still finalizing our analysis on this.

We look forward to our discussion tomorrow.

Thank you

-----Original Appointment-----

**From:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Sent:** Friday, October 18, 2019 11:59 AM  
**To:** Holecek, Michael; Lipshutz, Joshua S.; Gregg Farano; Helena Erickson; Allen Waxman  
**Subject:** DoorDash/CPR call  
**When:** Friday, October 25, 2019 12:30 PM-1:15 PM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** (866) 747-5969, code 2132297018

**Toll-free dial-in number (U.S. and Canada):**  
(866) 747-5969

**International dial-in number:**  
(631) 812-8554

**Conference code:**  
2132297018

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# **Exhibit**

# **K**

---

**From:** Allen Waxman [awaxman@cpradr.org]  
**Sent:** 10/28/2019 2:51:46 PM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]; Gregg Farano [gregg.farano@doordash.com]; Lipshutz, Joshua S. [JLipshutz@gibsondunn.com]; Helena Erickson [herickson@cpradr.org]  
**Subject:** RE: DD/CPR call  
**Attachments:** Mass-Claims Employment-Related Protocol--DD.docx  
**Flag:** Flag for follow up

*Michael, Gregg and Josh – Helena may not be able to join us for today’s call, but let’s proceed in any event.*

*I am attaching the latest version of the Protocol. We should be able to post the Protocol and a template before week’s end. We do think it important that all claimants who will be subject to the Protocol be given the opportunity to review the Protocol before signing on.*

*In terms of the fee structure under the Protocol, we propose to specify those fees separately in a note to be accepted and confirmed by you all. We should have numbers shortly, but I just want to specify what they will cover:*

- *The initiation fee (Para 1) shall cover the costs for processing the template relating to the Initial Mass Arbitrations filed with CPR, support for the resolution by the Administrative Arbitrator of any disputes relating to the application of the Protocol to particular claims, and the initial presentation of the Master List to counsel for Door Dash;*
- *The appointment fee per arbitrator appointment (para 4f and Para 22) shall cover the costs relating to managing the appointment process;*
- *The mediation administrative fee (Para 8) shall cover the costs relating to anonymization of the test case awards as well as selection of the mediator;*
- *The presentation fee (Para 19) shall cover the costs relating to refreshing of the Master List, addressing any objections to the Master List as well as the costs of sequencing opt-outs and opt-ins;*
- *There are references to other a la carte fees in the Protocol should other services be needed (i.e., fundholding); and*
- *Finally, subject to Para 27, CPR reserves the right to revisit with Door Dash the fee structure subject to experience under the Protocol.*

-----Original Appointment-----

**From:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Sent:** Friday, October 25, 2019 5:05 PM  
**To:** Holecek, Michael; Gregg Farano; Lipshutz, Joshua S.; Allen Waxman; Helena Erickson  
**Subject:** DD/CPR call  
**When:** Monday, October 28, 2019 2:00 PM-3:00 PM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** (866) 747-5969, code 2132297018

Toll-free dial-in number (U.S. and Canada):  
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International dial-in number:  
(631) 812-8554

Conference code:  
2132297018

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# **Exhibit**

# **L**

---

**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 10/29/2019 12:41:50 PM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]; Gregg Farano [gregg.farano@doordash.com]; Lipshutz, Joshua S. [JLipshutz@gibsondunn.com]; Helena Erickson [herickson@cpradr.org]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** RE: DD/CPR call  
**Attachments:** Mass-Claims Employment-Related Protocol--DD-001.docx

*Please find attached the Protocol with one addition we have made in footnote 3.*

*What is the status out there?*

*We are still working through some issues here.*

*Thanks*

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Monday, October 28, 2019 2:52 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>; Gregg Farano <gregg.farano@doordash.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Helena Erickson <herickson@cpradr.org>  
**Subject:** RE: DD/CPR call

*Michael, Gregg and Josh – Helena may not be able to join us for today's call, but let's proceed in any event.*

*I am attaching the latest version of the Protocol. We should be able to post the Protocol and a template before week's end. We do think it important that all claimants who will be subject to the Protocol be given the opportunity to review the Protocol before signing on.*

*In terms of the fee structure under the Protocol, we propose to specify those fees separately in a note to be accepted and confirmed by you all. We should have numbers shortly, but I just want to specify what they will cover:*

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- *There are references to other a la carte fees in the Protocol should other services be needed (i.e., fundholding); and*
- *Finally, subject to Para 27, CPR reserves the right to revisit with Door Dash the fee structure subject to experience under the Protocol.*

