

# **APPENDIX**

APPENDIX A

MAR 10 2021

Court of Appeal, First Appellate District, Division Three - No. A159296

Jorge Navarrete Clerk

S266497

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

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BRANDON CAMPBELL, Plaintiff and Respondent,

v.

DOORDASH INC., Defendant and Appellant.

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The petition for review is denied.

CANTIL-SAKAUYE

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*Chief Justice*

## APPENDIX B

Filed 11/30/20 Campbell v. Doordash CA1/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

## IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

## FIRST APPELLATE DISTRICT

## DIVISION THREE

BRANDON CAMPBELL,

Plaintiff and Respondent,

v.

DOORDASH INC.,

Defendant and Appellant.

A159296

(City & County of San  
Francisco No. CGC-19-  
575383)

DoorDash Inc. (DoorDash) appeals from the trial court's order denying its petition to compel arbitration of a Private Attorney General Act (PAGA) action brought by its employee, Brandon Campbell (Campbell). DoorDash acknowledges that the California Supreme Court case of *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*) precludes California courts from enforcing pre-dispute waivers of the right to litigate PAGA claims, but argues *Iskanian* is no longer good law in light of subsequent United States Supreme Court cases. Other courts, including most recently Division Two of our district in *Olson v. Lyft, Inc.* (Oct. 29, 2020, No. A156322) 2020 WL 6336102, have uniformly rejected this argument. We join them in holding *Iskanian* is good law and California courts remain bound

by it. Accordingly, we affirm the order denying arbitration of Campbell's PAGA action.

### **FACTUAL AND PROCEDURAL BACKGROUND**

DoorDash is a same-day, on-demand delivery company that delivers goods from local restaurants and stores to its customers for a fee. DoorDash guarantees a certain minimum pay to its workers, known as Dashers, for each delivery. The guaranteed minimum pay amount depends on various factors such as order size, distance, and delivery logistics. To place an order, a customer uses the DoorDash smartphone app and selects items to be delivered from a participating business. The app displays a price, which includes the total cost of the items and a service/delivery fee. When the customer places an order, the customer's credit card is charged and a Dasher picks up the items from the business and delivers them to the customer. The customer may tip the Dasher through the app.

In early 2019, several news sources reported DoorDash had been using customer tips to satisfy its Dashers' guaranteed minimum pay. These reports explained that if the guaranteed minimum pay for a job is \$10, DoorDash first pays its Dasher a "base pay" of \$1. "If that minimum is \$10 and you tip \$5, then DoorDash kicks in the \$1 base plus an additional \$4" to meet the \$10 minimum. "If . . . you tip \$9, then DoorDash pays only the \$1 base" to meet the \$10 minimum. "If . . . you tip nothing, DoorDash pays the \$1 base plus an additional \$9." The reports stated: "DoorDash's policy of '[a]djusting [its] contribution, depending on the tip, flies in the face of how customers have traditionally viewed the act of tipping: as a bonus that's in addition to a set, if low, base salary from the company.'" "When people add additional tips to their delivery service tab, they reasonably assume they are tipping the delivery person—rather than the company." " 'Consumers are basically



subsidizing [DoorDash's] promised minimum payment, and it's extremely deceptive.' ”

On April 19, 2019, Campbell, a Dasher, filed a PAGA action (Lab. Code, §§ 2698 *et seq.*) against DoorDash alleging DoorDash's tipping policy violated Labor Code section 351, which provides that an employer shall not “collect, take, or receive” an employee's gratuity, and section 353, which requires employers to “keep accurate records of all gratuities received.”

DoorDash filed a petition to compel arbitration and stay proceedings<sup>1</sup> on the basis that its Independent Contractor Agreement, which Campbell signed, provided that “any and all claims arising out of or relating to this Agreement,” including “the payments received by [Dashers] for providing services to consumers,” shall be submitted to binding arbitration. The parties also waived their “right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action—including but not limited to actions brought pursuant to . . . PAGA. . . .” DoorDash recognized that the California Supreme Court case of *Iskanian* prohibits the pre-dispute waiver of the right to litigate PAGA claims, but argued *Iskanian* did not survive the United States Supreme Court's decision in *Epic Systems Corp. v. Lewis* (2018) 138 S.Ct. 1612 (*Epic Systems*), which “reiterated courts' obligation to enforce arbitration agreements according to their terms.”

Campbell opposed the petition, asserting the trial court was bound by *Iskanian* because California trial courts and Courts of Appeal must follow California Supreme Court decisions on federal questions unless the United States Supreme Court has decided the same issue differently. (Citing *Correia*

<sup>1</sup> DoorDash's request for a stay, which the trial court denied, is not at issue in this appeal.

*v. NB Baker Electric, Inc.* (2019) 32 Cal.App.5th 603, 619 (*Correia*).)

Campbell argued that because *Epic Systems* did not consider whether PAGA waivers are enforceable, the court remained bound by *Iskanian*. Campbell also argued there was nothing in *Epic Systems* that suggested *Iskanian* was wrongly decided.

The trial court denied DoorDash’s petition to compel arbitration, stating “California courts are bound by *Iskanian*’s holding that a waiver of an employee’s right to bring a representative action in any forum violates public policy and that this rule is not preempted by the FAA [Federal Arbitration Act].” “ ‘Although the *Epic* court reaffirmed the broad preemptive scope of the [FAA], *Epic* did not address the specific issue before the *Iskanian* court involving a claim for civil penalties brought *on behalf of the government* and the enforceability of an agreement barring a PAGA representative action in any forum.’ ” (Quoting *Correia, supra*, 32 Cal.App.5th at pp. 619–620.) “Furthermore, there is no evidence that the State consented to any waiver of the employee’s right to bring the PAGA claim in court.” (Citing *Correia, supra*, 32 Cal.App.5th at pp. 624–625 [“we agree with [courts] that have held *Iskanian*’s view of a PAGA representative action necessarily means that this claim cannot be compelled to arbitration absent some evidence that the state consented to the waiver of the right to bring the PAGA claim in court”].) DoorDash appeals.

## DISCUSSION

We conclude the trial court properly denied DoorDash’s petition to compel arbitration of Campbell’s PAGA action.

PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees, with most of the

proceeds of that litigation going to the state.” (*Iskanian, supra*, 59 Cal.4th at p. 360.) The Legislature enacted PAGA “to remedy systemic underenforcement of many worker protections” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545) and to enhance the state’s enforcement of labor laws by “allow[ing] aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies [are] to retain primacy over private enforcement efforts” (*Iskanian, supra*, 59 Cal.4th at p. 379). Although PAGA empowers employees to act as the agent of the Labor Commissioner, the governmental entity “is always the real party in interest.” (*Id.* at p. 382.) A PAGA action is therefore “a type of qui tam action” “ ‘ “designed to protect the public and not to benefit private parties.” ’ ” (*Id.* at pp. 382, 387.)

In *Iskanian*, the California Supreme Court examined two related questions regarding the pre-dispute waiver of PAGA claims: (1) whether arbitration agreements requiring employees to waive their right to bring PAGA actions are unenforceable under state law, and if so, (2) whether the FAA preempts that rule. (*Iskanian, supra*, 59 Cal.4th at p. 378.) First, the court held that pre-dispute waivers requiring employees to relinquish the right to assert a PAGA claim on behalf of other employees were prohibited, as such waivers violate public policy and “harm the state’s interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations.” (*Id.* at p. 383.) Second, the court held the FAA did not preempt this rule invalidating PAGA waivers in arbitration agreements because “the FAA aims to ensure an efficient forum for the resolution of *private* disputes, whereas a PAGA action is a dispute between an employer and the state [Labor and Workforce Development] Agency.” (*Id.* at p. 384.) PAGA actions “directly enforce the *state’s* interest in penalizing and deterring employers

who violate California’s labor laws.” (*Id.* at p. 387.) The FAA, which “aims to promote arbitration of claims belonging to the private parties to an arbitration agreement,” “does not aim to promote arbitration of claims belonging to a government agency.” (*Id.* at p. 388.) This “is no less true when such a claim is brought by a statutorily designated proxy for the agency as when the claim is brought by the agency itself. The fundamental character of the claim as a public enforcement action is the same in both instances.” (*Ibid.*)

Four years after *Iskanian* was decided, the United States Supreme Court in *Epic Systems* addressed the FAA’s preemptive effect over a provision of the National Labor Relations Act (NLRA) that guarantees workers the right to engage in “concerted activities.” (*Epic Systems, supra*, 138 S.Ct. at pp. 1619–1620, citing 29 U.S.C. § 157.) The employees in that case resisted arbitration on the ground that an arbitration agreement prohibiting class actions was illegal under the NLRA and therefore unenforceable. (*Id.* at p. 1622; see 9 U.S.C. § 2 [under the FAA, courts may refuse to enforce arbitration agreements “ ‘upon such grounds as exist at law or in equity for the revocation of any contract’ ”].) The United States Supreme Court disagreed and declined to “read a right to class actions into the NLRA.” (*Id.* at p. 1619.) The Court reiterated that the FAA instructs federal courts to enforce arbitration agreements according to their terms, and rejected any NLRA exception to the FAA. (*Id.* at p. 1624.)

In the last two years since *Epic Systems* was decided, California courts have uniformly rejected the argument that *Epic Systems* overruled *Iskanian*. In *Correia, supra*, 32 Cal.App.5th at pp. 608, 619, the Court of Appeal held a pre-dispute waiver of PAGA claims was unenforceable and rejected the employer’s argument that “*Iskanian* is no longer binding [in light of] . . . *Epic*

*Systems*.” Noting that California trial and appellate courts are bound by the California Supreme Court’s decisions on federal questions unless the United States Supreme Court has decided the same question differently, the court stated: “Although the *Epic* court reaffirmed the broad preemptive scope of the [FAA], *Epic* did not address the specific issues before the *Iskanian* court involving a claim for civil penalties *brought on behalf of the government* and the enforceability of an agreement barring a PAGA representative action in any forum.” (*Id.* at p. 609.) The claim at issue in *Epic Systems* differed “fundamentally from a PAGA claim” because the employee in *Epic Systems* was “asserting claims *on behalf of other employees*,” whereas a plaintiff who brings a PAGA action “has been deputized by the state” to act “‘as “the proxy or agent” of the state’ ” to enforce the state’s labor laws. (*Correia, supra*, at pp. 619–620.) Because *Epic Systems* did not “decide the *same* question differently,” its “interpretation of the FAA’s preemptive scope [did] not defeat *Iskanian*’s holding or reasoning for purposes of an intermediate appellate court applying the law.” (*Ibid.*)

Similarly, in *Collie v. Icee Company* (2020) 52 Cal.App.5th 477, 482 (*Collie*), the Court of Appeal rejected an employer’s argument that “*Iskanian* [was] no longer good law after the United States Supreme Court’s decision in *Epic*.” The court noted *Epic Systems* did not address “the unique nature of a PAGA claim”—that is, the “ ‘ ‘ ‘PAGA litigant’s status as “the proxy or agent” of the state’ and his or her ‘substantive role in enforcing our labor laws on behalf of state law enforcement agencies.’ ” ’ [Citation.]” (*Collie, supra*, at p. 483.) “*Epic*, therefore, does not undermine *Iskanian*’s . . . characterization[] of PAGA claims as law enforcement actions in which plaintiffs step into the shoes of the state.” (*Collie, supra*, at p. 483.) The court held that while *Epic Systems* “reconfirmed the breadth of the FAA,” a

pre-dispute PAGA waiver remained unenforceable without a showing that the state—which is the real party in interest in PAGA actions—consented to the waiver. (*Collie, supra*, at p. 483; see also *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 869–872 [employee’s pre-dispute agreement to arbitrate PAGA claims is unenforceable absent a showing the state also consented to the agreement because the state is the real party in interest]; *Betancourt v. Prudential Overall Supply* (2017) 9 Cal.App.5th 439, 445–449 [same].)

Several other Courts of Appeal, including Division Two of our district, have reached the same conclusion—that *Epic Systems* did not overrule *Iskanian*. (See, e.g., *Zakaryan v. The Men’s Wearhouse, Inc.* (2019) 33 Cal.App.5th 659, 671 [*“Epic Systems did not overrule Iskanian”*], overruled on another ground by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197, fn. 8; *Provost v. YourMechanic, Inc.* (Oct. 15, 2020, No. D076569) 2020 WL 6074632, at pp. \*7, 8 [*“reaffirm[ing]”* the analysis and decision in *Correia* that *Epic Systems* did not overrule *Iskanian*]; *Olson v. Lyft, Inc., supra*, 2020 WL 6336102 [Division Two case citing *Correia* with approval].) DoorDash urges us not to follow the above cases because “[a] decision of a Court of Appeal is not binding in the Courts of Appeal,” (quoting Witkin, Cal. Proc. 5th Appeal, § 498), and because there are a number of purported flaws with the decisions. DoorDash asserts, for example, that the *Zakaryan* case did not include sufficient analysis and that the Court of Appeal in *Correia* “did not have the benefit of complete briefing on the issue” as the employer “devoted only four paragraphs of its brief to its *Epic Systems* argument.” We find the Court of Appeal cases to be thorough and well-reasoned and we join these courts in concluding *Epic Systems* did not overrule *Iskanian*.

DoorDash also attempts to distinguish the cases on the basis that the arbitration agreement Campbell signed was not mandatory; instead, he

simply “chose not to opt out of” it. DoorDash argues the FAA should apply “with particular force” to individuals who “*voluntarily*” choose arbitration. However, “ ‘*Iskanian*’s underlying public policy rationale—that a PAGA waiver circumvents the Legislature’s intent to empower employees to enforce the Labor Code as agency representatives and harms the state’s interest in enforcing the Labor Code—does not turn on how the employer and employee entered into the agreement, or the mandatory or voluntary nature of the employee’s initial consent to the agreement’ ”; rather, a “ ‘PAGA claim provides a remedy inuring to the state . . . and the law . . . broadly precludes private agreements to waive such [] rights.’ ” (*Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 647–648, quoting *Securitas Security Services USA, Inc. v. Superior Court* (2015) 234 Cal.App.4th 1109; *see also Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1203 [refusing to enforce a pre-dispute waiver of a representative PAGA claim merely because the employee had the opportunity to opt out of the waiver].) Accordingly, it is immaterial whether Campbell voluntarily entered into the arbitration agreement or did so as a condition of becoming a Dasher for DoorDash.

#### DISPOSITION

The trial court’s order denying DoorDash’s petition to compel arbitration and stay proceedings is affirmed. Plaintiff Brandon Campbell shall recover his costs on appeal.

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Petrou, J.

WE CONCUR:

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Siggins, P.J.

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Simons, J.\*

\* Associate Presiding Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



12a  
APPENDIX C  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

MINUTES

November 07, 2019

BRANDON CAMPBELL

PLAINTIFF

VS.

DOORDASH, INC., A DELAWARE  
CORPORATION et al

DEFENDANT

Department: 302

Case Number: CGC-19-575383

Nature of Cause:  
DEFENDANT DOORDASH, INC.'s  
Petition To Compel Arbitration And  
Stay Proceedings.

Present:

Judge: ETHAN P. SCHULMAN  
Reporter: Court Reporter: Maria Torreano,  
CSR#8600, maria.torreano@gmail.com

Clerk: M. GOODMAN  
Bailiff: Deputy Jaime

Appearing for Plaintiff (s):

John Bickford, Esq. 661-949-2595 of  
PARRIS

Appearing for Defendant(s):

Michael Holecek, Esq. 213-229-7000 of  
Gibson Dunn & Crutcher LLP for Defendant  
Door Dash.

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Defendant DoorDash Inc.'s petition to compel arbitration is denied. The Court cannot compel this representative PAGA action to arbitration. In *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, our Supreme Court held that "where, as here, an employment agreement compels the waiver of representative claims under PAGA, it is contrary to public policy and unenforceable as a matter of state law." (*Id.* at 384.) Further, the Court held that "California's public policy prohibiting waiver of PAGA claims, whose sole purpose is to vindicate the [Labor and Workforce Development] Agency's interest in enforcing the Labor Code, does not interfere with the FAA's goal of promoting arbitration as a forum for private dispute resolution," and therefore is not preempted by the Federal Arbitration Act. (*Id.* at 388-389; see also *ZA, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197 [*Iskanian* established an

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CORPORATION ET AL

important principle: employers cannot compel employees to waive their right to enforce the state's interests when the PAGA has empowered employees to do so.”.)

California courts are bound by *Iskanian*'s holding that a waiver of an employee's right to bring a representative action in any forum violates public policy and that this rule is not preempted by the FAA. (*Correia v. NB Baker Electric, Inc.* (2019) 32 Cal.App.5th 602, 616 [“[A] PAGA claim lies outside the FAA's coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the state.”]; accord, *Davis v. TWC Dealer Group, Inc.* (Oct. 30, 2019) ---Cal.Rptr.3d---, 2019 WL 5586867, at \*8 [arbitration clause that improperly barred employee from arbitrating any PAGA claims was substantively unconscionable]; *Subcontracting Concepts (CT), LLC v. De Melo* (2019) 34 Cal.App.5th 201, 213 [same].) Although Defendant boldly asserts that *Correia* (and, presumably, the other cited cases) are “wrongly decided” (Reply at 8), those decisions are binding on this court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *Correia*, 32 Cal.App.5th at 620 [“On federal questions, intermediate appellate courts in California must follow the decisions of the California Supreme Court, unless the United States Supreme Court has decided the same question differently”].)

In any event, contrary to Defendant's argument, *Epic Systems Corp. v. Lewis* (2018) –U.S.–, 138 S.Ct. 1612 did not overrule *Iskanian*. “Although the *Epic* court reaffirmed the broad preemptive scope of the Federal Arbitration Act, Epic did not address the specific issue before the *Iskanian* court involving a claim for civil penalties brought *on behalf of the government* and the enforceability of an agreement barring a PAGA representative action in any forum.” (*Correia*, 32 Cal.App.5th at 609, 619-620; see also *ZA, N.A.*, 8 Cal.5th at 196-197 [“the PAGA authorizes a representative action only for the purpose of seeking [civil] penalties for Labor Code violations, and an action to recover civil penalties is fundamentally a law enforcement action, not one for the benefit of private parties” (citations and internal quotations omitted)].) Furthermore, there is no evidence that the State consented to any waiver of the employee's right to bring the PAGA claim in court. (See *id.* at 624-625 [“we agree with the California Courts of Appeal that have held *Iskanian*'s view of a PAGA representative action necessarily means that this claim cannot be compelled to arbitration absent some evidence that the state consented to the waiver of the right to bring the PAGA claim in court.”].)

In the alternative, Defendant requests the Court to stay the action pursuant to Code of Civil Procedure section 1281.4. The Court denies such request. The mere pendency of another PAGA action does not bar another plaintiff's PAGA claims. (*Tan v. Grubhub, Inc.* (N.D. Cal. 2016) 171 F.Supp.3d 998, 1013 [“Defendants do not cite a single case in which the court held that two PAGA representatives cannot pursue the same PAGA claims at the same time. The Court declines to be the first to so hold”]; see also *Albert v. Postmates Inc.* (N.D. Cal. Mar. 5, 2019) 2019 WL 1045785 at \*6 [“PAGA does not itself prohibit concurrent actions by different plaintiffs or require a stay of subsequent actions. [Citation.] ‘State and federal courts in California have routinely permitted concurrent PAGA actions to proceed so long as there is only one PAGA judgment against a defendant for the same or similar claims for a single timeframe.’”].)

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Counsel for Plaintiff to submit a proposed order that is verbatim with the Court's ruling and in compliance with CRC 3.1312.

Judge: Ethan P. Schulman, Clerk: M. Goodman, Court Reporter: Maria Torreano, CSR#8600, maria.torreano@gmail.com, Reported. =(302/EPS)

Case Number: CGC-19-575383

Case Title: BRANDON CAMPBELL VS. DOORDASH, INC., A DELAWARE CORPORATION ET AL

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**APPENDIX D**

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**Statutory Provisions Involved****9 U.S.C § 2. Validity, irrevocability, and enforcement of agreements to arbitrate**

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

(July 30, 1947, ch. 392, 61 Stat. 670.)

**DERIVATION**

Act Feb. 12, 1925, ch. 213, § 2, 43 Stat. 883.

**California Labor Code § 2699**

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, “person” has the same meaning as defined in Section 18.

