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9 *on behalf of herself and all others similarly situated*

**ENDORSED
FILED**
San Francisco County Superior Court

MAY 08 2018
CLERK OF THE COURT
BY: KALENE APOLONIO Deputy Clerk

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

12 DORA LEE, on behalf of herself and all others
13 similarly situated,

14 Plaintiff,

15 v.

16 POSTMATES INC.,

17 Defendant.

Case No. **CGC-18-566394**

CLASS ACTION COMPLAINT

- 1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (CAL. LAB. CODE § 2802)
- 2. MINIMUM WAGE (CAL. LABOR CODE §§ 1194, 1197)
- 3. WILLFUL MISCLASSIFICATION (CAL. LABOR CODE § 226.8)
- 4. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§17200-17208)

BY FAX
ONE LEGAL LLC

1 **I. INTRODUCTION**

2 1. This case is brought on behalf of individuals who have worked as Postmates
3 couriers in California since June 2, 2017. Postmates Inc. (“Postmates”) provides on-demand
4 delivery of food and other merchandise to customers at their homes and businesses through its
5 mobile phone application and website. Postmates is based in San Francisco, California, but it
6 does business across the United States and extensively throughout California.
7

8 2. As described further below, Postmates has willfully misclassified its couriers
9 including Plaintiff Dora Lee, in violation of Cal. Labor Code § 226.8. Additionally, because of
10 couriers’ misclassification as independent contractors, Postmates has unlawfully required
11 couriers to pay business expenses (including expenses to own or lease a vehicle and maintain and
12 fuel it, as well as phone/data expenses) in violation of Cal. Lab. Code § 2802 and has also failed
13 to pay required minimum wage for all hours worked in violation of Cal. Lab. Code §§ 1197 and
14 1194.

15 **II. PARTIES**

16 3. Plaintiff Dora Lee is an adult resident of Huntington Beach, California, where she
17 has worked as a courier for Postmates.

18 4. Plaintiff brings this action on their own behalf and on behalf of all others similarly
19 situated, namely all other individuals who have worked as couriers for Postmates throughout
20 California since June 2, 2017.

21 5. Defendant Postmates, Inc. (“Postmates”) is headquartered in San Francisco,
22 California.

23 **III. JURISDICTION**

24 6. This Court has jurisdiction over Plaintiff’s claims pursuant to California Code of
25 Civil Procedure § 410.10. The monetary relief which Plaintiff seeks is in excess of the
26 jurisdictional minimum required by this Court and will be established according to proof at trial.
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1 7. Venue is proper in this Court pursuant to Code of Civ. P. §§ 395 and 395.5
2 because Postmates is headquartered in San Francisco County. Furthermore, Defendant engages
3 in business activities in and throughout the State of California, including San Francisco County.

4 **IV. STATEMENT OF FACTS**

5 8. Postmates is a San Francisco-based delivery service, which engages couriers
6 across the state of California to deliver food and other merchandise to its customers at their
7 homes and businesses.

8 9. Postmates offers customers the ability to order food and other items via a mobile
9 phone application or via its website, which Postmates couriers then deliver to customers.

10 10. Postmates holds itself out to the public as a delivery service. Its website
11 homepage advertises that it offers customers “Anything, anywhere, anytime.” Postmates’
12 website also promotes its “Postmates Unlimited” service where customers can subscribe and
13 receive unlimited free deliveries, touting “Pay once, free delivery all year.” Its website also
14 boasts that “Postmates is transforming the way goods move around cities by enabling anyone to
15 have anything delivered on-demand.”

16 11. Plaintiff Dora Lee has driven for Postmates at various times, including over the
17 last year, and continues to drive for Postmates.

18 12. Postmates classifies its couriers like Ms. Lee as “independent contractors,” but
19 under California law, they should be classified as employees.

20 13. Postmates perform services within Postmates’ usual course of business as a
21 delivery service. The couriers’ services are fully integrated into Postmates’ business. Without
22 couriers to perform deliveries, Postmates would not exist.

23 14. Postmates couriers are not typically engaged in their own delivery business. When
24 delivering items for Postmates customers, they wear the “hat” of Postmates.
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1 15. In addition, Postmates maintains the right of control over the couriers’
2 performance of their jobs and exercises detailed control over them.

3 16. Postmates unilaterally sets the pay scheme and rate of pay for couriers’ services
4 and changes the rate of pay in its sole discretion.

5 17. Postmates communicates directly with customers and follows up with couriers if
6 the customer complains that something was not delivered or that the delivery otherwise failed to
7 meet their expectations. Based on any customer feedback, Postmates may suspend or terminate
8 couriers.

9 18. Postmates does not reimburse couriers for any expenses they may incur while
10 working for Postmates, including, but not limited to the cost of maintaining their vehicles, gas,
11 insurance, and phone and data expenses for running the Postmates Application. Couriers incur
12 these costs as a necessary expenditure to work for Postmates, which California law requires
13 employers to reimburse.
14

15 19. Postmates pays couriers a fee per delivery plus a certain amount of “boost pay.”
16 Postmates has failed to ensure that its couriers receive the applicable state minimum wage for all
17 hours worked, and couriers frequently do not receive minimum wage for all hours worked,
18 particularly given that customers’ tips cannot count toward Postmates’ minimum wage
19 obligations.