-----Original Appointment-----

**From:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Sent:** Friday, October 25, 2019 5:05 PM  
**To:** Holecek, Michael; Gregg Farano; Lipshutz, Joshua S.; Allen Waxman; Helena Erickson  
**Subject:** DD/CPR call

**When:** Monday, October 28, 2019 2:00 PM-3:00 PM (UTC-08:00) Pacific Time (US & Canada).

**Where:** (866) 747-5969, code 2132297018

**Toll-free dial-in number (U.S. and Canada):**

(866) 747-5969

**International dial-in number:**

(631) 812-8554

**Conference code:**

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# **Exhibit**

# **M**

---

**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 10/30/2019 5:40:28 PM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** RE: DD/CPR call  
**Attachments:** Employment-Related Mass Claims Protocol.docx

Michael – one other change. See paragraph 27, which we think necessary given various state laws.

Let me know if you have any questions. We are going to send off the agreement.

Any updates on status?

---

**From:** Allen Waxman  
**Sent:** Tuesday, October 29, 2019 12:42 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>; Gregg Farano <gregg.farano@doordash.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Helena Erickson <herickson@cpradr.org>  
**Subject:** RE: DD/CPR call

*Please find attached the Protocol with one addition we have made in footnote 3.*

*What is the status out there?*

*We are still working through some issues here.*

*Thanks*

---

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Monday, October 28, 2019 2:52 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>; Gregg Farano <gregg.farano@doordash.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Helena Erickson <herickson@cpradr.org>  
**Subject:** RE: DD/CPR call

*Michael, Gregg and Josh – Helena may not be able to join us for today's call, but let's proceed in any event.*

*I am attaching the latest version of the Protocol. We should be able to post the Protocol and a template before week's end. We do think it important that all claimants who will be subject to the Protocol be given the opportunity to review the Protocol before signing on.*

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- *The appointment fee per arbitrator appointment (para 4f and Para 22) shall cover the costs relating to managing the appointment process;*
- *The mediation administrative fee (Para 8) shall cover the costs relating to anonymization of the test case awards as well as selection of the mediator;*

- ***The presentation fee (Para 19) shall cover the costs relating to refreshing of the Master List, addressing any objections to the Master List as well as the costs of sequencing opt-outs and opt-ins;***
- ***There are references to other a la carte fees in the Protocol should other services be needed (i.e., fundholding); and***
- ***Finally, subject to Para 27, CPR reserves the right to revisit with Door Dash the fee structure subject to experience under the Protocol.***

-----Original Appointment-----

**From:** Holecek, Michael <MHolecek@gibsondunn.com>

**Sent:** Friday, October 25, 2019 5:05 PM

**To:** Holecek, Michael; Gregg Farano; Lipshutz, Joshua S.; Allen Waxman; Helena Erickson

**Subject:** DD/CPR call

**When:** Monday, October 28, 2019 2:00 PM-3:00 PM (UTC-08:00) Pacific Time (US & Canada).

**Where:** (866) 747-5969, code 2132297018

**Toll-free dial-in number (U.S. and Canada):**

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# **Exhibit**

# **N**

---

**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 10/29/2019 10:10:50 AM  
**To:** tjsabatino@gmail.com; Kiernan, John S. [jskiernan@debevoise.com]  
**CC:** Helena Erickson [herickson@cpradr.org]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** RE: Mass Claims Protocol

***We spoke to Door Dash last evening. They may want to launch as early as later today albeit this may have to be tempered by our getting everything up on the website in a timely fashion.***

***They are seeking to modify all of their contracts with their "Dashers" to change from AAA to CPR. They will decide whether to do this under our Administered or Non-Administered Rules, but in either event, once the threshold is hit, the Protocol will apply and will govern.***

***They are offering opt out opportunities to new Dashers but, for those who have already been given an opt out opportunity from arbitration, they will not get a separate opt out opportunity before signing off on an amended contract – other than the ability not to sign up. The idea is for the contracts to link to the Protocol on our website.***

***We will not publicly disclose our fees but just refer folks who want to avail themselves of the Protocol to consult with us. We will gain the agreement of Door Dash to the below fee structure.***

***We are ready to execute.***

***Please let us know if you have any remaining questions.***

***Thanks***

---

**From:** Allen Waxman  
**Sent:** Sunday, October 27, 2019 4:26 PM  
**To:** 'tjsabatino@gmail.com' <tjsabatino@gmail.com>; 'Kiernan, John S.' <jskiernan@debevoise.com>  
**Cc:** Helena Erickson <herickson@cpradr.org>  
**Subject:** Mass Claims Protocol