(c) For purposes of this part, “aggrieved employee” means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e)

(1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g)

(1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l)

(1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.

(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.

(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

*(Amended by Stats. 2016, Ch. 31, Sec. 189. (SB 836) Effective June 27, 2016.)*

APPENDIX E

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Attorneys for Defendant DOORDASH, INC.

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**08/16/2019**  
Clerk of the Court  
BY: SANDRA SCHIRO  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO**

BRANDON CAMPBELL, in his  
representative capacity under the Private  
Attorneys General Act ("PAGA"),

Plaintiff,

v.

DOORDASH, INC., a Delaware Corporation;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. CGC-19-575383

**DEFENDANT'S PETITION TO COMPEL  
ARBITRATION AND STAY  
PROCEEDINGS; MEMORANDUM OF  
POINTS AND AUTHORITIES**

*[Declarations of Stanley Tang, Cody Aughney,  
and Joshua Lipshutz; and [Proposed] Order filed  
concurrently herewith]*

Department 302  
Honorable Judge Ethan P. Schulman

FAC Filed: July 18, 2019

Hearing Date: November 1, 2019  
Hearing Time: 9:30 a.m.  
Reservation ID: 08121101-12  
Trial Date: None set



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

**PLEASE TAKE NOTICE THAT** on November 1, 2019, at 9:30 a.m., or as soon as the matter may be heard before the Honorable Ethan P. Schulman of the San Francisco County Superior Court, Department 302, 400 McAllister Street, San Francisco, California 94102, Defendant DoorDash, Inc. will and hereby does petition, pursuant to Sections 1281.2 and 1281.4 of the Code of Civil Procedure, for an order: (a) compelling Plaintiff Brandon Campbell to submit his claims to arbitration as required by the Arbitration Agreement in his Independent Contractor Agreement (“ICA”); (b) staying the action pending the outcome of this petition; and (c) staying all proceedings of any non-arbitrable claims.

Plaintiff’s claims arise from his use of DoorDash’s technology, and his claims are within the scope of the ICA’s Arbitration Agreement, which governs any and all matters arising out of or related to Plaintiff’s classification as an independent contractor and payment received by Plaintiff for providing services to consumers. Specifically, the agreement states that Plaintiff and DoorDash agree “to resolve disputes on an individual basis, to the fullest extent permitted by law, through final and binding arbitration.”

Because the Arbitration Agreement exists, and because Plaintiff’s claims are governed by the Arbitration Agreement, the Court should compel arbitration of the claims. (Code Civ. Proc. § 1281.2 [if a party “alleg[es] the existence of a written agreement to arbitrate a controversy and that party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy.”]; 9 U.S.C. § 2.) In addition, a stay of all civil proceedings should also be entered. (Code Civ. Proc., § 1281.4; 9 U.S.C. § 3.)

This action should also be stayed pending the resolution of overlapping arbitrations and earlier-filed PAGA actions against DoorDash.

DoorDash’s petition is based on this Notice of Petition and Petition, the accompanying Memorandum of Points and Authorities, the concurrently filed Declarations of Stanley Tang, Cody Aughney, and Joshua Lipshutz, any other matters of which the Court may take judicial notice, other documents on file in this action, and any oral argument of counsel.

Dated: August 16, 2019

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GIBSON, DUNN & CRUTCHER LLP

By: /s/ Joshua Lipshutz  
Joshua Lipshutz

Attorneys for Defendant DoorDash, Inc.

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INTRODUCTION

Plaintiff Brandon Campbell signed an independent-contractor agreement with Defendant DoorDash, Inc. to be a delivery provider. Plaintiff alleges that he is really an employee and entitled to minimum wage. Plaintiff brings this lawsuit under the Private Attorneys General Act (“PAGA”) on behalf of all DoorDash independent contractors in California. DoorDash disputes Plaintiff’s claims on the merits, but this case cannot proceed in this Court. It must be arbitrated or, alternatively, stayed.

The Court should compel bilateral arbitration of Plaintiff’s claim. The parties contractually agreed to individually arbitrate disputes between them, and Plaintiff expressly waived his right to bring any representative action—such as a PAGA action. California’s *Iskanian* rule prohibits the pre-dispute waiver of the right to litigate PAGA claims in any forum (see *Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 360), but *Iskanian* does not survive the U.S. Supreme Court’s recent decision in *Epic Systems Corp. v. Lewis* (2018) 138 S.Ct. 1612. This Court must follow U.S. Supreme Court decisions even in the face of contrary California precedent.

In the alternative, this Court should stay any non-arbitrable claim for two reasons. *First*, this case would interfere with ongoing arbitrations that (like this case) must resolve the issue of whether DoorDash misclassifies its delivery providers as independent contractors. Plaintiff brings this case under Labor Code sections 351 and 353, which apply only to “employers” and “employees.” Thus, for Plaintiff to succeed, the Court necessarily would have to determine that Plaintiff is an employee rather than an independent contractor. But the issue of whether DoorDash misclassifies its delivery providers is currently being decided in *hundreds* of arbitrations. Code of Civil Procedure section 1281.4 provides that courts “shall” stay any litigation that overlaps with pending arbitrations. (See *Heritage Provider Network, Inc. v. Super. Ct.* (2008) 158 Cal.App.4th 1146, 1154.)

*Second*, this case overlaps with several earlier-filed PAGA cases that seek to litigate—on behalf of the State—whether DoorDash misclassifies delivery providers as independent contractors. The earliest of these cases, *Marko v. DoorDash*, was filed in 2017 and is still pending. Plaintiff should not be permitted to leapfrog *Marko* and litigate the central issue in that case on behalf of the same real party in interest.

Multiple courts have stayed actions against DoorDash on both of these bases. In *Marciano*

*v. DoorDash*, for example, a delivery provider filed a PAGA-only action alleging that DoorDash misclassifies its delivery providers as independent contractors. This Court (Judge Ulmer) entered a stay. Recognizing the “welter of litigation” against DoorDash on “the same central issue” of classification, Judge Ulmer stayed the case under section 1281.4 and the Court’s inherent powers. (Lipshutz Decl. Ex. X, at p. 1.) Judge Ulmer explained that other delivery providers were arbitrating the same classification issue and there was already an earlier-filed PAGA claim in *Marko*. (*Id.* at pp. 1–2.) And in *Farran v. DoorDash*, the Orange County Superior Court denied leave to add a PAGA claim against DoorDash because “it would be stayed pending the outcome of the [earlier-filed PAGA] actions.” (*Id.* Ex. Z, at p. 3.)

Like *Marciano* and *Farran*, this case must be stayed because it overlaps with five PAGA actions that were filed before this case—all of which seek to litigate the *same* classification issue on behalf of all California DoorDash delivery providers.

## STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

### A. DoorDash’s Platform Connects Customers, Restaurants, And Delivery Contractors

DoorDash is a technology company that facilitates food delivery through its online platform. (Tang Decl. ¶ 4.) The platform connects customers, restaurants, and independent contractor delivery providers (“contractors”). (*Ibid.*) Customers can access the platform via the DoorDash website or a mobile application (“DoorDash app”) on a smartphone. (*Ibid.*) Contractors typically receive delivery opportunities via the DoorDash app on their smartphone or other mobile device. (*Ibid.*)

### B. The Parties’ Independent Contractor Agreement

On November 14, 2018, Plaintiff agreed to DoorDash’s Independent Contractor Agreement (“ICA”) when he signed up to create an account with the DoorDash platform. (Tang Decl. ¶ 4.) To sign up for an account with the DoorDash platform, Plaintiff had to enter his email and provide his phone numbers and zip codes. (*Id.* ¶ 6.) The sign-up screen provides a box that the user must check to proceed, which provides “I agree to the **Independent Contractor Agreement** and have read the **Dasher Privacy Policy**.” (*Id.* ¶ 7 & Ex. B.)

The words “Independent Contractor Agreement” and “Dasher Privacy Policy” were highlighted in red text and hyperlinked to the ICA and Dasher Privacy Policy so that the user could review those



documents before indicating his or her agreement to them. (*Id.* ¶ 7.) In order to create a DoorDash account, the user had to click the box to indicate his or her agreement to the ICA. (*Ibid.*) In the event that a user clicked the “Sign Up” button without first checking the box to indicate agreement to the ICA, the user would be unable to proceed and would receive a message in bold black text and highlighted in a yellow box: **“You must accept this agreement to continue!”** (*Id.* ¶ 8 & Ex. C.)

Plaintiff entered his email, phone number and zip code, clicked the consent box to “agree to the Independent Contractor Agreement” and then clicked the “Sign Up” button. (*Id.* ¶¶ 5–10.) Thus, Plaintiff agreed to the ICA, which became “effective on the date it is accepted.” (*Id.* Ex. A.)

The ICA includes an arbitration agreement in which Plaintiff and DoorDash mutually agreed to arbitrate “any and all claims arising out of or relating to ... [Plaintiff’s] classification as an independent contractor, ... the payments received by [Plaintiff] for providing services to consumers ... and all other aspects of [Plaintiff’s] relationship with [DoorDash].” (*Id.* Ex. A at § XI.1.) The parties further agreed that the Arbitration Agreement would be governed by the FAA. (*Ibid.*)

The ICA also contains an Arbitration Class Action Waiver providing that both Plaintiff and DoorDash “waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action—including but not limited to actions brought pursuant to the Private Attorney General Act (‘PAGA’).” (*Id.* § XI.3.) Notably, the ICA’s Arbitration Agreement contains a delegation clause providing that the arbitrator will decide all issues of arbitrability, except for the validity of the Arbitration Class Action Waiver. (*Ibid.*)<sup>1</sup>

The ICA also contains numerous provisions designed to make the arbitration cost-effective, efficient, and fair for both parties. For example, the ICA invokes the American Arbitration Association (“AAA”) rules and provides a hyperlink that facilitates accessing those rules. (*Id.* §§ XI.5, XI.7.) The ICA also allows Plaintiff to demand that the arbitration take place within 45 miles of his residence, discovery is permitted, and “the Arbitrator may award all remedies to which a party is entitled under

<sup>1</sup> The ICA also contains a separate, stand-alone Litigation Class Action Waiver, which is not part of the Arbitration Agreement, providing that “any proceeding to litigate in court ... will be conducted solely on an individual basis” and not as “a representative action, a collective action, [or] a private attorney-general action.” Tang Decl. Ex. A, § XII. If the Court finds that any part of Plaintiff’s claims must be litigated, DoorDash preserves all arguments, including that the Litigation Class Action Waiver prevents Plaintiff from litigating in court on a representative basis.

applicable law and which would otherwise be available in a court of law ....” (*Id.* § XI.5.)

The ICA states in bold text that each contractor has a right to opt out of the arbitration provision within 30 days of the effective date of the ICA by mailing a personally signed letter. (*Id.* § XI.8.) The ICA makes clear that any contractor who opts out “will not be subject to any adverse action from DOORDASH as a consequence of that decision.” (*Ibid.*)

On November 14, 2018, Plaintiff accepted the ICA when he signed up for a DoorDash account and clicked “Sign Up” (Tang Decl. ¶ 10), and did not opt out (*id.* ¶ 12).

**C. The *Marko* Plaintiffs File A PAGA Claim Against DoorDash**

In 2017, Daniel Marko filed a putative class action against DoorDash and later amended his complaint to add a PAGA claim. (Lipshutz Decl. Ex. A.). The operative *Marko* complaint asserts twelve causes of action against DoorDash on behalf of two named plaintiffs (Marko and Corona). (*Id.*, Ex. B.) Like this case, *Marko* seeks to resolve whether DoorDash misclassifies its delivery providers. DoorDash petitioned to compel arbitration of the *Marko* case, and the superior court granted the petition in part. (*Id.* Ex. C.) The court compelled arbitration on the issue of the *Marko* plaintiffs’ independent contractor status and alleged damages. (*Ibid.*) It stayed resolution of the *Marko* plaintiffs’ public injunctive relief claims and PAGA claims pending the resolution of the arbitrations. (*Ibid.*)

**D. Hundreds Of Arbitrations Are Pending Against DoorDash Alleging Misclassification Of All DoorDash Delivery Providers**

Between May and July 2018, 17 additional arbitrations were filed against DoorDash that (like this case) seek to resolve whether DoorDash misclassified California delivery providers as independent contractors. (Lipshutz Decl. ¶¶ 5–21.) For example, in the pending arbitration in *Love v. DoorDash*, the plaintiff challenges “DoorDash’s misclassification of him as an independent contractor” and claims that DoorDash’s violations are part of a “practice” affecting “all other DoorDash delivery drivers.” (*Id.* Ex. D.) Further, other delivery providers have filed putative class actions against DoorDash alleging that all California delivery providers have been misclassified, and those actions have now been compelled to arbitration. (See Lipshutz Decl. Ex. Z [*Farran v. DoorDash, Inc.* (O.C. Super. Ct. Mar. 7, 2019)]; *Magana v. DoorDash, Inc.* (N.D.Cal. 2018) 343 F.Supp.3d 891.)

These arbitrations represent only a fraction of those that have been filed. Indeed, since July 2018, hundreds more overlapping arbitration demands have been filed against DoorDash, seeking to arbitrate the same misclassification and minimum-wage claims. (See Lipshutz Decl. ¶ 32.)

**E. Five Additional Contractors File PAGA Claims Against DoorDash**

Before Plaintiff filed this action, five more contractors brought PAGA claims against DoorDash, seeking to resolve the classification of all DoorDash delivery providers. In addition to *Marko*, PAGA claims were filed in *Marciano v. DoorDash*, No. CGC-18-567869 (S.F. Super. Ct. July 5, 2018); *Brown v. DoorDash*, No. BC712973 (L.A. Super. Ct. July 6, 2018); *Lowe v. DoorDash*, No. BC715425 (L.A. Super. Ct. July 26, 2018); *Roussel v. DoorDash*, No. CGC-19-572934 (S.F. Super. Ct. Mar. 12, 2019); and *Goldman-Hull v. DoorDash*, No. 19-cv-01513 (N.D. Cal. Mar. 22, 2019). (See Lipshutz Decl. ¶¶ 22–24, 29–30.) *Goldman-Hull* specifically alleges that DoorDash misclassifies its employees under Labor Code § 350. (Lipshutz Decl. Ex. CC, ¶ 100.) All of these PAGA actions remain pending.

**F. Plaintiff Files This PAGA Lawsuit Notwithstanding His Agreement To Arbitrate**

Plaintiff filed this PAGA action against DoorDash in April 2019, alleging that DoorDash’s “minimum pay guarantee” violates Labor Code sections 351 and 353. In July 2019, Plaintiff filed the operative First Amended Complaint that mirrored the original complaint, but (i) attached various news articles and (ii) disclaimed any argument that Plaintiff is misclassified as an independent contractor.

**ARGUMENT**

This case should be sent to bilateral arbitration because Plaintiff agreed to arbitrate all disputes with DoorDash and waived his right to bring a representative PAGA action. In the alternative, any non-arbitrable claims should be stayed under section 1281.4 and the Court’s inherent authority.

**A. The Arbitration Agreement Is Governed By The Federal Arbitration Act**

Courts unanimously have concluded that the FAA governs DoorDash’s ICA. (See *Magana, supra*, 343 F. Supp. 3d at p. 899; *Farran* (Lipshutz Decl. Ex. Z) at 1; *Marko* (Lipshutz Decl. Ex. C) at 2; *Edwards v. DoorDash, Inc.* (S.D.Tex. Oct. 18, 2017) 2017 WL 5514302, at \*13; *Marciano* (Lipshutz Decl. Ex. X) at 1.) The FAA provides: “A written provision in any ... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising ... shall be valid,

irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” (9 U.S.C. § 2.) If the FAA governs, courts must “move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.” (*Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 22.)

Here, the Arbitration Agreement is indisputably governed by the FAA for two reasons. **First**, the Agreement expressly states that it is governed by the FAA (Tang Decl. Ex. A, § XI.1), which brings it within the purview of the FAA. (*Mastrobuono v. Shearson Lehman Hutton* (1995) 514 U.S. 52, 63–64; *DIRECTV, Inc. v. Imburgia* (2015) 136 S.Ct. 463, 468–471.) The FAA governs, even absent evidence of an effect on interstate commerce, if the parties so agree. (See *Montes v. San Joaquin Cmty. Hosp.* (E.D.Cal. Jan. 29, 2014) 2014 WL 334912, at \*5 [courts honor parties’ contractual agreement to be bound by the FAA], citing *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 179; *Rodriguez v. Am. Techs.* (2006) 136 Cal.App.4th 1110, 1116, 1121.) The ICA invokes the FAA twice. (Tang Decl. Ex. A, § XI.1 [“This arbitration agreement is governed by the [FAA] (9 U.S.C. §§ 1–16)”]; *id.* § XIV.3.) Courts must “enforce arbitration agreements according to their terms.” (*Epic Sys., supra*, 138 S.Ct. at p. 1619.) And the ICA’s terms are clear: The FAA governs.

**Second**, the FAA applies because the Agreement “affect[s] commerce.” (*Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265, 273–274, 281.) “Involving commerce” is “functional[ly] equivalent” to “affecting commerce,” which “normally signals Congress’ intent to exercise its Commerce Clause powers to the full.” (*Id.* at p. 273.) This is so “even if the parties did not contemplate an interstate commerce connection.” (*Id.* at p. 281; accord *Citizens Bank v. Alafabco, Inc.* (2003) 539 U.S. 52, 56.) Courts regularly apply the FAA where, as here, a contract involves transactions and communications over email and the Internet. (See *Scott v. Yoho* (2016) 248 Cal.App.4th 392, 402; *Khalatian v. Prime Time Shuttle, Inc.* (2015) 237 Cal.App.4th 651, 658.)

DoorDash “is a technology startup ... that facilitates food delivery through its online platform,” and its “platform connects customers, a broad array of restaurants, and [contractors]. Customers can access the platform via the DoorDash website or a mobile application on a smartphone. Contractors typically receive delivery opportunities via the DoorDash app on their smartphone or other mobile device.” (Tang Decl. ¶ 4; see also Aughney Decl. ¶¶ 4–8 [explaining interstate nature of DoorDash’s

business].) Plaintiff expressly “acknowledge[d]” that DoorDash’s “business ... is to provide an online marketplace connection using web-based technology that connects contractors, restaurants and/or other businesses, and consumers.” (Tang Decl. Ex. A § III.3.) He agreed to “immediately notify” DoorDash if he disagreed with this characterization of DoorDash’s business. (*Id.* § III.7.) He did not do so.

## **B. Plaintiff Should Be Compelled To Arbitrate On An Individual Basis**

Plaintiff agreed to arbitrate his dispute with DoorDash on an individual basis and waived his right to bring “representative action[s],” including this PAGA action. The Court, therefore, must enforce the arbitration agreement according to its terms—including the terms prohibiting representative actions. To the extent California’s *Iskanian* rule holds otherwise, the FAA preempts it.

### **1. The FAA Mandates Enforcement Of Plaintiff’s Representative-Action Waiver**

“The FAA was enacted in 1925 in response to widespread judicial hostility to arbitration agreements.” (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.) Under the FAA, “[a] written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” (9 U.S.C. § 2.) This provision reflects “both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract.” (*Concepcion, supra*, 563 U.S. at p. 339, quotation marks and citations omitted; accord *Mercury Ins. Grp. v. Super. Ct.* (1998) 19 Cal.4th 332, 342 [California has “strong public policy” favoring arbitration].)

The FAA preempts state-law rules that invalidate arbitration agreements if (a) the rule is not a generally applicable contract defense, but instead applies only to arbitration or derives its meaning from the fact that an arbitration agreement is at issue; or (b) the rule stands as an obstacle to the accomplishment of the FAA’s objectives. (*Epic Sys., supra*, 138 S.Ct. at p. 1622.) The FAA thus “preempts any state rule discriminating on its face against arbitration” and “also displaces any rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements.” (*Kindred Nursing v. Clark* (2017) 137 S.Ct. 1421, 1426, quotation marks omitted.) In *Concepcion*, the Court “readily acknowledged that the defense [of unconscionability] formally applied in both the litigation and the arbitration context. But, the Court

held, the defense failed to qualify for protection under the saving clause because it interfered with a fundamental attribute of arbitration all the same.” (*Epic, supra*, 138 S.Ct. at p. 1622.)