20 20. On April 30, 2018, the California Supreme Court issued its decision in Dynamex
21 Operations W., Inc. v. Superior Court, No. S222732, 2018 WL 1999120 (Cal. Apr. 30, 2018),
22 which makes clear that Postmates couriers should be classified as employees rather than as
23 independent contractors under California law for purposes of wage-and-hour statutes like the
24 ones at issue here. Under the “ABC” test adopted in Dynamex, in order to justify classifying the
25 couriers as independent contractors, Postmates would have to prove that its couriers perform
26

1 services outside its usual course of business, which it cannot do. Notwithstanding this decision,
2 Postmates has willfully continued to misclassify its couriers as independent contractors.

3 **V. CLASS ALLEGATIONS**

4 21. Plaintiff Dora Lee brings this case as a class action pursuant to California Code of
5 Civil Procedure § 382 on behalf of all Postmates couriers who have worked for Postmates in
6 California since June 2, 2017.

7 22. Plaintiffs and other class members have uniformly been classified as independent
8 contractors, deprived reimbursement of their necessary business expenditures, and have been
9 paid under a system that does not ensure they receive minimum wage.

10 23. The members of the class are so numerous that joinder of all class members is
11 impracticable.

12 24. Common questions of law and fact regarding Postmates' conduct in classifying
13 couriers as independent contractors, failing to reimburse them for business expenditures, and
14 failing to ensure they are paid at least minimum wage for all hours worked, exist as to all
15 members of the class and predominate over any questions affecting solely any individual
16 members of the class. Among the questions of law and fact common to the class are:

- 17
- 18 a. Whether the work performed by class members—providing courier service to
 - 19 customers—is within Postmates' usual course of business, and whether such service is
 - 20 fully integrated into Postmates' business;
 - 21 b. Whether class members are typically engaged in their own delivery businesses or
 - 22 whether they wear the “hat” of Postmates when performing delivery services;
 - 23 c. Whether class members have been required to follow uniform procedures and policies
 - 24 regarding their work for Postmates;
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1 d. Whether these class members have been required to bear the expenses of their
2 employment, such as expenses for owning or leasing and maintaining their vehicles,
3 including expenses for gas, insurance, phone and data plan.
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5 25. Named Plaintiff Dora Lee is a class member who suffered damages as a result of
6 Defendant's conduct and actions alleged herein.

7 26. The named plaintiff's claims are typical of the claims of the class, and the named
8 plaintiff has the same interests as the other members of the class.

9 27. The named plaintiff will fairly and adequately represent and protect the interests
10 of the class. The named plaintiff has retained able counsel experienced in class action litigation.
11 The interests of the named plaintiff are coincident with, and not antagonistic to, the interests of
12 the other class members.

13 28. The questions of law and fact common to the members of the class predominate
14 over any questions affecting only individual members, including legal and factual issues relating
15 to liability and damages.

16 29. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy because joinder of all class members is impractical. Moreover,
18 since the damages suffered by individual members of the class may be relatively small, the
19 expense and burden of individual litigation makes it practically impossible for the members of
20 the class individually to redress the wrongs done to them. The class is readily definable and
21 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
22 There will be no difficulty in the management of this action as a class action.
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COUNT IV
Unfair Business Practices
Violation of Cal. Bus. & Prof. Code §17200, et seq.

33. Defendant's conduct, as set forth above, violates the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Defendant's conduct constitutes unlawful business acts or practices, in that Defendant has violated California Labor Code §§ 2802, 1194, 1197, and 226.8. As a result of Defendant's unlawful conduct, Plaintiff and class members suffered injury in fact and lost money and property, including, but not limited to business expenses that couriers were required to pay and wages that couriers were due. Pursuant to California Business and Professions Code § 17203, Plaintiff and class members seek declaratory and injunctive relief for Defendant's unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and class members who worked for Postmates are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

WHEREFORE, Plaintiff requests that this Court enter the following relief:

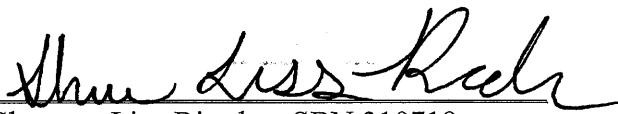
- a. Declare and find that the Defendant has violated the UCL and Cal. Lab. Code §§ 2802, 1194, 1197, and 226.8;
- b. Certify a class action under Count I through IV and appoint Plaintiff Dora Lee and her counsel to represent a class of Postmates couriers who have worked in California;
- c. Award compensatory damages, including all expenses and wages owed, in an amount according to proof;
- d. Award pre- and post-judgment interest;
- e. Award reasonable attorneys' fees, costs, and expenses;

- 1 f. Injunctive relief in the form of an order requiring Defendant to comply with the
2 California Labor Code; and
3
4 g. Any other relief to which Plaintiff may be entitled.

5 Respectfully submitted,

6 DORA LEE, on behalf of herself and all others
7 similarly situated,

8 By her attorneys,

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17 Dated: May 7, 2018
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