***Tom and John – hope this note finds you well. As we discussed some weeks ago, we have proceeded in our discussions with Gibson Dunn and its client Door Dash in developing the attached Protocol (which has also benefited from inputs from a number of lawyers at our members, including Ken Feinberg). Door Dash may want to go live with this Protocol this week as it updates its contracts with its contractors.***

***Please let us know if you have any additional comments or questions. In addition to the terms of the Protocol, we will propose the following fee structure under the Protocol to Door Dash for their confirmation:***

- ***The initiation fee (Para 1) shall be \$60,000.00, which covers the costs for processing the template relating to the Initial Mass Arbitrations filed with CPR, support for the resolution of any disputes relating to the application of the Protocol to particular claims, and the initial presentation of the Master List to counsel for Door Dash;***
- ***The appointment fee per arbitrator appointment (Para 4f and Para 22) shall be \$3000.00, which covers the costs relating to managing the appointment process;***
- ***The mediation fee (Para 8) shall be \$15,000.00, which covers the costs relating to anonymization of the test case awards as well as selection of the mediator;***
- ***The presentation fee (Para 19) shall be \$15,000, which covers the costs relating to refreshing of the Master List, addressing any objections to the Master List as well as the costs of sequencing opt-outs and opt-ins; and***

- *Finally, subject to Para 27, CPR reserves the right to revisit with Door Dash the fee structure subject to experience under the Protocol.*

# **Exhibit**

# **0**

---

**From:** Holecek, Michael [MHolecek@gibsondunn.com]  
**Sent:** 10/30/2019 6:23:07 PM  
**To:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** RE: DD/CPR call

Thanks, Allen.

Our timing is stable right now, and I don't anticipate having to do anything before Thursday.

**Michael J. Holecek**

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Los Angeles, CA 90071-3197  
Tel +1 213.229.7018 \* Fax +1 213.229.6018  
MHolecek@gibsondunn.com \* www.gibsondunn.com

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**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Wednesday, October 30, 2019 2:40 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Subject:** RE: DD/CPR call

[External Email]

Michael – one other change. See paragraph 27, which we think necessary given various state laws.

Let me know if you have any questions. We are going to send off the agreement.

Any updates on status?

---

**From:** Allen Waxman  
**Sent:** Tuesday, October 29, 2019 12:42 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>; Gregg Farano <gregg.farano@doordash.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Helena Erickson <herickson@cpradr.org>  
**Subject:** RE: DD/CPR call

***Please find attached the Protocol with one addition we have made in footnote 3.***

***What is the status out there?***

***We are still working through some issues here.***

***Thanks***

---

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Monday, October 28, 2019 2:52 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>; Gregg Farano <gregg.farano@doordash.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Helena Erickson <herickson@cpradr.org>  
**Subject:** RE: DD/CPR call

***Michael, Gregg and Josh – Helena may not be able to join us for today's call, but let's proceed in any event.***



*I am attaching the latest version of the Protocol. We should be able to post the Protocol and a template before week's end. We do think it important that all claimants who will be subject to the Protocol be given the opportunity to review the Protocol before signing on.*

*In terms of the fee structure under the Protocol, we propose to specify those fees separately in a note to be accepted and confirmed by you all. We should have numbers shortly, but I just want to specify what they will cover:*

- *The **initiation fee** (Para 1) shall cover the costs for processing the template relating to the Initial Mass Arbitrations filed with CPR, support for the resolution by the Administrative Arbitrator of any disputes relating to the application of the Protocol to particular claims, and the initial presentation of the Master List to counsel for Door Dash;*
- *The **appointment fee** per arbitrator appointment (para 4f and Para 22) shall cover the costs relating to managing the appointment process;*
- *The **mediation administrative fee** (Para 8) shall cover the costs relating to anonymization of the test case awards as well as selection of the mediator;*
- *The **presentation fee** (Para 19) shall cover the costs relating to refreshing of the Master List, addressing any objections to the Master List as well as the costs of sequencing opt-outs and opt-ins;*
- *There are references to other **a la carte fees** in the Protocol should other services be needed (i.e., fundholding); and*
- *Finally, subject to Para 27, CPR reserves the right to revisit with Door Dash the fee structure subject to experience under the Protocol.*

-----Original Appointment-----

**From:** Holecek, Michael <MHolecek@gibsondunn.com>

**Sent:** Friday, October 25, 2019 5:05 PM

**To:** Holecek, Michael; Gregg Farano; Lipshutz, Joshua S.; Allen Waxman; Helena Erickson

**Subject:** DD/CPR call

**When:** Monday, October 28, 2019 2:00 PM-3:00 PM (UTC-08:00) Pacific Time (US & Canada).

**Where:** (866) 747-5969, code 2132297018

Toll-free dial-in number (U.S. and Canada):  
(866) 747-5969

International dial-in number:  
(631) 812-8554

Conference code:  
2132297018

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# **Exhibit**

# **P**

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**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 10/31/2019 3:26:38 PM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]  
**CC:** Helena Erickson [herickson@cpradr.org]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** RE: DD/CPR call