Courts may not rewrite or invalidate parties’ arbitration agreements, even under the guise of compliance with state-law rules. In *Epic Systems*, the plaintiffs agreed to arbitrate individually any disputes between them and their employer in separate proceedings. (*Id.* at p. 1619.) After the plaintiffs sued in federal court, the employer successfully moved to compel arbitration over the plaintiffs’ objection that the requirement of separate proceedings violated the National Labor Relations Act. (*Ibid.*) The Supreme Court concluded the plaintiffs “object[ed] to their agreements precisely because they require individualized arbitration proceedings instead of class or collective ones. And by attacking (only) the individualized nature of the arbitration proceedings, the employees’ argument seeks to interfere with one of arbitration’s fundamental attributes.” (*Id.* at p. 1622.) “Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings.” (*Id.* at p. 1619.) The FAA’s “saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as ‘interfer[ing] with fundamental attributes of arbitration.’” (*Id.* at p. 1622, quoting *Concepcion, supra*, 563 U.S. at p. 344.)

Shortly after *Epic Systems*, the Supreme Court reiterated courts’ obligation to enforce arbitration contracts according to their terms. In *Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 139 S.Ct. 524, 528, the Court unanimously held that “courts must respect the parties’ decision” to delegate arbitrability questions to the arbitrator “as embodied in the contract,” even if the court believes the argument for arbitration is “wholly groundless.” The Court stated, “We must interpret the [Federal Arbitration] Act as written, and *the Act in turn requires that we interpret the contract as written*. When the parties’ contract delegates the arbitrability question to an arbitrator, *a court may not override the contract*.” (*Id.* at p. 529, italics added.) The Court held that courts “may not engraft [their] own exceptions onto the statutory text” even if, “as a practical and policy matter,” such exceptions to arbitration may be desirable. (*Id.* at pp. 530–531.)

In *Lamps Plus, Inc. v. Varela* (2019) 139 S.Ct. 1407, 1419, the Supreme Court held that “[c]ourts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis.” The Court relied heavily on *Epic Systems* and reaffirmed that “[t]he FAA requires

courts to ‘enforce arbitration agreements according to their terms.’” (*Id.* at p. 1415, quoting *Epic Sys.*, 138 S.Ct. at p. 1621.) Under *Lamps Plus*, courts may not rely on a generally applicable state-law contract principle to enforce classwide arbitration where the parties did not clearly consent to it. (*Ibid.*)

Because courts must enforce arbitration agreements by their terms, this Court should enforce the Arbitration Agreement here. The parties “mutually agree[d] to resolve any justiciable disputes between them exclusively through final and binding arbitration.” (Tang Decl. Ex. A, § XI.1.) And they “waive[d] their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action—including but not limited to actions brought pursuant to [PAGA].” (*Id.* § XI.3.) PAGA claims, like class claims, “are forms of representative actions.” (*Miranda v. Anderson Enters., Inc.* (2015) 241 Cal.App.4th 196, 200.) Thus, the Court should enforce the representative-action waiver and compel this case to bilateral arbitration.

## **2. The FAA Preempts the *Iskanian* Rule**

The FAA preempts any California law preventing Plaintiff from waiving his right to bring a representative claim. *Iskanian* held that “an arbitration agreement requiring an employee as a condition of employment to give up the right to bring representative PAGA actions in any forum is contrary to public policy.” (59 Cal.4th at p. 360.) It also held that “the FAA does not preempt a state law that prohibits waiver of PAGA representative actions in an employment contract.” (*Ibid.*)

But the U.S. Supreme Court’s interpretation of the FAA—California courts’ interpretation—governs this dispute because state courts are “bound by [the U.S. Supreme] Court’s interpretation of federal law.” (*James v. City of Boise* (2016) 136 S.Ct. 685, 686 (per curiam); *Nitro-Lift Techs., L.L.C. v. Howard* (2012) 133 S.Ct. 500, 503 (per curiam).)

*Epic Systems* constitutes intervening U.S. Supreme Court authority and abrogates *Iskanian*’s contrary holding. (See *Tanguilig v. Bloomingdale’s, Inc.* (2016) 5 Cal.App.5th 665, 673 [“[I]n the absence of a subsequent contrary decision of the United States Supreme Court, we are bound by the California Supreme Court’s holding on the issue of federal law that Bloomingdale’s contends was wrongly decided in *Iskanian*”], cert. denied, 138 S.Ct. 356 (2017); *People v. Ledesma* (1988) 204 Cal.App.3d 682, 690 [Court of Appeal “compelled to follow the rule enunciated by the United States Supreme Court” even though that rule was “rejected by the California Supreme Court”].)

The Court of Appeal has disagreed and held that the *Iskanian* rule remains good law even after *Epic Systems*. (See *Correia v. NB Baker Elec., Inc.* (2019) 32 Cal.App.5th 602, 609; *Zakaryan v. Men's Wearhouse, Inc.* (2019) 33 Cal.App.5th 659, 671.) But *Iskanian* does not apply here because (unlike in *Iskanian*), Plaintiff had the opportunity to opt out of the Arbitration Agreement. In any event, *Correia* and *Zakaryan* are wrongly decided for the reasons explained below. This Court must follow U.S. Supreme Court precedent even in the face of a contrary holding by a higher California court. (See *Tanguilig, supra*, 5 Cal.App.5th at p. 673.)

Under *Epic Systems*, the *Iskanian* rule fails both prongs of the preemption test: The *Iskanian* rule is not a rule of general applicability because it derives its meaning from the fact that an arbitration agreement is at issue; and it stands as an obstacle to the FAA's objectives.

**a. The *Iskanian* Rule Is Not A Rule Of General Applicability**

The FAA's savings clause "permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability,' but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." (*Concepcion, supra*, 563 U.S. at p. 339; *Epic Sys., supra*, 138 S. Ct. at p. 1622.)

Rather than rely on any of *Concepcion*'s contract defenses, *Iskanian* invalidated PAGA waivers based on public policy. (*Iskanian, supra*, 59 Cal.4th at p. 360.) Even if public policy could be a generally applicable contract defense, the policy against PAGA waivers here derives its meaning from the fact that an agreement to arbitrate on an individual basis is at issue. (*Id.* at p. 384 [PAGA waivers violate public policy because "whether or not an individual claim is permissible under the PAGA, a prohibition of *representative* claims frustrates the PAGA's objectives."].) *Epic Systems* makes clear that the FAA preempts this method of targeting arbitration. (138 S.Ct. at p. 1622 ["[B]y attacking (only) the individualized nature of the arbitration proceedings, the employees' argument seeks to interfere with one of arbitration's fundamental attributes."].) Under *Concepcion*, too, public policy is not a valid reason to disregard the FAA: "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons." (563 U.S. at p. 351.)

Further, *Iskanian* impermissibly attempted to vindicate state law by striking down PAGA waivers. (*Iskanian, supra*, 59 Cal.4th at pp. 388–389 [the "sole purpose" of PAGA claims "is to



vindicate the [LWDA’s] interest in enforcing the [California] Labor Code”].) But the U.S. Supreme Court has held that any effective-vindication doctrine does not apply to state laws like PAGA. (*Am. Express Co. v. Italian Colors Rest.* (2013) 570 U.S. 228, 233.). The so-called “*Iskanian* rule” cannot overcome the FAA for the purpose of vindicating a California agency’s policy goals—yet that is exactly what the California Supreme Court purported to do. The FAA thus preempts *Iskanian*.

**b. The *Iskanian* Rule Frustrates The Purposes And Objectives Of The FAA**

Even where a state law rule could be construed as one of general applicability, it is preempted if it stands “as an obstacle to the accomplishment of the FAA’s objectives.” (*Concepcion, supra*, 563 U.S. at p. 343; see also *Epic Sys., supra*, 138 S.Ct. at 1622–1623.) Here, the *Iskanian* rule prevents courts from “enforc[ing] arbitration agreements according to their terms,” particularly the “terms providing for individualized proceedings.” (*Epic Sys., supra*, 138 S.Ct. at p. 1619.) As in *Epic Systems*, the *Iskanian* rule prevents PAGA waivers “precisely because they [would] require[] individualized arbitration proceedings instead of class or collective ones.” (*Id.* at p. 1622; *Iskanian, supra*, 59 Cal.4th at p. 384 [“a prohibition of *representative* claims frustrates the PAGA’s objectives.”].) By attacking (only) the individual nature of the arbitration proceedings, the *Iskanian* rule interferes with arbitration’s fundamental attribute. The FAA preempts the *Iskanian* rule.

Indeed, *Epic Systems* implicitly approved the dissenting opinion in *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425, which explained why the FAA preempts the *Iskanian* rule:

[B]y (a) preventing parties from crafting arbitration agreements to limit the arbitration only to individual claims and (b) allowing *ex post* demand for the arbitration of representative PAGA actions, the *Iskanian* rule forces the parties to lose the benefits of arbitration and frustrates the purposes of the FAA. The *Iskanian* rule burdens arbitrations in the same three ways identified in *Concepcion*: it makes the process slower, more costly, and more likely to generate procedural morass; it requires more formal and complex procedure; and it exposes the defendants to substantial unanticipated risk.

(*Id.* at p. 444 [dis. op. of Smith, J.].) Echoing Judge Smith’s reasoning, the Supreme Court held that the FAA preempts state laws that change the “fundamental” nature of “traditional arbitration” by sacrificing its principal advantages of informality, speed, low cost, and decreased risk. (*Epic Sys., supra*, 138 S.Ct. at 1623.) *Epic Systems* make clear that a party’s attempt to avoid individual arbitration is an “attack [on] arbitration itself”; thus, this Court should enforce the representative-action waiver.

**C. Alternatively, This Case Must Be Stayed**

Even if *Iskanian* remains good law, this case must be stayed because: (1) an issue in this case overlaps with an issue in arbitration; and (2) this case overlaps with several earlier-filed PAGA cases.

**1. This Action Must Be Stayed Because It Overlaps With Pending Arbitrations**

Under Code of Civil Procedure section 1281.4, this Court is required to stay Plaintiff’s lawsuit pending the outcome of all overlapping arbitrations—including the two pending *Marko* arbitrations and the hundreds of other ongoing arbitrations. The statute provides that the court “*shall*, upon motion ... stay the action ... until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until the arbitration is had.” (Code Civ. Proc., § 1281.4, italics added.)

The Court of Appeal repeatedly has ordered trial courts to stay cases that overlap with pending arbitrations. (See *Heritage Provider Network*, *supra*, 158 Cal.App.4th at pp. 1148–1151 [reversing denial of stay where a plaintiff was compelled to arbitrate against some plaintiffs but not others]; *Marcus v. Super. Ct.* (1977) 75 Cal.App.3d 204, 211–212 [reversing trial court and ordering a stay because of overlapping issues with pending arbitration]; *Franco v. Arakelian Enters., Inc.* (2015) 234 Cal.App.4th 947, 966 [ordering stay of misclassification claims because they “might overlap” with pending arbitration]; *Cook v. Super. Ct.* (1966) 240 Cal.App.2d 880, 887 [same].)

“The purpose of the statutory stay is to protect the jurisdiction of the arbitrator by preserving the status quo until arbitration is resolved.” (*Heritage*, *supra*, 158 Cal.App.4th at p. 1152, quotation marks and citation omitted.) “In the absence of a stay, the continuation of the proceedings in the trial court disrupts the arbitration proceedings and can render them ineffective.” (*Ibid.*, quotation marks and citation omitted.) Further, “a single overlapping issue”—*i.e.*, any shared “question of law or fact”—“is sufficient to require imposition of a stay.” (*Id.* at pp. 1552–1553; see also *DirecTV Wage and Hour Cases*, Lipshutz Decl. Ex. DD [stay granted where two plaintiffs were compelled to arbitrate with only some defendants]; *Coker v. Lowe’s Home Ctrs., LLC* (Ventura Cty. Super. Ct. Dec. 8, 2017) 2017 WL 6812894, at \*1 [stay required where arbitration addressed overlapping issues]; *Delgado v. Am. Jewish Univ.* (L.A. Cty. Super. Ct. June 13, 2017) 2017 WL 2672479, at \*11 [same].)

This Court recently stayed a PAGA misclassification case on behalf of the same DoorDash delivery providers. In *Marciano v. DoorDash, Inc.*, Judge Ulmer stayed the case for multiple reasons,

including under section 1281.4. Because other plaintiffs “are presently arbitrating the same independent contractor v. employee issue with DoorDash,” section 1281.4 mandated a stay. (Lipshutz Decl. Ex. X, at p. 1.) The same rule applies here. As in *Marciano*, Plaintiff seeks (by implication) to litigate his independent contractor status and the status of *all* California DoorDash delivery providers. (See FAC ¶¶ 14–15.) This action thus necessarily interferes with hundreds of arbitrations. (*Ante* p. 4.) In each of those arbitrations, the arbitrator will resolve the same classification issue as Plaintiff’s action here, with respect to many of the same DoorDash delivery providers. Section 1281.4 was designed to avoid that scenario and mandates a stay. (See *Heritage*, *supra*, 158 Cal.App.4th at p. 1152.)

Contrary to Plaintiff’s assertion that he does not allege misclassification (FAC ¶ 28), resolving whether DoorDash meets the definition of “employer” for purposes of Labor Code sections 351 and 353 necessarily interferes with the pending misclassification arbitrations.<sup>2</sup> The relevant definitions of “employer” and “employee” appear in section 350, subdivisions (a)–(b).

“Employer” means every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis.

“Employee” means every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.

Section 351 claims can “only succeed on the merits if a jury ultimately concluded that [plaintiffs] are employees rather than independent contractors under California law.” (*Cotter v. Lyft, Inc.* (N.D.Cal. 2016) 193 F.Supp.3d 1030, 1039.) And the California Legislature made clear that “employees” under section 350 do not include independent contractors. Indeed, a separate section of the Civil Procedure Code defines “employee” as “persons defined in Section 350 of the Labor Code” *plus*, “[f]or purposes of this section only, ... a volunteer or independent contractor who performs services for the employer at the employer’s worksite.” (Code Civ. Proc., § 527.8, subd. (b)(3).) The

<sup>2</sup> Plaintiff inconsistently alleges misclassification. (Compare FAC ¶¶ 17 (“This definition [of ‘employee’] covers the Dashers.”), and ¶ 22 (“Plaintiff ... is ... an ‘aggrieved employee.’”), with ¶ 28 (disclaiming misclassification argument).) DoorDash reserves the right to argue that Plaintiff lacks standing under PAGA because he conceded he is an independent contractor. But even the issue of standing must be arbitrated. (See Tang Decl. Ex. A, § XI.1.)

fact that the California Legislature had to add “independent contractor” to the definition of “employee” in section 527.8 demonstrates that section 350 alone does not include independent contractors.

Section 350 does not encompass independent contractors for at least two additional reasons. *First*, the Legislature amended section 350’s definition of “gratuity” to clarify that dancers who “may be incorrectly identified as independent contractors and not employees [are] entitled to keep gratuities.” (California Bill Analysis, A.B. 2509 Sen., June 28, 2000.) If independent contractors were otherwise captured in section 350’s definition of “employees,” this amendment would be redundant. (See *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476 [courts should “give effect and significance to every word and phrase of a statute”].) *Second*, sections 350 *et seq.* are intended to prevent employers from crediting tips toward minimum wage. (*Henning v. Indus. Welfare Comm’n* (1988) 46 Cal.3d 1262, 1275, 1279.) But because independent contractors are not subject to minimum wage (see Labor Code, § 1182.12; *Dynamex Operations W., Inc. v. Super. Ct.* (2018) 4 Cal.5th 903, 964 fn. 32), including independent contractors in section 350(b)’s definition of “employee” does not further the statute’s purpose.

Because Plaintiff’s PAGA claim rests on a finding that he is an “employee,” and because the governing definition of “employees” excludes independent contractors, allowing this case to move forward would necessarily require a resolution of the same issue currently in arbitration—whether DoorDash misclassifies delivery providers as independent contractors. A stay is therefore mandatory.

## **2. Plaintiff’s PAGA Claim Must Be Stayed Because It Duplicates Earlier-Filed PAGA Claims Against DoorDash**

Plaintiff proposes to bring a PAGA claim on behalf of all other current and former aggrieved employees of DoorDash who have worked in California. (FAC ¶ 26.) But at least five PAGA actions predate Plaintiff’s proposed PAGA action and cover the same group of independent contractors, meaning Plaintiff’s PAGA action could not go forward. (Lipshutz Decl. Exs. U, V, W, BB, CC.)

A PAGA action is brought on behalf of the State of California, and the government is the real party in interest. (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 934.) The State cannot litigate the same action in several courtrooms at once, and cannot collect the same penalties for the same alleged violations with respect to the same workers more than once. (See *Alakozai v. Chase Inv. Servs. Corp.* (C.D.Cal. Mar. 1, 2012) 2012 WL 748584, at \*6, *aff’d*, (9th Cir. 2014) 557 F.App’x 658.)

In *Farran v. DoorDash, Inc.*, the Superior Court recently denied leave to add a PAGA claim because several “PAGA actions predate Plaintiff’s proposed PAGA claim. Thus, even if Plaintiff added a PAGA claim it would be stayed pending the outcome of the other actions.” (Lipshutz Decl. Ex. Z, at p. 3.) In *Marciano*, Judge Ulmer agreed: “[A] PAGA action—*Marko v. DoorDash, Inc.*—that makes the same allegations seeking the same penalties for the same group of DoorDash delivery providers was first-filed in Los Angeles County Superior Court. Thus, the San Francisco PAGA action should be stayed in favor of the Los Angeles PAGA action.” (Lipshutz Ex. X, at pp. 1–2.)

Like *Farran* and *Marciano*, this Court should stay Plaintiff’s PAGA claim. Several earlier-filed PAGA suits raise the same misclassification issues and would cover a longer period of time than Plaintiff’s proposed PAGA claim. (Lipshutz Decl. Exs. B, U, V, W, BB, CC.) *Marko* was filed in 2017, and litigation is stayed pending arbitration, making it a more effective vehicle for resolving any PAGA claims. (See *id.* Ex. B.) Thus, Plaintiff’s PAGA claim must be stayed pending *Marko*.

### **3. The Court Should Stay This Action Under Its Inherent Powers**

The Court should also stay this action because many earlier-filed actions seek to litigate the same classification issues on behalf of the same DoorDash delivery providers. Courts have inherent authority to stay actions “in furtherance of justice.” (Code Civ. Proc., § 128; *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) Judge Ulmer cited this inherent authority as a basis for staying *Marciano*. (Lipshutz Decl. Ex. X.) Judge Ulmer noted the Court’s budget “has been cut by fifty percent. And L.A. is almost as bad. And you’re saying we should do the same thing in L.A. [in *Marko*] at the same time as we do it here?” (*Id.* at p. 10.) Judge Ulmer thus stayed the action “on grounds of efficiency and consistency even if not required to do so by statute.” (*Id.* at p. 2.)

Likewise, it would be inefficient to litigate Plaintiff’s action given the numerous earlier-filed lawsuits that seek to adjudicate the classification of all DoorDash California delivery providers. (*Ante* pp. 4–5.) Those actions necessarily include Plaintiff’s classification status, and they were filed long before Plaintiff’s Complaint. There is no basis to litigate this duplicative action at this time.

### **CONCLUSION**

The Court should compel arbitration of this dispute, in accordance with the terms of the parties’ agreement, and stay any remaining proceedings.

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Dated: August 16, 2019

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Joshua Lipshutz  
Joshua Lipshutz

Attorneys for Defendant DoorDash, Inc.

APPENDIX F

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ELECTRONICALLY  
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County of San Francisco

**08/16/2019**  
**Clerk of the Court**  
BY: SANDRA SCHIRO  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**CITY AND COUNTY OF SAN FRANCISCO**

BRANDON CAMPBELL, in his  
representative capacity under the Private  
Attorneys General Act ("PAGA"),

Plaintiff,

v.

DOORDASH, INC., a Delaware Corporation;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. CGC-19-575383

**DECLARATION OF STANLEY TANG IN  
SUPPORT OF DEFENDANT'S PETITION  
TO COMPEL ARBITRATION AND STAY  
PROCEEDINGS**

Department 302  
Honorable Judge Ethan P. Schulman

Hearing Date: November 1, 2019  
Hearing Time: 9:30 a.m.  
Reservation ID: 08121101-12

Trial Date: None set

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I, Stanley Tang, declare as follows:

1. I am an adult over the age of 18 and a resident of the state of California. The information set forth herein is true and correct of my own personal knowledge (unless otherwise stated) and if asked to testify thereto, I would do so competently.
2. I am currently employed as the Chief Product Officer for DoorDash, Inc. (“DoorDash”). In that role, I am knowledgeable of contractor-facing aspects of DoorDash’s business, and I have comprehensive knowledge of DoorDash’s business model and operating systems. I have been employed by DoorDash or its predecessor entity since 2013.
3. I make this declaration in support of Defendant DoorDash’s Petition to Compel Arbitration and Stay Proceedings. I am authorized to make these statements on behalf of DoorDash. In my position as Chief Product Officer for DoorDash, I have access to and personal knowledge of the matters and information set forth in this declaration, and if called upon to testify thereto, could and would competently do so. The data from which the information set forth in this declaration was determined is maintained in the regular course of DoorDash’s business.
4. DoorDash is a technology startup headquartered in San Francisco, California that facilitates food delivery through its online platform. DoorDash’s platform connects customers, a broad array of restaurants, and independent contractor delivery providers (“contractors”). Customers can access the platform via the DoorDash website or a mobile application (“DoorDash app”) on a smartphone. Contractors typically receive delivery opportunities via the DoorDash app on their smartphone or other mobile device.
5. DoorDash’s records show that Plaintiff Brandon Campbell (“Plaintiff”) first signed up to create an account with DoorDash on November 14, 2018.
6. To sign up for a DoorDash account, contractors such as Plaintiff must enter their email address, phone number, and zip code on the sign-up screen.
7. DoorDash uses electronic independent contractor agreements with contractors such as Plaintiff. DoorDash asks contractors who create an account to review and agree to the applicable Independent Contractor Agreement (“ICA”) at the time of sign-up. Attached hereto as **Exhibit A** is a true and correct copy of the text of the ICA as it existed at the time that Plaintiff created a DoorDash



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account. The check-box section of the DoorDash sign-up screen asks the contractors to manifest their assent to the ICA by clicking a box next to the following text: “I agree to the Independent Contractor Agreement and have read the Dasher Privacy Policy.” The “Independent Contractor Agreement” and “Dasher Privacy Policy” text is hyperlinked in bright red, and directs potential contractors to the text of the ICA. Attached hereto as **Exhibit B** is a true and correct copy of the appearance of the sign-up page as it existed when Plaintiff signed up to create a DoorDash account.

8. In the event that a user clicked the “Sign Up” button at the bottom of the sign-up screen without first checking the box to indicate agreement to the ICA, the user would be unable to proceed and would receive a message in bold black text and highlighted in a yellow box: “You must accept this agreement to continue!” Attached hereto as **Exhibit C** is a true and correct copy of the message that appears on the sign-up page if a user clicked “Sign Up” without clicking the box manifesting consent to the ICA as it existed when Plaintiff signed up to create a DoorDash account.

9. Before creating an account and agreeing to the ICA, Plaintiff was free to scroll through the ICA at his leisure, on his own terms, and to seek the input of an attorney or trusted advisor if he so chose. He was equally free not to continue creating an account. If he elected to proceed, however, Plaintiff had to manifest his consent to the ICA by: (1) clicking the box indicating “I agree to the Independent Contractor Agreement,” and (2) by clicking “Sign Up.”

10. Because Plaintiff created his account on November 14, 2018, he necessarily accepted the ICA attached hereto as Exhibit A on that date.

11. After agreeing to the ICA, contractors such as Plaintiff have the opportunity to opt out of the arbitration provision if he/she so desires in the manner described by the arbitration provision. Contractors may opt out of the arbitration provision within thirty days after agreeing to the ICA by mailing a signed letter to DoorDash indicating that they wish to opt out. As the Chief Product Officer, I have access to DoorDash’s business records reflecting the names of those individuals who have accepted the ICA and have elected to opt out of the arbitration provision. The opt out records are maintained in an electronic file in the regular course of DoorDash’s business, and are records of DoorDash’s regularly conducted activity of recording those individuals who have opted out of the

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arbitration provision. Many contractors have exercised their right to opt out of the arbitration provision within thirty days of accepting the ICA.

12. DoorDash's records reflect that Plaintiff did not opt out of the arbitration provision.

I declare under penalty of perjury pursuant to the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed at San Francisco, California, on this 28th day of June, 2019.

DocuSigned by:

Stanley Tang

54FDB45666AA453...

Stanley Tang

Attorney for Defendant DOORDASH, INC.

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# EXHIBIT A

# INDEPENDENT CONTRACTOR AGREEMENT

This Agreement ("Agreement") is made and entered into by and between you, the undersigned contractor ("CONTRACTOR"), an independent contractor engaged in the business of performing the delivery services contemplated by this Agreement, and DoorDash, Inc. ("DOORDASH" or "COMPANY"). CONTRACTOR may enter this Agreement either as an individual or as a corporate entity. This Agreement will become effective on the date it is accepted regardless of whether you are eligible to, or ever do, perform any Contracted Services.

**IMPORTANT: PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN PARTICULAR, PLEASE REVIEW THE MUTUAL ARBITRATION PROVISION IN SECTION XI, AS IT REQUIRES THE PARTIES (UNLESS YOU OPT OUT OF ARBITRATION AS PROVIDED BELOW) TO RESOLVE DISPUTES ON AN INDIVIDUAL BASIS, TO THE FULLEST EXTENT PERMITTED BY LAW, THROUGH FINAL AND BINDING ARBITRATION. BY ACCEPTING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS, INCLUDING SECTION XI, AND HAVE TAKEN THE TIME AND SOUGHT ANY ASSISTANCE NEEDED TO COMPREHEND THE CONSEQUENCES OF ACCEPTING THIS AGREEMENT.**

## THE PARTIES

DOORDASH is a company that provides an online marketplace connection using web-based technology that connects contractors, restaurants and/or other businesses, and consumers ("DOORDASH platform" or "platform"). DOORDASH's software permits registered users to place orders for food and/or other goods from various restaurants and businesses. Once such orders are made, DOORDASH software notifies contractors that a delivery opportunity is available and the DOORDASH software facilitates completion of the delivery. DOORDASH is not a restaurant, food delivery service, or food preparation business.

CONTRACTOR is an independent provider of delivery services, authorized to conduct the delivery services contemplated by this Agreement in the geographic location(s) in which CONTRACTOR operates. CONTRACTOR possesses all equipment and personnel necessary to perform the delivery services contemplated by this Agreement in accordance with applicable laws. CONTRACTOR desires to enter into this Agreement for the right to receive delivery opportunities made available through DOORDASH'S platform. CONTRACTOR understands and expressly agrees that he/she is not an employee of DOORDASH or any restaurant, other business or consumer and that he/she is providing delivery services on behalf of him/herself and his/her business, not on behalf of DOORDASH. CONTRACTOR understands (i) he/she is free to select those times he/she wishes to be available on the platform to receive delivery opportunities; (ii) he/she is free to accept or reject the opportunities transmitted through the DOORDASH platform by consumers, and can make such decisions to maximize his/her opportunity to profit; and (iii) he/she has the sole right to control the manner in which deliveries are performed and the means by which those deliveries are completed.

In consideration of the above, as well as the mutual promises described herein, DOORDASH and CONTRACTOR (collectively "the parties") agree as follows:

## I. PURPOSE OF THE AGREEMENT

1. This Agreement governs the relationship between DOORDASH and CONTRACTOR, and establishes the parties' respective rights and obligations. In exchange for the promises contained in this Agreement, CONTRACTOR shall have the right and obligation to perform the "Contracted Services" as defined herein. However, nothing in this Agreement requires CONTRACTOR to perform any particular volume of Contracted Services during the term of this Agreement, and nothing in this Agreement shall guarantee CONTRACTOR any particular volume of business for any particular time period.
2. CONTRACTOR shall have no obligation to accept or perform any particular "Delivery Opportunity" (as that term is defined herein) offered by DOORDASH. However, once a Delivery Opportunity is accepted, CONTRACTOR shall be contractually bound to complete the Contracted Services in accordance with all consumer specifications and the terms laid out in this Agreement,

## II. CONTRACTOR'S OPERATIONS

1. CONTRACTOR represents that he/she operates an independently established enterprise that provides delivery services, and that he/she satisfies all legal requirements necessary to perform the services contemplated by this Agreement. As an independent contractor/enterprise, CONTRACTOR shall be solely responsible for determining how to operate his/her business and how to perform the Contracted Services.

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2. CONTRACTOR agrees to fully perform the Contracted Services in a timely, efficient, safe, and lawful manner. DOORDASH shall have no right to, and shall not, control the manner, method or means CONTRACTOR uses to perform the Contracted Services. Instead, CONTRACTOR shall be solely responsible for determining the most effective, efficient, and safe manner to perform the Contracted Services, including determining the manner of pickup, delivery, and route selection.
3. As an independent business enterprise, CONTRACTOR retains the right to perform services (whether delivery services or other services) for others and to hold him/herself out to the general public as a separately established business. The parties recognize that they are or may be engaged in similar arrangements with others and nothing in this Agreement shall prevent CONTRACTOR or DOORDASH from doing business with others. DOORDASH does not have the right to restrict CONTRACTOR from performing services for other businesses, customers or consumers at any time, even if such business directly competes with DOORDASH, and even during the time CONTRACTOR is logged into the DOORDASH platform. CONTRACTOR's right to compete with DOORDASH, or perform services for business that compete with DOORDASH, will survive even after termination of this Agreement.
4. CONTRACTOR is not required to purchase, lease, or rent any products, equipment or services from DOORDASH as a condition of doing business with DOORDASH or entering into this Agreement.
5. CONTRACTOR agrees to immediately notify DOORDASH in writing at [www.doordash.com/help/](http://www.doordash.com/help/) if CONTRACTOR's right to control the manner or method he/she uses to perform services differs from the terms contemplated in this Section.

### III. CONTRACTED SERVICES

1. From time to time, the DOORDASH platform will notify CONTRACTOR of the opportunity to complete deliveries from restaurants or other businesses to consumers in accordance with orders placed by consumers through the DOORDASH platform (each of these is referred to as a "Delivery Opportunity"). For each Delivery Opportunity accepted by CONTRACTOR ("Contracted Service"), CONTRACTOR agrees to retrieve the orders from restaurants or other businesses, ensure the order was accurately filled, and deliver the order to consumers in a safe and timely fashion. CONTRACTOR understands and agrees that the parameters of each Contracted Service are established by the consumer, not DOORDASH, and represent the end result desired, not the means by which CONTRACTOR is to accomplish the result. CONTRACTOR has the right to cancel, from time to time, a Contracted Service when, in the exercise of CONTRACTOR's reasonable discretion and business judgment, it is appropriate to do so. Notwithstanding the foregoing, CONTRACTOR agrees to maintain both a customer rating and a completion rate found here (<http://doordash.squarespace.com/local-markets>) as of the date this Agreement becomes effective. Failure to satisfy this obligation constitutes a material breach of this Agreement, and DOORDASH shall have the right to terminate this Agreement and/or deactivate CONTRACTOR'S account.
2. CONTRACTOR acknowledges that DOORDASH has discretion as to which, if any, Delivery Opportunity to offer, just as CONTRACTOR has the discretion whether and to what extent to accept any Delivery Opportunity.
3. CONTRACTOR acknowledges that CONTRACTOR is engaged in CONTRACTOR's own business, separate and apart from DOORDASH'S business, which is to provide an online marketplace connection using web-based technology that connects contractors, restaurants and/or other businesses, and consumers.
4. CONTRACTOR authorizes DOORDASH, during the course of a Contracted Service, to communicate with CONTRACTOR, consumer, and/or restaurant or other business to assist CONTRACTOR, to the extent permitted by CONTRACTOR, in facilitating deliveries. However, under no circumstances shall DOORDASH be authorized to control the manner or means by which CONTRACTOR performs delivery services. This includes, but is not limited to, the following:
  - DOORDASH does not require any specific type, or quality, of CONTRACTOR's choice of transportation.
  - CONTRACTOR does not have a supervisor or any individual at DOORDASH to whom they report.
  - CONTRACTOR is not required to use any signage or other designation of DOORDASH on his or her vehicle or person at any point in their use of the platform to perform the Contracted Services.
  - DOORDASH has no control over CONTRACTOR's personal appearance
  - CONTRACTOR does not receive regular performance evaluations by DOORDASH
5. CONTRACTOR may use whatever payment method he/she chooses to purchase items to be delivered to consumers, including, but not limited to CONTRACTOR's personal credit or debit card, cash or a prepaid card. CONTRACTOR may use, for CONTRACTOR's convenience, the prepaid card solely for purchasing items to be delivered to consumers. If CONTRACTOR chooses to use his/her personal credit or debit card or cash, CONTRACTOR shall invoice DOORDASH on a weekly basis and DOORDASH agrees to pay all invoices within 10 days of receipt.

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6. In the event CONTRACTOR fails to fully perform any Contracted Service (a "Service Failure") due to CONTRACTOR's action or omission, CONTRACTOR shall forfeit all or part of the agreed upon fee for that service. If CONTRACTOR disputes responsibility for a Service Failure, the dispute shall be resolved pursuant to the "Payment Disputes" provision below.

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7. CONTRACTOR agrees to immediately notify DOORDASH in writing by submitting a Support inquiry through <https://help.doordash.com/consumers/s/contactsupport> if CONTRACTOR's services or scope of work differ in any way from what is contemplated in this Section.

#### IV. RELATIONSHIP OF PARTIES

1. The parties acknowledge and agree that this Agreement is between two co-equal, independent business enterprises that are separately owned and operated. The parties intend this Agreement to create the relationship of principal and independent contractor and not that of employer and employee. The parties are not employees, agents, joint venturers, or partners of each other for any purpose. Neither party shall have the right to bind the other by contract or otherwise except as specifically provided in this Agreement.
2. DOORDASH shall not have the right to, and shall not, control the manner or the method of accomplishing Contracted Services to be performed by CONTRACTOR. The parties acknowledge and agree that those provisions of the Agreement reserving ultimate authority in DOORDASH have been inserted solely for the safety of consumers and other CONTRACTORS using the DOORDASH platform or to achieve compliance with federal, state, or local laws, regulations, and interpretations thereof.
3. DOORDASH shall report all payments made to CONTRACTOR on a calendar year basis using an appropriate IRS Form 1099, if the volume of payments to CONTRACTOR qualify. CONTRACTOR agrees to report all such payments and any cash gratuities to the appropriate federal, state and local taxing authorities.

#### V. PAYMENT FOR SERVICES

1. Unless notified otherwise by DOORDASH in writing or except as provided herein, CONTRACTOR will receive payment per accurate Contracted Service completed in an amount consistent with the publicly provided pay model, which you can view here (<http://doordash.squarespace.com/local-markets>). From time to time, DOORDASH may offer opportunities for CONTRACTOR to earn more money for performing Contracted Services at specified times or in specified locations. Nothing prevents the parties from negotiating a different rate of pay, and CONTRACTOR is free to accept or deny any such opportunities to earn different rates of pay.
2. DOORDASH's online credit card software may permit consumers to add a gratuity to be paid to CONTRACTOR, and consumers can also pay a gratuity to CONTRACTOR in cash. CONTRACTOR shall retain 100% of any gratuity paid by the consumer, whether by cash or credit card. DOORDASH acknowledges it has no right to interfere with the amount of gratuity given by the consumer to the CONTRACTOR.
3. DOORDASH will process payments made by consumers and transmit to CONTRACTOR. Payments for all deliveries completed in a given week will be transferred via direct deposit on no less than a weekly basis unless it notifies CONTRACTOR otherwise in writing.
4. Notwithstanding the terms of Section V(1) – (3), fulfillment orders placed directly with merchants rather than through the App or doordash.com ("Fulfillment Orders") may be subject to a different payment model. The current pay schedules offered for Fulfillment Orders in the relevant markets are reflected here (<https://doordash.squarespace.com/doordash-drive/>). Nothing prevents the parties from negotiating a different rate of pay for a Fulfillment Order, and the CONTRACTOR is free to accept or reject Fulfillment Order opportunities. As with all Delivery Opportunities, CONTRACTOR shall retain 100% of any gratuity paid by the consumer for a Fulfillment Order. DoorDash's software may not always include an option to add gratuity for Fulfillment Orders; however, consumers can pay a gratuity to CONTRACTOR in cash.
5. From time to time, DOORDASH may offer various Dasher promotions or referral programs. CONTRACTOR agrees that he or she will not manipulate or abuse the referral programs or Dasher promotions by, among other things: (a) tampering with the location feature on his or her mobile phone; (b) collecting incentive or promotional pay when not eligible to receive such pay under relevant policies; or, (c) creating multiple Dasher or consumer accounts. CONTRACTOR understands that engaging in this type of manipulation or abuse constitutes a material breach of this Agreement and may lead to deactivation of his or her account.

#### VI. PAYMENT DISPUTES

1. **CONTRACTOR's Failure:** In the event there is a Service Failure, CONTRACTOR shall not be entitled to payment as described above (as determined in DOORDASH's reasonable discretion). Any withholding of payment shall be based upon proof provided by the consumer, restaurant or other business, CONTRACTOR, and any other party with information relevant to the dispute. DOORDASH shall make the initial determination as to whether a Service Failure was the result of CONTRACTOR's action/omission. CONTRACTOR shall have the right to challenge DOORDASH's determination through any legal means contemplated by this Agreement; however, CONTRACTOR shall notify DOORDASH in writing at [www.doordash.com/help/](http://www.doordash.com/help/) of the challenge and provide DOORDASH the opportunity to resolve the dispute. CONTRACTOR should include any documents or other information in support of his/her challenge.
2. **DOORDASH's Failure:** In the event DOORDASH fails to remit payment in a timely or accurate manner, CONTRACTOR shall have the right to seek proper payment by any legal means contemplated by this Agreement and, should CONTRACTOR prevail, shall be entitled to recover reasonable costs incurred in pursuing proper payment, provided, however, CONTRACTOR shall first inform DOORDASH in writing at [www.doordash.com/help/](http://www.doordash.com/help/) of the failure and provide a reasonable opportunity to cure it.

## EQUIPMENT AND EXPENSES

1. CONTRACTOR represents that he/she has or can lawfully acquire all equipment, including vehicles and food hot bags ("Equipment") necessary for performing contracted services, and CONTRACTOR is solely responsible for ensuring that the vehicle used conforms to all vehicle laws pertaining to safety, equipment, inspection, and operational capability.
2. CONTRACTOR agrees that he/she is responsible for all costs and expenses arising from CONTRACTOR's performance of Contracted Services, including, but not limited to, costs related to CONTRACTOR's Personnel (defined below) and Equipment. Except as otherwise required by law, CONTRACTOR assumes all risk of damage or loss to its Equipment.

## VIII. PERSONNEL

1. In order to perform any Contracted Services, CONTRACTOR must, for the safety of consumers on the DOORDASH platform, pass a background check administered by a third-party vendor, subject to CONTRACTOR's lawful consent. CONTRACTOR is not required to perform any Contracted Services personally, but may, to the extent permitted by law and subject to the terms of this Agreement, hire or engage others (as employees or subcontractors of CONTRACTOR) to perform all or some of the Contracted Services, provided any such employees or subcontractors meet all the requirements applicable to CONTRACTOR including, but not limited to, the background check requirements that CONTRACTOR must meet in order to perform Contracted Services. To the extent CONTRACTOR furnishes his/her own employees or subcontractors (collectively "Personnel"), CONTRACTOR shall be solely responsible for the direction and control of the Personnel it uses to perform all Contracted Services.
2. **CONTRACTOR assumes full and sole responsibility for the payment of all amounts due to his/her Personnel for work performed in relation to this Agreement, including all wages, benefits and expenses, if any, and for all required state and federal income tax withholdings, unemployment insurance contributions, and social security taxes as to CONTRACTOR and all Personnel employed by CONTRACTOR in the performance of Contracted Services under this Agreement. DOORDASH shall have no responsibility for any wages, benefits, expenses, or other payments due CONTRACTOR's Personnel, nor for income tax withholding, social security, unemployment insurance contributions, or other payroll taxes relating to CONTRACTOR or his/her Personnel. Neither CONTRACTOR nor his/her Personnel shall receive any wages, including vacation pay or holiday pay, from DOORDASH, nor shall they participate in or receive any other benefits, if any, available to DOORDASH's employees.**
3. **Unless mandated by law, DOORDASH shall have no authority to withhold state or federal income taxes, social security taxes, unemployment insurance taxes/contributions, or any other local, state or federal tax on behalf of CONTRACTOR or his/her Personnel.**
4. CONTRACTOR and his/her Personnel shall not be required to wear a uniform or other clothing of any type bearing DOORDASH's name or logo.
5. If CONTRACTOR uses the services of any Personnel to perform the Contracted Services, CONTRACTOR's Personnel must satisfy and comply with all of the terms of this Agreement, which CONTRACTOR must make enforceable by written agreement between CONTRACTOR and such Personnel. A copy of such written agreement must be provided to DOORDASH at least 7 days in advance of such Personnel performing the Contracted Services. The parties acknowledge that the sole purpose of this requirement is to ensure CONTRACTOR's compliance with the terms of this Agreement.