Michael – we are ready to launch and will post the Protocol to our website once Gregg signs off on the Payment Terms and you all give the go ahead

thanks

---

**From:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Sent:** Wednesday, October 30, 2019 6:23 PM  
**To:** Allen Waxman <awaxman@cpradr.org>  
**Subject:** RE: DD/CPR call

Thanks, Allen.

Our timing is stable right now, and I don't anticipate having to do anything before Thursday.

**Michael J. Holecek**

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Los Angeles, CA 90071-3197  
Tel +1 213.229.7018 \* Fax +1 213.229.6018  
MHolecek@gibsondunn.com \* www.gibsondunn.com

---

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Wednesday, October 30, 2019 2:40 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Subject:** RE: DD/CPR call

[External Email]

Michael – one other change. See paragraph 27, which we think necessary given various state laws.

Let me know if you have any questions. We are going to send off the agreement.

Any updates on status?

---

**From:** Allen Waxman  
**Sent:** Tuesday, October 29, 2019 12:42 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>; Gregg Farano <gregg.farano@doordash.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Helena Erickson <herickson@cpradr.org>  
**Subject:** RE: DD/CPR call

*Please find attached the Protocol with one addition we have made in footnote 3.*

*What is the status out there?*

*We are still working through some issues here.*

**Thanks**

---

**From:** Allen Waxman <[awaxman@cpradr.org](mailto:awaxman@cpradr.org)>  
**Sent:** Monday, October 28, 2019 2:52 PM  
**To:** Holecek, Michael <[MHolecek@gibsondunn.com](mailto:MHolecek@gibsondunn.com)>; Gregg Farano <[gregg.farano@doordash.com](mailto:gregg.farano@doordash.com)>; Lipshutz, Joshua S. <[JLipshutz@gibsondunn.com](mailto:JLipshutz@gibsondunn.com)>; Helena Erickson <[herickson@cpradr.org](mailto:herickson@cpradr.org)>  
**Subject:** RE: DD/CPR call

*Michael, Gregg and Josh – Helena may not be able to join us for today's call, but let's proceed in any event.*

*I am attaching the latest version of the Protocol. We should be able to post the Protocol and a template before week's end. We do think it important that all claimants who will be subject to the Protocol be given the opportunity to review the Protocol before signing on.*

*In terms of the fee structure under the Protocol, we propose to specify those fees separately in a note to be accepted and confirmed by you all. We should have numbers shortly, but I just want to specify what they will cover:*

- *The initiation fee (Para 1) shall cover the costs for processing the template relating to the Initial Mass Arbitrations filed with CPR, support for the resolution by the Administrative Arbitrator of any disputes relating to the application of the Protocol to particular claims, and the initial presentation of the Master List to counsel for Door Dash;*
- *The appointment fee per arbitrator appointment (para 4f and Para 22) shall cover the costs relating to managing the appointment process;*
- *The mediation administrative fee (Para 8) shall cover the costs relating to anonymization of the test case awards as well as selection of the mediator;*
- *The presentation fee (Para 19) shall cover the costs relating to refreshing of the Master List, addressing any objections to the Master List as well as the costs of sequencing opt-outs and opt-ins;*
- *There are references to other a la carte fees in the Protocol should other services be needed (i.e., fundholding); and*
- *Finally, subject to Para 27, CPR reserves the right to revisit with Door Dash the fee structure subject to experience under the Protocol.*

-----Original Appointment-----

**From:** Holecek, Michael <[MHolecek@gibsondunn.com](mailto:MHolecek@gibsondunn.com)>  
**Sent:** Friday, October 25, 2019 5:05 PM  
**To:** Holecek, Michael; Gregg Farano; Lipshutz, Joshua S.; Allen Waxman; Helena Erickson  
**Subject:** DD/CPR call  
**When:** Monday, October 28, 2019 2:00 PM-3:00 PM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** (866) 747-5969, code 2132297018

Toll-free dial-in number (U.S. and Canada):  
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2132297018

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# **Exhibit**

# **Q**

**From:** Gregg Farano [gregg.farano@doordash.com]  
**Sent:** 10/31/2019 7:18:37 PM  
**To:** Allen Waxman [awaxman@cpradr.org]  
**CC:** Holecek, Michael [MHolecek@gibsondunn.com]; Helena Erickson [herickson@cpradr.org]; Lipshutz, Joshua S. [JLipshutz@gibsondunn.com]; Seth Sias [seth.sias@doordash.com]  
**Subject:** Re: Employment-Related Mass Claims matter - AGREEMENT  
**Flag:** Flag for follow up

Allen,

I have reviewed the terms relating to application of CPR's Employment-Related Mass Claims Protocol and agree to such on behalf of DoorDash.