## IX. INSURANCE

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2. **NOTIFICATION OF COVERAGE:** CONTRACTOR agrees to deliver to DOORDASH, upon request, current certificates of insurance as proof of coverage. CONTRACTOR agrees to provide updated certificates each time CONTRACTOR purchases, renews, or alters CONTRACTOR's insurance coverage. CONTRACTOR agrees to give DOORDASH at least thirty (30) days' prior written notice before cancellation of any insurance policy required by this Agreement.
  3. **WORKERS' COMPENSATION/OCCUPATIONAL ACCIDENT INSURANCE:** CONTRACTOR agrees that CONTRACTOR will not be eligible for workers' compensation benefits through DOORDASH, and instead, will be responsible for providing CONTRACTOR's own workers' compensation insurance or occupational accident insurance, if permitted by law.

## X. INDEMNITY

1. DOORDASH agrees to indemnify, protect and hold harmless CONTRACTOR from any and all claims, demands, damages, suits, losses, liabilities and causes of action arising directly from DOORDASH's actions arranging and offering the Contracted Services to CONTRACTOR.
2. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all claims, demands, damages, suits, losses, liabilities and causes of action arising directly or indirectly from, as a result of or in connection with, the actions of CONTRACTOR and/or his/her Personnel arising from the performance of delivery services under this Agreement, including personal injury or death to any person (including to CONTRACTOR and/or his/her Personnel), as well as any liability arising from CONTRACTOR's failure to comply with the terms of this Agreement. CONTRACTOR's obligations hereunder shall include the cost of defense, including attorneys' fees, as well as the payment of any final judgment rendered against or settlement agreed upon by DOORDASH or its parent, subsidiary and/or affiliated companies.
3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to this arbitration agreement, which is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), Federal Credit Reporting Act (or its state or local equivalents), Telephone Consumer Protection Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be



governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.

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2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Arbitration Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action—including but not limited to actions brought pursuant to the Private Attorney General Act ("PAGA"), California Labor Code section 2699 et seq., and any request seeking a public injunction—and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action, or to award relief to anyone but the individual in arbitration ("Arbitration Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Arbitration Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Arbitration Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Arbitration Class Action Waiver that is enforceable shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Arbitration Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.
4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, in the event that DOORDASH and CONTRACTOR have agreed to this Mutual Arbitration Provision, DOORDASH and CONTRACTOR shall equally share filing fees and other similar and usual administrative costs, as are common to both court and administrative proceedings. DOORDASH shall pay any costs uniquely associated with arbitration, such as payment of the costs of AAA and the Arbitrator, as well as room rental.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Arbitration Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a

- i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.
7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision. Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this MUTUAL ARBITRATION PROVISION.** In order to opt out, CONTRACTOR must notify DOORDASH in writing of CONTRACTOR's intention to opt out by sending a letter, by First Class Mail, to DoorDash, Inc., 901 Market Street, Suite 600, San Francisco, CA, 94131. Any attempt to opt out by email will be ineffective. The letter must state CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out letter must be postmarked within 30 days of the effective date of this Agreement. The letter must be signed by CONTRACTOR himself/herself, and not by any agent or representative of CONTRACTOR. The letter may opt out, at most, only one CONTRACTOR, and letters that purport to opt out multiple CONTRACTORS will not be effective as to any. No CONTRACTOR (or his or her agent or representative) may effectuate an opt out on behalf of other CONTRACTORS. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. LITIGATION CLASS ACTION WAIVER

1. To the extent allowed by applicable law, separate and apart from the Mutual Arbitration Provision found in Section XI, CONTRACTOR agrees that any proceeding to litigate in court any dispute arising out of or relating to this Agreement, whether because CONTRACTOR opted out of the Arbitration Provision or any other reason, will be conducted solely on an individual basis, and CONTRACTOR agrees not to seek to have any controversy, claim or dispute heard as a class action, a representative action, a collective action, a private attorney-general action, or in any proceeding in which CONTRACTOR acts or proposes to act in a representative capacity ("Litigation Class Action Waiver"). CONTRACTOR further agrees that no proceeding will be joined, consolidated, or combined with another proceeding, without the prior written consent of all parties to any such proceeding. If a court of competent jurisdiction determines that all or part of this Litigation Class Action Waiver is unenforceable, unconscionable, void or voidable, the remainder of this Agreement shall remain in full force and effect.

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1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

#### **XIV. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER**

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the consumer facing Terms and Conditions Agreement to which Contractor may be bound (and vice versa). This Agreement may not be assigned by either party without written consent of the other and shall be binding upon the parties hereto, including their heirs and successors, provided, however, that DOORDASH may assign its rights and obligations under this Agreement to an affiliate of DOORDASH or any successor(s) to its business and/or purchaser of substantially all of its stock or assets. References in this Agreement to DOORDASH shall be deemed to include such successor(s).
2. The failure of DOORDASH or CONTRACTOR in any instance to insist upon a strict performance of the terms of this Agreement or to exercise any option herein, shall not be construed as a waiver or relinquishment of such term or option and such term or option shall continue in full force and effect.

#### **XV. MISCELLANEOUS**

1. CAPTIONS: Captions appearing in this Agreement are for convenience only and do not in any way limit, amplify, modify, or otherwise affect the terms and provisions of this Agreement.
2. SEVERABILITY Clause: Except as specifically provided in Section XI, if any part of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect.
3. GOVERNING LAW: Except for the Mutual Arbitration Provision above, which is governed by the Federal Arbitration Act, the choice of law for interpretation of this Agreement, and the right of the parties hereunder, as well as substantive interpretation of claims asserted pursuant to Section XI, shall be the rules of law of the state in which CONTRACTOR performs the majority of the services covered by this Agreement.
4. NOTICE AND OPPORTUNITY TO CURE: CONTRACTOR agrees to notify DOORDASH in writing at <https://www.doordash.com/help/> (<https://www.doordash.com/help/>) of any breach or perceived breach of this Agreement, of any claim arising out of or related to this Agreement, or of any claim that CONTRACTOR's services or scope of work differ in any way from what is contemplated in this Agreement, including but not limited to the terms in Sections II (Contractor's Operations) and III (Contractor's Services), or if the relationship of the parties differs from the terms contemplated in Section IV (Relationship of Parties).
5. PRIVACY POLICY: CONTRACTOR represents and warrants that he or she has reviewed and understands DOORDASH'S Dasher Privacy Statement, which can be found here (<http://www.doordash.com/dasherprivacypolicy>). By using the Dasher

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/s/Cody Aughney

Cody Aughney, authorized representative for DoorDash, Inc.

About (/about/) • Blog (<http://blog.doordash.com>) • Careers (/careers/) • Terms (/terms/) • Privacy (/privacy/) • Accessibility  
(/accessibility/) • Delivery Locations (/food-delivery/) • Help & Support (/help/) • Become a Merchant (/merchant/apply/) • Become  
a Dasher (/driver/apply/)

 (<http://twitter.com/doordash>)  (<http://facebook.com/doordash>)  (<http://instagram.com/doordash>)

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# EXHIBIT B

[About Us](#)[Careers](#)[Blog](#)

# Get your first check this week

☐ I consent to receive emails, calls, or SMS messages including by automatic telephone dialing system from DoorDash to my email or phone number(s) above for informational and/or marketing purposes. Consent to receive messages is not a condition to make a purchase or sign up. I agree to the [Independent Contractor Agreement](#) and have read the [Dasher Privacy Policy](#).

[Sign Up](#)[Already started signing up?](#)

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# EXHIBIT C

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# Get your first check this week

San Francisco, CA

☐ I consent to receive emails, calls, or SMS messages including by automatic telephone dialing system from DoorDash to my email or phone number(s) above for informational and/or marketing purposes. Consent to receive messages is not a condition to make a purchase or sign up. I agree to the [Independent Contractor Agreement](#) and have read the [Dasher Privacy Policy](#).

**You must accept this agreement to continue!**

**Sign Up**

[Already started signing up?](#)



**APPENDIX G**

R. Rex Parris (SBN 96567)  
 Kitty K. Szeto (SBN 258136)  
 John M. Bickford (SBN 280929)  
 Ryan A. Crist (SBN 316653)

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Attorneys for Plaintiff BRANDON CAMPBELL  
 and the Aggrieved Employees

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

BRANDON CAMPBELL, in his representative  
 capacity under the Private Attorney General Act  
 ("PAGA"),

Plaintiff,

v.

DOORDASH, INC., a Delaware Corporation; and  
 DOES 1 through 100, inclusive,

Defendants.

Case No.: CGC-19-575383

[Assigned for all purposes to the Honorable  
 Ethan P. Schulman, Dept. 302]

**PLAINTIFF'S OPPOSITION TO  
 DEFENDANT'S PETITION TO COMPEL  
 ARBITRATION**

Date: November 1, 2019

Time: 9:30 a.m.

Place: 302

Complaint Filed: April 19, 2019

Trial Date: None Set

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## INTRODUCTION

Defendant DoorDash, Inc. (“DoorDash”) is asking this court to ignore the California Supreme Court’s decision in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*) holding Private Attorney General Act (“PAGA”) waivers are unenforceable and this rule is not preempted by the Federal Arbitration Act (“FAA”). According to it, the United States Supreme Court’s decision in *Epic Systems Corp. v. Lewis* (2018) 138 S.Ct. 1612 (*Epic Systems*) implicitly overruled *Iskanian*. But *Epic Systems* dealt with whether the NLRA prohibits class waivers in employment agreements. It said nothing about the enforceability of PAGA waivers, nor did it discuss any other representative claim. Since this court is “absolutely bound to follow the decisions of the California Supreme Court, unless the United States Supreme Court has decided the *same* question differently,” Defendant’s motion to compel arbitration must be denied. (*Truly Nolen of America v. Superior Court* (2012) 208 Cal.App.4th 487, 507 (*Truly Nolen*), italics in original.)

Additionally, there is no reason to stay this case. Unlike the “hundreds” of individual arbitrations and five PAGA claims alleging DoorDash misclassifies its Dashers as independent contractors, Plaintiff is claiming California’s tipping laws apply to independent contractors, at least in this case. It would make little sense to stay a case pending the outcome of a case based on an entirely different legal theory. Moreover, even if the cases were the same, there is no rule prohibiting an employer from facing multiple arbitrations and PAGA claims at one time. Accordingly, the petition should be denied.

## FACTS

### **A. DoorDash is a food delivery company.**

DoorDash is an on-demand delivery company that enables customers to order food from local restaurants and stores and have it delivered to them for a fee. (FAC, ¶ 10.) To make an order, customers use DoorDash’s smartphone app to place an order from a participating business. (*Ibid.*) When an order is placed, the price is shown and charged to the customer’s credit card. (*Ibid.*) Besides the cost of the food, the price includes a service/delivery fee. (*Ibid.*) The order is then picked up and delivered by delivery drivers, called “Dashers,” which DoorDash classifies as independent contractors. (*Ibid.*) Once the food is delivered, the customer may tip the Dasher through the app. (*Ibid.*)

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**B. DoorDash uses customers' tips to satisfy its workers' guaranteed minimum pay.**

Each delivery has a guaranteed minimum pay the Dashers are promised to receive for each delivery, which varies based on order size, distance, traffic, and other factors relating to the logistics of the delivery. (FAC, ¶ 11.) Earlier this year, controversy arose when reporters discovered that DoorDash had been using its customers' tips to satisfy the Dasher's guaranteed minimum pay since at least 2017. (See *id.*, Ex. D at p. 2.) The policy works like this: DoorDash pays out a base fee of \$1 per order and then counts a customer's tip, if they leave one, toward the guaranteed pay amount. (*Id.*, Ex. H at p. 2.) If the value of the tip falls short of the guaranteed pay amount, DoorDash pays the difference. (*Ibid.*) If the tip exceeds the guaranteed pay amount, then DoorDash only pays \$1 and the tip makes up the rest of the pay. (*Ibid.*)

Consider the following three order examples, all with a hypothetical guaranteed minimum pay of \$10. In the first example, the customer tips nothing, so DoorDash pays the \$1 base plus an additional \$9. (FAC, Ex. J at p. 2.) In the second example, the customer tips \$5, so DoorDash pays the \$1 base plus an additional \$4. (*Ibid.*) In the third example, the customer tips \$9, so DoorDash pays only the \$1 base. (*Ibid.*)

In any of these cases, the outcome for the worker is the same: They get \$10.

So long as [the customers'] tip counts toward the guaranteed order minimum set by the company, it doesn't matter to the worker whether [the customer] left [a tip] or not; they get paid the same. . . . But it matters to DoorDash, because if [a customer doesn't] leave a tip, the company has to cover the entire cost of the guaranteed minimum it promises to take on a job.

(*Ibid.*)

**C. Customers don't realize their tips are being used to subsidize the Dasher's promised minimum payment.**

DoorDash's policy of "[a]djusting [its] contribution, depending on the tip, flies in the face of how customers have traditionally viewed the act of tipping: as a bonus that's in addition to a set, if low, base salary from the company." (FAC, Ex. D at p. 3.) "When people add additional tips to their delivery

service tab, they reasonably assume they are tipping the delivery person—rather than the company.” (*Id.*, Ex. E at p. 1.) “ ‘Customers are basically subsidizing a promised minimum payment, and it’s extremely deceptive.’ ” (*Id.*, Ex. B at p. 1.; *id.*, Ex. H at p. 4 [“ ‘If the customers really knew what was going on, I don’t think they would be happy because tips are supposed to be on top of base pay.’ ”].)

The only way a customer can ensure their tip is being used properly is by tipping in cash.

Let’s revisit that hypothetical order with the \$10 guarantee. If [a customer] leave[s] zero tip in the app, but [gives the] delivery worker \$5 in cash, then guess what? DoorDash pays them the \$1 base plus \$9 to meet that minimum, and they *also* get [the customer’s] \$5 tip, for a total of \$15. When [a customer] leave[s] the same \$5 tip in the app, DoorDash counts it against the order guarantee and the worker only get \$10. The cost to [the customer] in both cases is \$5, but when the [customer] tips in cash the worker gets that money on top of the order minimum, rather than as part of it.

(FAC, Ex. J. at p. 3.)

**D. Plaintiff files a PAGA claim, alleging DoorDash’s tipping policy violates California tipping law.**

On April 19, 2019, Plaintiff filed a PAGA complaint, alleging DoorDash’s tipping policy violates Labor Code section 351 and 353. Labor Code section 351 states, in part:

No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.

(Labor Code, § 351.) Labor Code section 353 states: “Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of

deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.” (*Id.*, § 353.)

The stated public purpose of these statutes “is to prevent fraud upon the public in connection with the practice of tipping.” (Labor Code, § 355.) The statutes “cannot be contravened by private agreement.” (*Ibid.*)

Notably, these statutes do not rely on the commonly-used definitions of employer and employee. (See Labor Code, § 350; see also *Salazar v. McDonalds Corp.* (9th Cir. Oct. 1, 2019, No. 17-15673) \_\_\_\_ F.3d \_\_\_, \_\_\_, [2019 WL 4782760, at \*3] [The California Supreme Court has provided three alternative definitions for what it means for a person or entity to ‘employ[ ]’ someone: ‘(a) to exercise control over the wages, hours or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common law relationship.’ ” (alteration in original)].) Rather, California’s tipping laws have their own definitions, which are much broader:

(a) “Employer” means every person engaged in any business or enterprise in this state that *has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis.*

(b) “Employee” means *every person*, including aliens and minors, *rendering actual service* in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.

(c) “Employing” includes hiring, *or in any way contracting for*, the services of an employee.

(Labor Code, § 350, italics added.)

Plaintiff has clarified that he is not alleging he and the other aggrieved employees are misclassified as independent contractors under the commonly used definitions of employer and employee. (FAC, ¶ 28.) Instead, he is alleging that the Dashers, despite being classified as independent contractors, fall within the



definition of employee, and DoorDash falls within the definition of employer, as defined by California’s tipping laws. Consequently, DoorDash’s tipping policy is unlawful.

### **ARGUMENT**

#### **I. THE PAGA WAIVER IS UNENFORCEABLE.**

DoorDash argues “this case should be sent to bilateral arbitration because Plaintiff agreed to arbitrate all disputes with DoorDash and waived his right to bring a representative PAGA claim.” (Mot. at 5:5:20–21.) But it is well established that PAGA claims cannot be waived, nor can they be compelled to arbitration. This remains true despite the United States Supreme Court’s decision in *Epic Systems Corp. v. Lewis* (2018) 138 S.Ct. 1612 (“*Epic Systems*”). The petition must be denied.

##### **A. A PAGA claim is a type of qui tam action.**

PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees, with most of the proceeds of that litigation going to the state.” (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 360 (*Iskanian*)). It was enacted

to remedy systemic underenforcement of many worker protections. This underenforcement was a product of two related problems. First, many Labor Code provisions contained only criminal sanctions, and district attorneys often had higher priorities. Second, even when civil sanctions were attached, the government agencies with existing authority to ensure compliance often lacked adequate staffing and resources to police labor practices throughout an economy the size of California’s. [Citations.] The Legislature addressed these difficulties by adopting a schedule of civil penalties ‘ “significant enough to deter violations” ’ for those provisions that lacked existing noncriminal sanctions, and by deputizing employees harmed by labor violations to sue on behalf of the state and collect penalties, to be shared with the state and other affected employees.

(*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545 (*Williams*)).

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PAGA was passed “with the understanding that labor law enforcement agencies were to retain primacy over private enforcement efforts.” (*Iskanian, supra*, 59 Cal.4th at p. 379, internal quotation marks omitted.) Thus, an aggrieved employee must first “provide notice to the employer and the responsible state agency ‘of the specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation.’ [Citations.] If the agency elects not to investigate, or investigates without issuing a citation, the employee may then bring a PAGA action.” (*Williams, supra*, 3 Cal.5th at p. 545.) “Of the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency [LWDA], leaving the remaining 25 percent for the ‘aggrieved employees.’ ” (*Iskanian*, at p. 380, internal quotation marks omitted.)

A PAGA action is therefore “fundamentally a law enforcement action designed to protect the public and not to benefit private parties.” (*Iskanian, supra*, 59 Cal.4th at p. 381, internal quotation marks omitted.) An employee “suing . . . under the [PAGA] does so as a proxy or agent of the state’s labor law enforcement agencies. . . . In a lawsuit brought under the act, the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies—namely, recovery of civil penalties that otherwise would have been assessed and collected by the Labor Workforce Development Agency.” (*Id.* at p. 380, alterations in original, internal quotation marks omitted.) Put differently, a PAGA action is “a type of qui tam action,” except “a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation.” (*Id.* at p. 382; accord, *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 429 (*Sakkab*) [“An action brought under the PAGA is a type of qui tam action.”].)

**B. Iskanian holds PAGA waivers violate public policy and are unenforceable despite the FAA.**

In *Iskanian*, the California Supreme Court examined two related questions regarding the predispute waiver of PAGA claims: (1) whether arbitration agreements requiring employees to waive their right to bring PAGA actions are unenforceable under state law, and if so, (2) whether the FAA preempts that rule. (*Iskanian, supra*, 59 Cal.4th at p. 378.) The court began by holding that two state statutes prohibited the enforcement of PAGA waivers. The first, Civil Code section 1668, codifies the general principle that agreements exculpating a party for violations of the law are unenforceable. The court observed that

allowing employees to waive the right to bring PAGA actions would “disable one of the primary mechanisms for enforcing the Labor Code.” (*Id.* at p. 383.) Because a PAGA waiver “has as its ‘object, . . . indirectly, to exempt [the employer] from responsibility for [its] own . . . violation of law,’ it is against public policy and may not be enforced.” (*Ibid.*, alterations in original, quoting Civ. Code, § 1668.) The court also found PAGA waivers violated Civil Code section 3513, which codifies the general principle that a law established for a public reason may not be contravened by private agreement. The court concluded that “agreements requiring the waiver of PAGA rights would harm the state’s interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations.” (*Ibid.*)

The California Supreme Court further held this rule is not preempted by the FAA. This is because “the FAA aims to ensure an efficient forum for the resolution of *private* disputes, whereas a PAGA action is a dispute between an employer and the state Labor and Workforce Development Agency.” (*Iskanian, supra*, 59 Cal.4th at p. 384.) “[A] PAGA claim lies outside the FAA’s coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the *state*, which alleges directly or through its agents—either the Labor and Workforce Development Agency or aggrieved employees—that the employer has violated the Labor Code.” (*Id.* at pp. 386–387, italics in original.)

Nothing in the text or legislative history of the FAA nor in the Supreme Court’s construction of the statute suggest that the FAA was intended to limit the ability of states to enhance their public enforcement capabilities by enlisting willing employees in qui tam actions. Representative actions under PAGA, unlike class action suits for damages, do not displace the bilateral arbitration of private disputes between employers and employees over their respective rights and obligations toward each other. Instead, they directly enforce the state’s interest in penalizing and deterring employers who violate California’s labor laws.

(*Id.* at p. 387.) “In sum, the FAA aims to promote arbitration of claims belonging to the private parties to an arbitration agreement. It does not aim to promote arbitration of claims belonging to a government agency.” (*Id.* at p. 388.) This “is no less true when such a claim is brought by a statutorily designated

proxy for the agency as when the claim is brought by the agency itself. The fundamental character of the claim as a public enforcement action is the same in both instances.” (*Id.* at p. 389.)

**C. Iskanian is neither overruled nor distinguishable.**

DoorDash recognizes *Iskanian*, but claims the United States Supreme Court’s reasoning in *Epic Systems* requires this court to overrule it. It also claims *Iskanian* is distinguishable because Plaintiff had an opportunity to opt out of the Arbitration Agreement. Neither of these arguments have merit.

**1. The court must follow *Iskanian*.**

First, the court has no choice but to follow *Iskanian*. “On federal questions, intermediate appellate courts in California”—along with trial courts—“must follow the decisions of the California Supreme Court, unless the United States Supreme Court has decided the *same* question differently.” (*Correia v. N.B. Baker Electric, Inc.* (2019) 32 Cal.App.5th 603, 619 (*Correia*), italics in original.)

*Iskanian* held a ban on bringing PAGA actions in any forum violates public policy and that this rule is not preempted by the FAA because the claim is a governmental claim. [Citation.] *Epic* did not consider this issue and thus did not decide the *same* question differently. [Citation.] *Epic* addressed a different issue pertaining to the enforceability of an individualized arbitration requirement against challenges that such enforcement violated the NRLA. [Citation.]

(*Ibid.*, italics in original.)

The court is also bound by *Correia*. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [“Decisions of every division of the District Courts of Appeal are binding upon all the justice and municipal courts and upon all the superior courts of this state . . . .”].) There, the Court of Appeal recognized “*Epic* did not reach the issue regarding whether a governmental claim of this nature is governed by the FAA, or consider the implications of a complete ban on a state law enforcement action.” (*Correia, supra*, 32 Cal.App.5th at p. 620.) It therefore held it “remain[ed] bound by the California Supreme Court’s decision.” (*Ibid.*)

Moreover, even if the court weren’t bound by higher courts, nothing in *Epic Systems* suggests *Iskanian* is incorrect. According to DoorDash, *Epic Systems*’ “intervening law” was its declaration that

1 courts must “ ‘enforce arbitration agreements according to their terms—including terms providing for  
 2 individualized proceedings.’ ” (Pet. at p. 8:11–13, quoting *Epic Systems Corp. v. Lewis* (2018) 138 S.Ct.  
 3 1612, 1619.) This isn’t new or revolutionary; it’s just another reiteration of the Court’s post-*Concepcion*  
 4 holdings. And *Iskanian* considered this rule and held it did not apply to public actions brought on behalf  
 5 of the state:

6           Our opinion today would not permit a state to circumvent the FAA by, for  
 7           example, deputizing employee A to bring a suit for the individual damages  
 8           claims of employees B, C, and D. This pursuit of victim-specific relief by  
 9           a party to an arbitration agreement on behalf of other parties to an arbitration  
 10          agreement would be tantamount to a private class action, whatever the  
 11          designation given by the Legislature. Under *Concepcion*, such an action  
 12          could not be maintained in the face of a class waiver. Here, importantly, a  
 13          PAGA litigant’s status as “the proxy or agent” of the state [citation] is not  
 14          merely semantic; it reflects a PAGA litigant’s substantive role in enforcing  
 15          our labor laws on behalf of state law enforcement agencies. Our FAA  
 16          holding applies specifically to a state law rule barring predispute waiver of  
 17          an employee’s right to bring an action that can only be brought by the state  
 18          or its representatives, where any resulting judgment is binding on the state  
 19          and any monetary penalties largely go to state coffers.

20 (*Iskanian, supra*, 59 Cal.4th at pp. 387–388.)

## 21           **2.       *Iskanian* is not distinguishable.**

22           Second, DoorDash claims *Iskanian* is distinguishable because Plaintiff allegedly “had the  
 23 opportunity to opt out of the Arbitration Agreement.” (Pet. at 10:4.) But

24           this same argument was raised and rejected in *Securitas Security Services*  
 25           *USA, Inc. v. Superior Court* (2015) 234 Cal.App.4th 1109. There, the  
 26           appellate court held that an agreement’s PAGA waiver violated public  
 27           policy, notwithstanding that the employee was not required to enter into it  
 28           as a condition of employment. [Citation.] As the court explained,

“*Iskanian*’s underlying public policy rationale—that a PAGA waiver circumvents the Legislature’s intent to empower employees to enforce the Labor Code as agency representatives and harms the state’s interest in enforcing the Labor Code—does not turn on how the employer and employee entered into the agreement, or the mandatory or voluntary nature of the employee’s initial consent to the agreement.” [Citation.] The reason is that “[a] PAGA claim provides a remedy inuring to the state and the public, and the law . . . broadly precludes private agreements to waive such public rights.” [Citation].

(*Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 648–649; see also *id.* at p. 649 [We agree with the *Securitas* court.”].)

## **II. THE CASE SHOULD NOT BE STAYED.**

Alternatively, DoorDash argues this case could be stayed because there are “hundreds” of individual arbitrations and five PAGA claims pending, alleging Dashers are misclassified as independent contractors. But this case is not claiming Dashers are misclassified as independent contractors. (See FAC, ¶ 28.) Rather, Plaintiff is alleging that Dashers—despite being classified as independent contractors—fall within the definition of employee, and DoorDash falls within the definition of employer, as defined by California’s tipping laws. Additionally, even these other arbitrations and PAGA claims were the same, it would not prevent Plaintiff from asserting his PAGA claim here.

### **A. This PAGA case does not overlap with the “hundreds” of individual misclassification arbitrations against DoorDash.**

First, DoorDash claims this case must be stayed because there are allegedly “hundreds” of arbitrations pending against DoorDash on whether Dashers are properly classified as independent contractors. But as explained above,

a “PAGA action is brought on behalf of the State of California, and state law treats the government—not the private plaintiff—as the real party in interest.” [Citation.] [DoorDash] has presented no persuasive reason why California should have its interest in the enforcement of its laws delayed by

other private plaintiffs’ complications related to arbitration, nor why proceeding with this case while others are stayed would cause judicial inefficiency.

(*Albert v. Postmates Inc.* (N.D.Cal. Mar. 5, 2019, No. 18-cv-07592-JCS) 2019 WL 1045785, at \*6.) Additionally, “[e]ven if the arbitrations involve similar issues of classification, it is not clear why the state’s interest in enforcing its laws should wait for the conclusion of those arbitrations, each of which—by the terms of [DoorDash’s arbitration agreement]—can only resolve the claims of a single [Dasher].” (*Ibid.*)

**B. DoorDash misconstrues Plaintiff’s allegations in order to avoid having to litigate this case.**

Additionally, Plaintiff has made it clear that he is *not* alleging he and the other aggrieved employees are misclassified as independent contractors under the commonly used definitions of employer/employee. (FAC, ¶ 28.) He also expressly states this case is not about his entitlement to minimum wage, overtime, and meal and rest breaks. (*Ibid.*) Rather, his allegations are related solely to the definitions contained Labor Code section 350, and whether he and the other Dashers are included within the protections of Labor Code sections 351 and 353.

DoorDash ignores this, and instead argues that “Plaintiff alleges that he is really an employee and entitled to minimum wage” (Pet. at p. 1:3–4), and therefore is the same as the hundreds of pending arbitration and five PAGA claims. But DoorDash has failed to provide any evidence that *any* of these cases involve the question of whether DoorDash’s policy of using customers’ tips to subsidize its labor costs violates the California Labor Code. Nor could it, since it was only early this year when this practice was first discovered.

Finally, DoorDash’s claim that it will prevail on the merits of Plaintiff’s claim, and therefore the case should be stayed, makes little sense. If DoorDash is confident that independent contractors—as a matter of law—are not covered by California’s tipping laws, it should just file a demurrer, not request a stay. The issue can be decided quickly, and the case can be resolved. Indefinitely staying this action because of unrelated cases makes little sense.

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1           **C. In any event, the first-to-file rule does not apply to PAGA actions.**

2           Additionally, even if the other PAGA claims were the same as this case, there is no rule that  
 3 multiple PAGA claim cannot proceed against an employer at the same time. Contrary to DoorDash’s  
 4 claim, the first-to-file rule generally does not apply to PAGA actions. (*Gonzalez v. CoreCivic of*  
 5 *Tennessee, LLC* (E.D.Cal. July 31, 2018, No. 16-cv-01891-DAD-JLT), 2018 WL 3689564, at \*4 [“[T]he  
 6 court is unpersuaded that California’s PAGA statute contains a first-to-file rule.”]; *O’Connor v. Uber*  
 7 *Technologies, Inc.* (N.D.Cal. Feb. 4, 2016, No. 13-cv-03826-EMC) 2016 WL 11556426, at \*1 (*O’Connor*)  
 8 [“[T]he Court finds that the PAGA statute does not require the stay or dismissal of duplicative PAGA  
 9 claims.”]; *Tan v. Grubhub, Inc.* (N.D.Cal. 2016) 171 F.Supp.3d 998, 1013 (“*Tan*”) [rejecting first to file  
 10 rule and allowing subsequent PAGA claim to proceed]; see also *Albert, supra*, 2019 WL 1045785 at p. \*6  
 11 [“The parties agree that PAGA does not in itself prohibit concurrent actions by different plaintiffs or  
 12 require a stay of subsequent actions.”].)

13           In *Tan v. Grubhub, Inc.*, for example, the court explained that PAGA explicitly “bars an employee  
 14 from bringing a PAGA action when the LWDA has cited an employer. But the statute is silent with respect  
 15 to whether an employee may bring a PAGA action when another private plaintiff brings suit against the  
 16 employer in a representative capacity.” (See *Tan, supra*, 171 F.Supp.3d at p. 1012.) Considering that  
 17 statutory silence, the court in *O’Connor* held that there is no reason “why [PAGA] should be read to  
 18 include deferring to a suit brought by *private* plaintiffs (as opposed to the LWDA) when the statutory  
 19 language makes no such provision.” (*O’Connor, supra*, 2016 WL 11556426 at p. \*1.)

20           DoorDash’s authority for the alternative position is far more limited. Its lone citable case, *Alakozai*  
 21 *v. Chase Investment Services Corp.* (C.D.Cal. Mar. 1, 2012, No. CV 11-09178 SJO (JEMx)), 2012 WL  
 22 748584, relies on federal procedural doctrine rather than specifically interpreting the PAGA statute and  
 23 predates the cases cited above that reach the opposite conclusion. DoorDash’s citation to unpublished  
 24 California state trial court authority is improper and potentially sanctionable. (See Cal. Rules of Court,  
 25 rule 8.115; accord, *People v. Williams* (2009) 176 Cal.App.4th 1521, 1529 [“persistent use of unpublished  
 26 authority may be cause for sanctions”]; *Alicia T v. County of Los Angeles* (1990) 222 Cal.App.3d 869,  
 27 885–886.) Plaintiff is aware of no authority that permits parties to make an end-run around this rule by  
 28 attaching unpublished orders to a declaration and then citing the declaration.

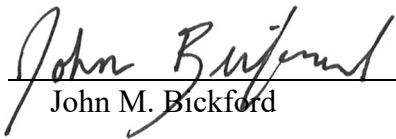


**CONCLUSION**

The court should deny DoorDash's petition to compel arbitration and stay proceedings.

Date: October 21, 2019

**PARRIS LAW FIRM**

By:   
John M. Bickford  
Attorneys for Plaintiff BRANDON  
CAMPBELL and the Aggrieved Employees

**PROOF OF SERVICE**  
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action, my business address is 43364 10<sup>th</sup> Street West, Lancaster, California 93534.

On October 21, 2019, I served the foregoing document described as **PLAINTIFF'S OPPOSITION TO DEFENDANT'S PETITION TO COMPEL ARBITRATION** by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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[ X ] **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addressed listed on the attached Service List.

[ X ] **BY OVERNIGHT MAIL as follows:** I placed such envelope in a Golden State Overnight Mailer addressed to the above party or parties at the above address(es), with delivery fees fully pre-paid for next-business-day delivery, and delivered it to a Golden State Overnight pick-up driver before 4:00 p.m. on the stated date.

Executed on October 21, 2019, at Lancaster, California.

[ X ] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_\_  
Sommer Jordan

APPENDIX H

78a

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Attorneys for Defendant DOORDASH, INC.

ELECTRONICALLY

**FILED**

*Superior Court of California,  
County of San Francisco*

**08/16/2019**

**Clerk of the Court**

BY: SANDRA SCHIRO

Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**CITY AND COUNTY OF SAN FRANCISCO**

BRANDON CAMPBELL, in his  
representative capacity under the Private  
Attorneys General Act ("PAGA"),

Plaintiff,

v.

DOORDASH, INC., a Delaware Corporation;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. CGC-19-575383

**DECLARATION OF JOSHUA LIPSHUTZ  
IN SUPPORT OF DEFENDANT'S  
PETITION TO COMPEL ARBITRATION  
AND STAY PROCEEDINGS**

Department 302

Honorable Judge Ethan P. Schulman

Hearing Date: November 1, 2019

Hearing Time: 9:30 a.m.

Reservation ID: 08121101-12

Trial Date: None set

I, Joshua Lipshutz, declare as follows:

1. I am an attorney admitted to practice law before this Court and all of the Courts of the State of California. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Defendant DoorDash, Inc. (“DoorDash” or “Defendant”) in the above-captioned action. I offer this declaration in support of DoorDash’s Petition to Compel Arbitration and Stay Proceedings. I have personal knowledge of the facts set forth in this declaration (unless otherwise noted), and, if called to testify, I could and would competently testify to them.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint filed in *Marko v. DoorDash, Inc.* No. BC659841 (L.A. Super. Ct. May 2, 2017).

3. Attached hereto as **Exhibit B** is a true and correct copy of the First Amended Class Action Complaint filed in *Marko v. DoorDash, Inc.*, No. BC659841 (L.A. Super. Ct. Aug. 15, 2017).

4. Attached hereto as **Exhibit C** is a true and correct copy of the Order Granting in Part Defendant DoorDash, Inc.’s Petition to Compel Arbitration in *Marko v. DoorDash, Inc.*, No. BC659841 (L.A. Super. Ct. May 29, 2018).

5. Attached hereto as **Exhibit D** is a true and correct copy of the arbitration demand filed in *Love v. DoorDash, Inc.* on May 11, 2018.

6. Attached hereto as **Exhibit E** is a true and correct copy of the arbitration demand filed in *Van Buren v. DoorDash, Inc.* on May 21, 2018.

7. Attached hereto as **Exhibit F** is a true and correct copy of the arbitration demand filed in *Beatleston v. DoorDash, Inc.* on May 31, 2018.

8. Attached hereto as **Exhibit G** is a true and correct copy of the arbitration demand filed in *Borantes v. DoorDash, Inc.* on May 31, 2018.

9. Attached hereto as **Exhibit H** is a true and correct copy of the arbitration demand filed in *Evans v. DoorDash, Inc.* on May 31, 2018.

10. Attached hereto as **Exhibit I** is a true and correct copy of the arbitration demand filed in *Goldstein v. DoorDash, Inc.* on May 31, 2018.

11. Attached hereto as **Exhibit J** is a true and correct copy of the arbitration demand filed in *Jones v. DoorDash, Inc.* on May 31, 2018.

12. Attached hereto as **Exhibit K** is a true and correct copy of the arbitration demand filed in *Lee v. DoorDash, Inc.* on May 31, 2018.
13. Attached hereto as **Exhibit L** is a true and correct copy of the arbitration demand filed in *Beck v. DoorDash, Inc.* on July 18, 2018.
14. Attached hereto as **Exhibit M** is a true and correct copy of the arbitration demand filed in *Cole v. DoorDash, Inc.* on July 18, 2018.
15. Attached hereto as **Exhibit N** is a true and correct copy of the arbitration demand filed in *Denham v. DoorDash, Inc.* on July 18, 2018.
16. Attached hereto as **Exhibit O** is a true and correct copy of the arbitration demand filed in *Erickson v. DoorDash, Inc.* on July 18, 2018.
17. Attached hereto as **Exhibit P** is a true and correct copy of the arbitration demand filed in *Fogg v. DoorDash, Inc.* on July 18, 2018.
18. Attached hereto as **Exhibit Q** is a true and correct copy of the arbitration demand filed in *Hseih v. DoorDash, Inc.* on July 18, 2018.
19. Attached hereto as **Exhibit R** is a true and correct copy of the arbitration demand filed in *Mendoza v. DoorDash, Inc.* on July 18, 2018.
20. Attached hereto as **Exhibit S** is a true and correct copy of the arbitration demand filed in *Teitelbaum v. DoorDash, Inc.* on July 18, 2018.
21. Attached hereto as **Exhibit T** is a true and correct copy of the arbitration demand filed in *Xayavongsa v. DoorDash, Inc.* on July 18, 2018.
22. Attached hereto as **Exhibit U** is a true and correct copy of the complaint filed in *Marciano v. DoorDash, Inc.*, No. CGC-15-548101 (S.F. Super. Ct. Sept. 23, 2015).
23. Attached hereto as **Exhibit V** is a true and correct copy of the complaint filed in *Brown v. DoorDash, Inc.*, Case No. BC712973 (L.A. County Super. Ct. July 6, 2018).
24. Attached hereto as **Exhibit W** is a true and correct copy of the complaint filed in *Lowe v. DoorDash, Inc.*, Case No. BC715425 (L.A. County Super. Ct. July 26, 2018).
25. Attached hereto as **Exhibit X** is a true and correct copy of order Granting Motion to Stay in *Marciano v. DoorDash, Inc.* No. CGC-18-567869 (S.F. County Super. Ct. Dec. 7, 2018).

26. Attached hereto as **Exhibit Y** is a true and correct copy of the Order re: Motion to Compel Arbitration in *Brown v. DoorDash, Inc.* No. BC712973 (L.A. County Super. Ct. Dec. 13, 2018).

27. Attached hereto as **Exhibit Z** is a true and correct copy of Minute Order in *Farran v. DoorDash, Inc.*, No. 30-2018-00992677-CU-OE-CSC (O.C. County Super. Ct. Mar. 7, 2019).

28. Attached hereto as **Exhibit AA** is a true and correct copy of the order staying proceedings in *Lowe v. DoorDash, Inc.*, No. BC715425 (L.A. County Super. Ct. Apr. 18, 2019).

29. Attached hereto as **Exhibit BB** is a true and correct copy of the First Amended Complaint filed in *Roussel v. DoorDash, Inc.*, No. CGC-19-572934 (S.F. Cty. Super. Ct. Mar. 12, 2019.)