Please let us know when the Protocol is published so that we may link to it in our terms and conditions.

Best,  
Gregg



Gregg Farano  
Associate General Counsel - Head of Litigation  
[DoorDash.com](http://DoorDash.com)

On Wed, Oct 30, 2019 at 2:50 PM Allen Waxman <[awaxman@cpradr.org](mailto:awaxman@cpradr.org)> wrote:

***Gregg – We ask that you confirm on behalf of Door Dash by return email the agreement of Door Dash to the following terms (references to “Para” are to paragraphs in the Protocol) relating to application of CPR’s Employment-Related Mass Claims Protocol:***

- ***The initiation fee of \$70,000.00 (Para 1) shall be paid to CPR to cover the costs for processing the template relating to the Initial Mass Arbitrations filed with CPR, support for the resolution by the Administrative Arbitrator of any disputes relating to the application of the Protocol to particular claims, and the initial presentation of the Master List to counsel for Door Dash;***
- ***The appointment fee of \$3000.00 per arbitrator appointment (para 4f and Para 22) shall be paid to CPR to cover the costs relating to managing the appointment process;***
- ***The mediation administrative fee of \$20,000.00 (Para 8) shall be paid to CPR to cover the costs relating to anonymization of the test case awards as well as selection of the mediator;***
- ***The presentation fee of \$15,000.00 (Para 19) shall be paid to CPR to cover the costs relating to any refreshing of the Master List, addressing any objections to the Master List as well as the costs of sequencing opt-outs and opt-ins;***



- *Door Dash agrees to pay a la carte fees in the Protocol applicable to other services that are needed (i.e., fundholding); and*
- *Subject to Para 28, CPR reserves the right to revisit with Door Dash the fee structure as circumstances arise under the Protocol.*

*Finally, Door Dash agrees that its inclusion of this Protocol in its contracts and application to its counterparties shall comply with all applicable laws, ordinances, regulations, and orders of any relevant jurisdiction*

# **Exhibit**

# **R**

---

**From:** Allen Waxman [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E31B05E866BD4819B766DC92347F90BA-ALLEN WAXMA]  
**Sent:** 11/4/2019 5:46:55 PM  
**To:** Holecek, Michael [MHolecek@gibsondunn.com]; Helena Erickson [herickson@cpradr.org]  
**BCC:** Allen Waxman [awaxman@cpradr.org]  
**Subject:** RE: 2 questions

Michael – we have posted the [Protocol](#).

Can you please let us know when you believe contracts with links will be distributed.

Thanks much!

---

**From:** Allen Waxman <awaxman@cpradr.org>  
**Sent:** Saturday, November 2, 2019 3:34 PM  
**To:** Holecek, Michael <MHolecek@gibsondunn.com>; Helena Erickson <herickson@cpradr.org>  
**Subject:** Re: 2 questions

Mike - sorry for the tardiness of my reply. We decided to hold off until Monday as we wanted to prepare some explanatory documents for the Protocol.

We have not typically provided our waivers given our bandwidth but let's discuss what you have in mind.

Allen Waxman  
President & CEO  
International Institute for Conflict Prevention and Resolution  
646-753-8248

---

**From:** Holecek, Michael <MHolecek@gibsondunn.com>  
**Sent:** Friday, November 1, 2019 7:22 PM  
**To:** Allen Waxman; Helena Erickson  
**Subject:** 2 questions

Allen and Helena,

I'm sorry to bother you on a Friday late afternoon, and no need to respond until Monday, but I had two quick questions:

1. Are you still planning on publishing the new protocol today, or is there a new ETA for publishing it?
2. I don't think we've discussed this before, but does CPR grant fee waivers to claimants who cannot afford fees and/or have income that falls below a certain threshold? AAA offers fee waivers, but I did not see it on your website. We're just curious about what your policy is with respect to fee waivers.

Thanks! I hope you both have a great weekend.

Michael J. Holecek

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Los Angeles, CA 90071-3197  
Tel +1 213.229.7018 \* Fax +1 213.229.6018  
MHolecek@gibsondunn.com \* www.gibsondunn.com

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