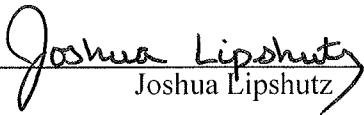
30. Attached hereto as **Exhibit CC** is a true and correct copy of the complaint filed in *Goldman-Hull v. DoorDash, Inc.*, No. 19-cv-01513 (N.D. Cal. Mar. 22, 2019).

31. Attached hereto as **Exhibit DD** is a true and correct copy of the Santa Clara Superior Court's Order After Hearing on March 17, 2017 issued in *DirectTV Wage and Hour Cases*, No. JCCP 4850 (Santa Clara Super. Ct. Mar. 24, 2017).

32. Since July 2018, hundreds of overlapping arbitration demands have been filed against DoorDash seeking to arbitrate misclassification and minimum-wage claims.

I declare under penalty of perjury pursuant to the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed at Washington, D.C. on this 16th day of August, 2019.

  
Joshua Lipshutz

Attorney for Defendant DOORDASH, INC.

# EXHIBIT A

ORIGINAL

Todd M. Friedman (SBN 216752)  
Adrian R. Bacon (SBN 280332)  
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Attorneys for Plaintiff,  
DANIEL MARKO

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAY 02 2017

Sherri R. Carter, Executive Officer/Clerk  
By Shamya Bolden, Deputy

322 Highberger

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

DANIEL MARKO, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

DOORDASH, INC.; and DOES 1 to 50,  
inclusive,

Defendants.

CASE NO.:

CLASS ACTION

CLASS ACTION COMPLAINT  
DAMAGES

JURY DEMAND

BC 659841

RECEIPT #: CCH463980113  
DATE PAID: 05/02/17 11:57 AM  
PAYMENT: \$1,000.00  
RECEIVED:

BY FAX

CIT/CASE: BC659841

Plaintiff DANIEL MARKO (hereinafter "Plaintiff"), on behalf of himself and all those  
similarly situated, alleges the following as and for a complaint against Defendants DOORDASH,  
INC., a Delaware corporation that is headquartered in California, and DOES 1 through 50 (hereinafter  
sometimes collectively referred to as "Defendants").

Plaintiff brings this Class Action against Defendants, and each of them, pursuant to California  
*Code of Civil Procedure* § 382. All allegations in this Class Action Complaint ("Complaint") are  
based upon information and belief, except for those allegations which pertain to the Plaintiff named  
herein and his counsel. Plaintiff's information and beliefs are based upon, *inter alia*, the investigation  
conducted to date by Plaintiff and his counsel. Each allegation in this Complaint either has  
support or is likely to have evidentiary support after a reasonable opportunity for further investigation  
and discovery.

CLASS ACTION COMPLAINT

RECEIPT #: CCH463980112  
DATE PAID: 05/02/17 11:56 AM  
PAYMENT: \$435.00  
RECEIVED:  
\$435.00  
\$0.00  
\$0.00  
\$0.00

CIT/CASE: BC659841

05/02/2017



INTRODUCTION

1  
2 1. This action is within the Court's jurisdiction pursuant to the provisions of California  
3 *Labor Code* §§ 201-204, 226, 226.7, 510, 1194, 1194.2 and 1199, and California *Business and*  
4 *Professions Code* §§ 17200, *et seq.*

5 2. This Complaint challenges systemic illegal employment practices resulting in  
6 violations of the California *Labor Code*, *Business and Professions Code*, and applicable Industrial  
7 Welfare Commission ("IWC") wage order against employees of Defendants.

8 3. Plaintiff is informed and believes and based thereon alleges that Defendants, jointly  
9 and severally, have acted intentionally and with deliberate indifference and conscious disregard of the  
10 rights of all employees in, among other things, failing to provide the statutorily required meal and rest  
11 periods and failing to pay the statutorily required meal period and rest period premium wages when  
12 not provided, failing to pay all minimum, regular and overtime wages due, failing to pay wages in a  
13 timely fashion, including at the end of employment, mis-classifying employees so as to avoid payment  
14 of wages, failing to indemnify employees for business expenses, and failing to keep statutorily  
15 required payroll records.

16 4. Plaintiff is informed and believes and based thereon alleges that Defendants have  
17 engaged in, among other things, a system of willful violations of the California *Labor Code*, *Business*  
18 *and Professions Code*, and applicable IWC wage order, including, but not limited to, Labor Code §§  
19 201-203, 221, 222.5, 223, 226.8, 226.3, 226.7, 400-410, 450, 510, 512, 1182, 1174, 1194, 1197,  
20 1197.1, and 2802; California Code of Regulations, Title 8 §11090 section 7 & 11-12; California Wage  
21 Order No. 1-2001 (8 Cal. Code Reg., § 11090); and Industrial Wage Commission Wage (hereinafter  
22 "IWC") Order No. 9. Specifically, Plaintiff challenges Defendants' acts of creating and maintaining  
23 policies, practices and customs of: (1) classifying Dashers as independent contractors instead of  
24 employees; (2) failing to reimburse Plaintiff and the Class for reasonable business expenses; (3)  
25 making deductions from Plaintiff's and the Class' wages; (4) requiring Plaintiff and the Class to pay  
26 for pre-employment medical and physical examinations; (5) coercing or compelling Plaintiff and the  
27 Class to purchase things of value from Defendants; (6) failing to provide, authorize, permit and/or  
28 make available meal and rest periods to Plaintiff and the Class as required by California law; (7)

1 denying Plaintiff and the Class full compensation for all hours worked; (8) failing to pay Plaintiff and  
2 the Class minimum wage; (9) failing to pay Plaintiff and the Class overtime and double time; (10)  
3 failing to provide Plaintiff and the Class with accurate, itemized wage statements; (11) failing to timely  
4 pay Plaintiff and the Class full wages upon termination or resignation; and (12) engaging in a pattern  
5 or practice of willfully misclassifying employees as independent contractors. Plaintiff seeks  
6 compensation, damages, penalties and interest to the full extent permitted by the Labor Code and IWC  
7 Wage Orders.

8 5. The policies, practices and customs of Defendants described above and below have  
9 resulted in the unjust enrichment of Defendants and an unfair business advantage over businesses that  
10 routinely adhere to the strictures of the California *Labor Code* and the *Business and Professions Code*.

#### 11 JURISDICTION AND VENUE

12 6. This Court has jurisdiction over the alleged violations of the California *Labor Code*  
13 §§ 201-204, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, 1198 and 1199, and California *Business and*  
14 *Professions Code* §§ 17200, *et seq.*

15 7. This case is subject to the jurisdiction of this Court pursuant to California *Labor Code*,  
16 California *Business and Professions Code*, California *Code of Civil Procedure*, and the California  
17 Department of Industrial Relations. On information and belief, and at all times relevant, Defendants  
18 operate and are doing business under the brand name of DOORDASH, INC. Defendants, and each of  
19 them, do business throughout the State of California. Further, Defendants' principle place of business  
20 and corporate headquarters is in San Francisco, California.

21 8. The unlawful acts alleged herein have a direct effect on Plaintiff and other employees  
22 similarly situated within the State of California. Plaintiff and the Class Members have suffered  
23 damages and will continue to suffer the same harm as the Representative Plaintiff as a result of  
24 Defendants', and each Defendant's, wrongful conduct unless the relief requested herein is granted.

#### 25 PARTIES

26 9. Plaintiff is informed and believes and based thereon alleges that Defendant  
27 DOORDASH, INC. is a Delaware corporation, which regularly does business throughout the State of  
28 California. Further, Defendants' principle place of business and corporate headquarters is in San

1 Francisco California. Plaintiff is informed and believes and thereon alleges that Defendants, at all  
2 times herein mentioned, is and was doing business in the County of Los Angeles, State of California.

3 10. Whenever in this Complaint reference is made to "DoorDash," such allegations  
4 collectively mean and refer to Defendants DOORDASH, INC., and its subsidiaries and divisions.

5 11. Plaintiff DANIEL MARKO is, and at relevant times herein was, a resident of the  
6 County of Los Angeles, California. Plaintiff is currently a Dasher (known as a "Dasher") employed  
7 by Defendants. Plaintiff was employed as an independent contractor Dasher, and worked throughout  
8 Los Angeles County, California.

9 12. Although Plaintiff was classified as an independent contractor, and not classified as an  
10 employee, Plaintiff's employment nonetheless was subject to substantial control by Defendants over  
11 his wages, hours, and working conditions.

12 13. Plaintiff is informed and believes and based thereon alleges that at all times herein  
13 mentioned Defendants are and were corporations, business entities, individuals, and partnerships,  
14 licensed to do business and actually doing business in the State of California.

15 14. Plaintiff does not know the true names or capacities, whether individual, partner or  
16 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said  
17 Defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint  
18 when the true names and capacities of said Doe Defendants become known to Plaintiff. Plaintiff is  
19 informed and believes and thereon alleges that each of said fictitious Defendants were responsible in  
20 some way for the matters alleged herein, and proximately caused Plaintiff, as well as members of the  
21 Class and members of the general public, damages as more specifically identified below.

22 15. At all times herein mentioned, each of said Defendants participated in the doing of the  
23 acts hereinafter alleged to have been done by the named Defendants; and, furthermore, the Defendants,  
24 and each of them, were the agents, servants and employees of each of the other Defendants, as well as  
25 the agents of all Defendants, and at all times herein mentioned were acting within the course and scope  
26 of said agency and employment.

27 16. Plaintiff is informed and believes and based thereon alleges that at all times material  
28 hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer

1 of, or working in concert with, each of the other co-Defendants and was acting within the course and  
2 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,  
3 conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants  
4 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

5 17. At all times herein mentioned, Defendants, and each of them, were members of, and  
6 engaged in, a joint venture, partnership and common enterprise, and acted within the course and scope  
7 of, and in pursuance of, said joint venture, partnership and common enterprise.

8 18. Plaintiff is further informed and believes and based thereon alleges, at all times herein  
9 material, each Defendants were completely dominated and controlled by its Co-Defendants, and each  
10 was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any  
11 conduct by Defendants or Defendants, such allegations and references shall also be deemed to mean  
12 the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and  
13 wherever reference is made to individuals who are not named as Defendants in this Complaint, but  
14 were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of  
15 Defendants named in this Complaint within the scope of their respective employments.

16 19. At all times herein mentioned, the acts and omissions of various Defendants, and each  
17 of them, concurred and contributed to the various acts and omissions of each and all of the other  
18 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein  
19 mentioned, Defendants, and each of them, ratified each and every act or omission complained of  
20 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts  
21 and omissions of each and all of the other Defendants in proximately causing the damages as herein  
22 alleged.

### 23 FACTUAL ALLEGATIONS

24 20. At all times herein mentioned, Class Members, including Plaintiff, were employees of  
25 Defendants in the State of California, and Defendants were and are employers employing persons in  
26 the State of California. As such, Class Members, including Plaintiff, were the type of persons  
27 contemplated to be protected by the California *Labor Code* and the Wage Order, and said laws and  
28 regulations were intended to apply to Defendants and to prevent the type of injury and damage herein.

1 21. Plaintiff is informed and believes and based thereon alleges that Defendants are and  
2 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of  
3 the requirements of California's wage and hour laws.

4 22. During the relevant time period of this action, Defendants have employed, and continue  
5 to employ, Plaintiff and other similarly situated individuals ("Dashers") to provide delivery services  
6 for its customers. Defendants' entire business model is premised on outsourcing its core business  
7 function onto Dashers as independent contractors, as a method of cutting costs in the delivery services  
8 market, and thereby gain a competitive advantage.

9 23. Defendants has devised an elaborate scheme to skirt the requirements under the  
10 California Labor Code, by misclassifying its Dashers as independent contractors rather than  
11 employees, denying them the benefits of employment, and shifting the vast majority of the cost of  
12 doing business onto the employees who carry out the day to day customer service duties for  
13 Defendants, in fulfillment of their core business function of food delivery.

14 24. Defendants characterize its Dashers as independent contractors who merely utilize  
15 Defendants' logistics software to independently provide Delivery services to facilitate private  
16 transactions between private vehicle drivers and food service patrons. In fact, these Dashers are  
17 subject to high levels of control by Defendants over their wages, hours, and working conditions, such  
18 that the conditions of their employment are in fact dominated and controlled in every material aspect  
19 by Defendants.

20 25. Defendants' control over Plaintiff's and Class Members' wages, hours, and working  
21 conditions begins with Defendants' requirement that each Dasher enter into a written agreement with  
22 Defendants as to the terms of their employment. This agreement specifies that Dashers must adhere  
23 to strict rules and regulations put in place at Defendants' sole discretion.

24 26. Defendants maintain sole discretion over the terms of the independent contractor  
25 agreement, and require applicants to sign these agreements with no ability to negotiate the terms, but  
26 rather as a condition of employment.

27 27. The Agreements are drafted exclusively by Defendants and/or its legal counsel.  
28

1       28.       The Agreement purports to classify Dashers as independent contractors so as to conceal  
2 the true nature of the relationship between Defendants and their Dashers: that of employer and  
3 employees.

4       29.       Defendants retain the right to terminate Dashers without notice if they fail to adhere to  
5 any part of the Agreement. Defendants require Dashers to comply with their numerous policies and  
6 procedures, or face possible termination

7       30.       Defendants maintain exclusive control over the rates of pay that Dashers will receive,  
8 which is based on an hourly rate and other factors, determined at the sole discretion of Defendants.  
9 Defendants reserve the right to make adjustments to their rates of pay, at any time, without notice to  
10 Dashers directly impacting the wages earned by Plaintiff and Class Members.

11       31.       Dashers are required to agree to Defendants' pay schedule, which is subject to change,  
12 in order to activate Defendants' application on their Smartphone devices and accept fares from  
13 Defendants' customers.

14       32.       Defendants' managers also supervise and oversee the work performed by Dashers, and  
15 are in regular email and telephone communication with Dashers about Defendants' policies and  
16 procedures, and about the job duties of Dashers.

17       33.       Defendants perform background and DMV checks on prospective Dashers.

18       34.       Dashers must utilize Defendants' Smartphone application in order to access  
19 Defendants' network of customers. Defendants' application place serious limitations and  
20 requirements on Dashers in how they are required to carry out their job duties. Having a Smartphone  
21 is a condition of employment with Defendants as a Dashers.

22       35.       Defendant also monitors Dashers through use of the GPS devise in Dashers'  
23 Smartphones, and by using Defendant's application, which must be loaded onto Dashers' devices as  
24 a condition of their employment.

25       36.       Despite requiring a smartphone as a condition of employment, Defendants do not  
26 indemnify Dashers for these business expenses.

27       37.       Defendants also require Dashers to utilize their personal vehicles for business purposes,  
28 including to transport company marketing material between different zones throughout the city at the

benefit of the Defendants, yet fails to indemnify these business expenses. Defendants do not compensate Dashers in any fashion for these services.

38. Defendants require Valet to wear a company uniform, including a red Door Dash t-shirt.

39. Defendants require Dashers to utilize motor vehicles in order to expedite the Dasher process, so that they can more quickly travel between a food pickup location, and the customer delivery location, and Defendants allow Dashers to forego use of a motor vehicle and use a bicycle or walk only in select "markets" determined entirely by Defendants.

40. Furthermore, Defendants do not indemnify Dashers for any kind of damage sustained by their motor vehicles. Moreover, Defendants require, as an express material condition of employment, Dashers to have and maintain their own motor vehicle insurance for which Defendants do not reimburse Dashers.

41. Defendants determine where Dashers are required to work, when they are required to work, and how they are required to work. Specifically, Defendants will set Dasher work schedules, which instruct them where and when to work.

42. Defendants require Dasher to log in to the attendant application on their smartphone devices in order to start and end their shifts. Defendants maintain attendance records, and have the ability to maintain accurate time records for all hours worked by Dashers.

43. Defendants secure Dashers contracts with an underlying \$10 per hour wage. However, Defendants fail to account for all time worked by Dashers, and fail to fully compensate Dashers for all working time. Further, where Dashers work more than 40 hours in a week or 8 hours in a day, Defendants fail to pay Dashers overtime wages, including by not paying for all compensable hours, and by using an improper regular rate of pay for purposes of said calculations.

44. Defendants provide Dashers with no meal or rest breaks, and do not provide Dashers with any of the other benefits of employment.

45. Defendant fails to provide breaks, provides them late, does not provide breaks that are duty free, and otherwise provides non-compliant breaks, such that a compliant meal break is the

1 exception rather than the norm. Further, Defendant fails to maintain accurate time records regarding  
2 meal breaks for Dashers.

3 46. Defendants also require Plaintiff and other Class Member Dashers to utilize their  
4 cellular phones for business purposes, in order to perform and carry out their work duties, at  
5 considerable personal expense.

6 47. Defendants do not issue pay stubs of any kind to Plaintiff and other Class Members.  
7 Rather these employees are paid via direct deposit.

8 48. Plaintiff is informed and believes and based thereon alleges that Defendants know,  
9 should know, knew or should have known that Class Members, including Plaintiff, were entitled to  
10 receive duty-free meal periods within the first five (5) hours of any shift of six (6) or more hours  
11 worked, and that any failure to do so requires Defendants to pay Class Members one (1) hour of wages  
12 per day for untimely, missed, or on-duty meal periods.

13 49. Plaintiff is informed and believe and based thereon allege that, during the Class Period,  
14 Defendants had a consistent policy or practice of requiring Class Members, including Plaintiff, to  
15 continue working through meal periods, or were required to stay on the premises during their meal  
16 periods, or were interrupted during their meal periods, or Defendants otherwise failing to provide a  
17 duty-free meal period within the first five (5) hours of any shift of six (6) or more hours worked.

18 50. Plaintiff is informed and believes and based thereon alleges, during the Class Period,  
19 Defendants had a consistent policy or practice of failing to compensate Class Members, including  
20 Plaintiff, for duty-free meal periods that were not provided within the first five (5) hours of any shift  
21 of six (6) or more hours worked, and for on-duty meal periods.

22 51. Plaintiff is informed and believes and based thereon alleges that Defendants know,  
23 should know, knew or should have known that Class Members, including Plaintiff, were and are  
24 entitled to one (1) ten (10) minute rest break for each shift of four (4) hours or more, and that any  
25 failure to allow said breaks requires Defendants to pay Class Members, including Plaintiff, one (1)  
26 hour of wages per day for missed or on-duty rest breaks.



52. Plaintiff is informed and believes and based thereon alleges that during the Class Period, Defendants had a consistent policy or practice of failing to provide to Class Members, including Plaintiff, one (1) ten (10) minute break for each shift of four (4) hours or more worked.

53. Plaintiff is informed and believes and based thereon alleges that, during the Class Period, Defendants had a consistent policy or practice of failing to compensate Class Members, including Plaintiff, for missed rest breaks that were not provided within each four (4) hours of a shift.

54. Plaintiff is informed and believe and based thereon allege that, during the Class Period, Defendants had a consistent policy or practice of failing to compensate Class Members, including Plaintiff, overtime pay for all overtime hours, and regular pay for any regular hours worked, and at least minimum wage for all hours worked.

55. Plaintiff is informed and believes and based thereon alleges that, during the Class Period, Defendants had a consistent policy or practice of failing to provide Class Members, including Plaintiff, with accurate wage statements reflecting the true number of hours worked due to Defendants' failure to provide lawful, timely, and duty-free meal and rest periods and failure to document all hours worked.

#### CLASS ALLEGATIONS

56. Plaintiff brings this action individually, as well as on behalf of each and all other persons similarly situated and, thus, seek class certification under California *Code of Civil Procedure* § 382.

57. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

58. The "Class Period" is designated as the time from four years prior to the filing of this Complaint, to the trial date, based upon the allegation that the violations of California's wage and hour laws, as described more fully below, have been ongoing for at least the four years prior to the filing of this Complaint.

59. Pursuant to California *Code of Civil Procedure* § 382, Plaintiff brings this action on behalf of the following class:

1 All persons who have been, or currently are, employed by Defendants and who  
2 performed at least one delivery service in California for Defendants as an independent  
3 contractor Dasher during the Class Period and who held, or hold, the position of Dasher.  
4 This definition includes any and all prior job titles assigned to this position during the  
5 Class Period (collectively, the "Class" or "Class Members"). Excluded from the Class  
6 are all persons who were employed by Defendants as Managers, or in managerial or  
7 corporate positions equal, or superior, to Managers, during the Class Period.

8 60. The Class seeks unpaid wages for meal period and rest periods, regular hours and  
9 overtime hours worked, penalties, equitable relief, interest, and reasonable attorneys' fees and costs,  
10 for failure to comply with applicable sections of the California *Labor Code*, Industrial Welfare  
11 Commission Wage Order No. 7-2001 ("Wage Order"), California *Business and Professions Code*  
12 §§ 17200, *et seq.*, and California *Code of Civil Procedure* § 1021.5.

13 61. This action is also brought by Plaintiff on behalf of a sub-class, as follows:  
14 All Class Members whose employment ended at any time during the Class Period (collectively, the  
15 "Former Employee Sub-Class" or "Former Employee Sub-Class Members").

16 62. The Former Employee Sub-Class Members seek waiting time penalties of up to thirty  
17 (30) days wages each, pursuant to California *Labor Code* § 203, due to Defendants' failure to pay all  
18 wages due and owing at the time of termination of the employment relationship.

19 63. Under California *Business and Professions Code* §§ 17200, *et seq.* ("Unfair Practices  
20 Act"), and pursuant to both the class action and representative action procedures provided for in these  
21 statutes, Plaintiff, on behalf of himself and the proposed Class Members, also seeks restitution of all  
22 benefits Defendants have received from its unlawful actions as alleged herein.

23 64. During Plaintiff's and Class Members' employment with Defendants, Defendants did  
24 not provide meal or rest periods in compliance with California law, and did not compensate Plaintiff  
25 and members of the Class for all regular hours worked, for all overtime hours worked, or for meal or  
26 rest periods that did not comply with California law (including, but not limited to, missed meal and  
27 rest periods). Plaintiff and the Class Members he seeks to represent did not voluntarily or willfully  
28 waive their meal or rest periods. Defendants maintained and implemented a course of conduct

1 requiring Plaintiff and Class Members to involuntarily waive their meal or rest periods as a condition  
2 of employment and failed to obtain uncoerced waivers.

3 65. During Plaintiff's and Class Members' employment with Defendants, Defendants did  
4 not reimburse Dashers for business expenses incurred in the course of their employment, in violation  
5 of California *Labor Code* §§ 2800 *et. seq.*

6 66. Defendants did not keep accurate records of the hours worked by Plaintiff and members  
7 of the Class, or of the amount of wages due to them. Plaintiff was and is a victim of the policies,  
8 practices and customs of Defendants complained of in this action in ways that have deprived them of  
9 the rights guaranteed by California *Labor Code* §§ 201-204, 226, 226.7, 510, 512, 1194, 1194.2,  
10 1197.1, 1198 and 1199, and California *Business and Professions Code* §§ 17200, *et seq.* (Unfair  
11 Practices Act).

12 67. As such, and based upon all the facts and circumstances incident to Defendants'  
13 business in California, Defendants are subject to California *Labor Code* §§ 201-204, 226, 226.7, 227.3,  
14 1194, 1194.2 and 2802, and California *Business and Professions Code* §§ 17200, *et seq.* (Unfair  
15 Practices Act).

16 68. This action is brought, and may properly be maintained, as a Class Action under  
17 California *Code of Civil Procedure* § 382 because there is a well-defined community of interest in the  
18 litigation and the proposed Class is easily ascertainable. This action satisfies the predominance,  
19 typicality, numerosity, superiority, and adequacy requirements of these provisions.

20 69. **Numerosity:** The members of the Class are so numerous that joinder of all members  
21 would be impractical, if not impossible. The identity of the members of the Class is readily  
22 ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and  
23 believes and based thereon alleges that: (a) Class Members regularly were denied payment of all  
24 regular and overtime wages due and denied payment of overtime wages at the proper rate of overtime  
25 pay; (b) Class Members were not provided meal periods or rest periods in compliance with California  
26 *Labor Code* §§ 226.7 and 512 and the applicable IWC wage order, and were not paid all meal period  
27 or rest period premium wages for non-compliant periods; (c) Class Members were not reimbursed for  
28 business expenses incurred in the course of their employment, in violation of California *Labor Code*

1 §§ 2800 *et. seq.*; (d) Class Members were not paid all wages in a timely fashion, including all wages  
2 at the end of employment based on Defendants' own records; and (e) Defendants did not maintain  
3 accurate records and provide accurate wage statements to Class Members, pursuant to California  
4 *Labor Code* § 226. Based on information and belief, there are more than 100 persons who are  
5 potentially Class Members.

6 70. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all  
7 necessary steps to represent fairly and adequately the interests of the Class defined above with whom  
8 they have a well-defined community of interests and typicality of claims as demonstrated herein.  
9 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and the  
10 representative Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions  
11 in the past and currently have a number of wage-and-hour class actions pending in California courts.  
12 Further, Plaintiff's counsel is competent and experienced in litigation class actions involving  
13 California *Business and Professions Code* §§ 17200, *et seq.*

14 71. Defendants uniformly administered corporate policies and practices that did not afford  
15 Plaintiff and Class Members proper meal and rest periods, as required by California *Labor Code* §§  
16 226.7 and 512 and the applicable IWC wage order, that failed to pay all earned regular and overtime  
17 wages, minimum wages, and all wages owed, and that uniformly paid their employees late wages.  
18 Plaintiff is informed and believes and based thereon alleges that this corporate conduct was  
19 accomplished with the advance knowledge and designed intent to willfully withhold appropriate  
20 wages for work performed by Class Members.

21 72. Plaintiff is informed and believes and based thereon alleges that Defendants, in  
22 violation of California *Labor Code* §§ 201 through 203, had a consistent and uniform policy,  
23 procedure and practice of willfully failing to pay Plaintiff and Sub-Class Members all wages due them  
24 upon termination. Plaintiff and other Sub-Class Members did not secret or absent themselves from  
25 Defendants, nor refuse to accept the earned and unpaid wages from Defendants upon termination.  
26 Accordingly, Defendants are liable for waiting time compensation for the unpaid wages to the Sub-  
27 Class Members pursuant to California *Labor Code* § 203.

1 73. In addition, Defendants uniformly administered a corporate policy, procedure and  
2 practice of not maintaining accurate records, and failing to provide true and accurate wage statements,  
3 as required by California *Labor Code* § 226.

4 74. Plaintiff is informed and believes and based thereon alleges that the foregoing corporate  
5 conduct was accomplished with the advance knowledge and designed intent to willfully and  
6 intentionally fail to accurately record proper rates of pay, hours worked, net wages, and deductions.

7 75. As a pattern and practice and matter of corporate policy, in violation of the  
8 aforementioned labor laws, Defendants committed unfair practices based on the claims alleged in the  
9 preceding paragraphs.

10 76. **Common Question of Law and Fact:** There are predominant common questions of  
11 law and fact and a community of interest among Plaintiff and the Class Members concerning whether:

- 12 a) Class Members are independent contractors or employees under applicable law;
- 13 b) Defendants have the right to control the manner and means by which the Dashers perform  
14 their work;
- 15 c) Defendants direct and/or supervise the work that the Dashers perform;
- 16 d) Defendants' policy manuals and handbooks instruct the Dashers on how to conduct  
17 themselves and perform their work;
- 18 e) The Dashers use and receive forms and materials provided by Defendants;
- 19 f) The Dashers attend meetings or training conducted by Defendants regarding their work  
20 assignments and performance;
- 21 g) Defendants assign the Dashers schedules and routes;
- 22 h) Defendants exercise control, directly or indirectly, over Class Members' work hours;
- 23 i) Defendants exercise control, directly or indirectly, over Class Members' working  
24 conditions;
- 25 j) Defendants exercise control, directly or indirectly, over the kinds equipment the Dashers  
26 use;
- 27 k) Dashers wear uniforms as specified by Defendants;
- 28 l) Defendants' logos and/or names are affixed on the Dashers' uniforms;

- 1 m) Dashers need special training, skills or education to perform their work;  
2 n) Defendants supply tools and equipment to the Dashers;  
3 o) The Dasher work is part of the regular business of Defendants;  
4 p) The method by which Defendants pay the Dashers;  
5 q) The Dasher tenure with the company is indefinite and/or whether the contracts signed by  
6 the Dasher contain automatic renewal clauses and can be terminated by either party;  
7 r) Defendants have the authority to discipline and/or terminate a Dasher;  
8 s) The Class Members are entitled to be reimbursed for Defendants' business expenses and  
9 deductions;  
10 t) Defendants failed to provide Plaintiff and the Class Members with meal and rest periods  
11 in compliance with California law;  
12 u) Defendants failed to pay Plaintiff and the Class Members statutory meal and rest period  
13 premium wages for non-compliant meal and rest periods;  
14 v) Plaintiff and the Class Members regularly were denied payment of all overtime wages due  
15 for overtime hours worked;  
16 w) Plaintiff and the Class Members regularly were denied payment of all regular wages due  
17 for regular hours worked;  
18 x) Plaintiff and the Class Members regularly were denied payment of at least minimum wage  
19 for all hours worked;  
20 y) Defendants failed to pay all wages due in a timely fashion under California law;  
21 z) Waiting time penalties are owed to Plaintiff and the Class Members;  
22 aa) Defendants failed to maintain accurate records of hours worked by Plaintiff and the Class  
23 Members, and failed to provided accurate wage statements that comply with California  
24 *Labor Code* § 226; and  
25 bb) Defendants' employment practices towards Plaintiff and Class Members constitute unfair  
26 business practices pursuant to California *Business and Professions Code* §§ 17200, *et seq.*

27 77. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the  
28 Class. Plaintiff is a member of the Class and have suffered harm as a result of the violations of the

1 Wage Order and California *Labor Code* alleged herein, including but not limited to California *Labor*  
2 *Code* §§ 201-204, 226, 226.7, 227.3, 1194, 1194.2 and 2802.

3 78. The Wage Order and the California *Labor Code* upon which Plaintiff bases these claims  
4 contain provisions that are broadly remedial in nature. These laws and labor standards serve an  
5 important public interest in establishing minimum working conditions and standards in California.  
6 These laws and labor standards protect the average working employee from exploitation by employers  
7 who may seek to take advantage of superior economic and bargaining power by establishing onerous  
8 terms and conditions of employment.

9 79. The nature of this action and the format of laws available to Plaintiff and members of  
10 the Class identified herein make the Class Action format a particularly efficient and appropriate  
11 procedure to redress the wrongs alleged herein. If each employee were required to file an individual  
12 lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they  
13 would be able to exploit and overwhelm the limited resources of each individual Plaintiff with their  
14 vastly superior financial and legal resources. Requiring each Class Member to pursue an individual  
15 remedy would also discourage the assertion of lawful claims by current employees for fear of  
16 retaliation, and even by former employees, for fear of retaliation within the industry.

17 80. The prosecution of separate actions by the individual Class Members, even if possible,  
18 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual  
19 Class Members against the Defendants, which would establish potentially incompatible standards of  
20 conduct for the Defendants, and/or (b) adjudications with respect to individual Class Members which  
21 would, as a practical matter, be dispositive of the interests of the other Class Members not parties to  
22 the adjudications, or which would substantially impair or impede the ability of the Class Members to  
23 protect their interests. Further, the claims of the individual members of the Class are not sufficiently  
24 large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

25 81. Such a pattern, practice and uniform administration of corporate policy regarding  
26 illegal employee compensation described herein is unlawful and creates an entitlement to recovery by  
27 the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the full amount  
28 of unpaid wages, overtime and vacation wages, including interest thereon, applicable penalties,

reasonable attorney's fees, and costs of suit according to the mandate of California *Labor Code* §§ 218.6, 226, 226.7, 227.3, & 1194, 1194.2 and 2802, California *Code of Civil Procedure* § 1021.5, and applicable IWC wage order.

82. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the Class Members to recovery on the causes of action alleged herein.

83. The Class Members are commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class Members are commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire Class and will result in the creation of a common fund.

#### FIRST CAUSE OF ACTION

##### **Unpaid Overtime Wages**

**(California *Labor Code* §§ 510, 1194 and 1198,**

**and Industrial Welfare Commission Wage Order No. 9)**

**-By Plaintiff and Class Members Against All Defendants-**

84. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

85. This action is brought, in part, pursuant to the Wage Order and California *Labor Code* §§ 510, 1194 and 1198. Under the Wage Order and California *Labor Code* § 510, Defendants were required to compensate Plaintiff and all Class Members for all overtime, calculated at one and one-half (1-½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day, and two (2) times the regular rate of pay for hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) day of work.

86. While employed by Defendants, Plaintiff and the Class Members were required to work more than eight (8) hours in a day or forty (40) hours in a week. Regardless of the number of actual hours worked, and even though Plaintiff and all Class Members are not exempt from California overtime laws, Plaintiff and all Class Members were not and are not afforded overtime compensation.



1 for any hours in excess of eight (8) hours in a workday and/or forty (40) hours per week. By failing  
2 to compensate Plaintiff and all Class Members for the hours actually worked, Defendants have failed  
3 and continue to fail to pay the overtime compensation owed to Plaintiff and all Class Members  
4 pursuant to the Wage Order and the California *Labor Code*.

5 87. Plaintiff is informed and believes and based thereon alleges that Defendants' policy  
6 and practice of requiring overtime work and not paying for said work according to the overtime  
7 mandates of California law is, and at all times herein mentioned was, in violation of *California Labor*  
8 *Code* § 1194, applicable regulations, and the Wage Order. Defendants' employment policies and  
9 practices wrongfully and illegally failed to compensate Plaintiff and Class Members for overtime  
10 compensation earned as required by California law.

11 88. The conduct of Defendants and their agents and employees as described herein was  
12 willful and intentional and part of a corporate policy, procedure and practice. Furthermore, Defendants  
13 willfully failed to pay Plaintiff and Class Members proper compensation for all overtime hours worked  
14 at the appropriate rate of overtime pay.

15 89. Plaintiff is informed and believes and based thereon alleges that Defendants' willful  
16 failure to provide all overtime wages due and owing them upon separation from employment results  
17 in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,  
18 Plaintiff and other members of the Class who have separated from employment are entitled to  
19 compensation pursuant to California *Labor Code* § 203.

20 90. Such a pattern, practice and uniform administration of unlawful corporate policy  
21 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff  
22 and each Class Member for damages and wages owed, and for penalties, interest, costs and attorney's  
23 fees, in an amount to be proven at time of trial.

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SECOND CAUSE OF ACTION

## Failure to Pay All Regular Wages

*(California Labor Code § 204)***-By Plaintiff and Class Members Against All Defendants-**

91. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

92. At all times relevant herein, Defendants were required, by California *Labor Code* § 204, to compensate Plaintiff and Class Members correct and proper regular wages for all regular hours worked.

93. As a pattern and practice, Defendants regularly required Plaintiff and Class Members to work more than eight (8) hours in a day, and forty (40) hours in a week; and required Plaintiff and Class Members to work through meal and rest breaks. Regardless of the number of hours worked, Plaintiff and Class Members received the same pay, without payment of wages for all hours actually worked.

94. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class Members the proper wages for all hours worked

95. Plaintiff is informed and believes and based thereon alleges that Defendants willfully failed to pay Plaintiff and Class Members all regular wages for all hours worked. Plaintiff is informed and believes and based thereon alleges that Defendants' willful failure to provide all regular wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

96. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff, Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest, costs and attorney's fees.

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**THIRD CAUSE OF ACTION****Failure to Pay Minimum Wages****(California Labor Code § 1194, 11.942 and 1197.1)****-By Plaintiff and Class Members Against All Defendants-**

97. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

98. This cause of action is brought pursuant to California *Labor Code* § 1194, which provides that non-exempt employees are entitled to the statutory hourly minimum wage for work performed.

99. At all times relevant herein, Defendants were required to compensate Plaintiff and Class Members at least the statutorily mandated minimum wage for all regular hours worked.

100. As a pattern and practice, Defendants regularly required Plaintiff and Class Members to work without recording the time worked in any capacity, due to the misclassification of Dashers as independent contractors.

101. As a result, Defendants regularly failed to pay Plaintiff and Class Members the statutorily required minimum wage for all hours worked.

102. Defendants' conduct as alleged herein is in violation of California *Labor Code* § 1194 and the Wage Order. Defendants' employment policies and practices wrongfully and illegally failed to compensate Plaintiff and Class Members for all hours worked at minimum wages as required by California law.

103. Plaintiff is informed and believes and based thereon alleges that Defendants willfully failed to pay Plaintiff and Class Members minimum wages for all hours worked. Plaintiff is informed and believes and based thereon alleges that Defendants' willful failure to provide wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Sub-Class Members who have separated from employment are entitled to compensation pursuant to *California Labor Code* § 203.

104. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff,

1 Class Members and Sub-Class Members for damages and wages owed, and for liquidated damages,  
2 penalties, interest, costs and attorney's fees.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Pay All Regular Wages**

5 *(California Labor Code §§ 1197.1 and 1199, and the Wage Order)*

6 **-By Plaintiff and Class Members Against All Defendants-**

7 105. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
8 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

9 106. At all times relevant herein, Defendants were required by California *Labor Code*  
10 §§ 1197.1 and 1199 and the Wage Order to compensate Plaintiff and Class Members correct and  
11 proper wages for all hours worked.

12 107. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class  
13 Members for all hours worked in excess of eight (8) hours in one day or forty (40) hours in a week.

14 108. Plaintiff is informed and believes and based thereon alleges that Defendants willfully  
15 failed to pay Plaintiff and Class Members wages for all hours worked. Plaintiff is informed and  
16 believes and based thereon alleges that Defendants' willful failure to provide all wages due and owing  
17 upon separation from employment results in a continued payment of wages up to thirty (30) days from  
18 the time the wages were due. Therefore, Plaintiff and Sub-Class Members are entitled to compensation  
19 pursuant to California *Labor Code* § 203.

20 109. Such a pattern, practice and uniform administration of unlawful corporate policy  
21 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff,  
22 Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest,  
23 costs and attorney's fees, in an amount according to proof.

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FIFTH CAUSE OF ACTION

## Failure to Allow or Pay for Meal Periods

(California Labor Code §§ 226.7 and 512)

**-By Plaintiff and Class Members Against All Defendants-**

110. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

111. At all times relevant herein, Defendants were required to provide Plaintiff and Class Members with meal periods that comply with the California *Labor Code* and applicable regulations and the Wage Order, including California *Labor Code* §§ 226.7 and 512.

112. Consistent with Defendants' corporate policy, practice and pattern, Defendants regularly failed to provide, and in fact denied, Plaintiff's and Class Members' statutorily compliant meal periods.

113. Consistent with Defendants' policy, practice and pattern, Defendants regularly failed to provide any breaks to Dashers, allow Plaintiff and Class Members to take or timely take uninterrupted, duty-free meal periods. As a pattern and practice, Defendants regularly failed to accurately record meal periods.

114. Plaintiff is informed and believes and based thereon alleges that Defendants willfully failed to pay Plaintiff and Class Members proper meal period premium wages for all non-compliant or missed meal periods. Plaintiff re informed and believes and based thereon alleges that Defendants' willful failure to provide all such meal period wages due and owing to Sub-Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

115. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff, Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest, costs and attorney's fees.

1 116. Accordingly, Plaintiff and all members of the Class are entitled to one (1) hour of  
2 compensation at their regular hourly rate for each workday that the proper meal periods were not  
3 provided and one (1) hour of compensation at their regular hourly rate for each workday that the proper  
4 meal periods were not provided in penalty wages pursuant to California *Labor Code* § 226.7 and the  
5 Wage Order.

6 117. Plaintiff and Class Members are further entitled to civil penalties under California  
7 *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00) for each pay period for  
8 which the employee was underpaid, in addition to any amount sufficient to recover underpaid wages;  
9 and, for each subsequent violation, One Hundred Dollars (\$100.00) for each pay period for which the  
10 employee was underpaid, in addition to any amount sufficient to recover underpaid wages.

11 **SIXTH CAUSE OF ACTION**

12 **Failure to Allow or Pay For Rest Periods**

13 **(California *Labor Code* §226.7)**

14 **-By Plaintiff and Class Members Against All Defendants-**

15 118. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
16 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

17 119. At all times relevant herein, Defendants were required to provide Plaintiff and Class  
18 Members with rest periods that comply with the California *Labor Code* and applicable regulations and  
19 IWC wage order, including California *Labor Code* § 226.7.

20 120. Consistent with Defendants' corporate policy, practice and pattern, Defendants  
21 regularly failed to provide, and in fact denied, Plaintiff and Class Members statutorily compliant rest  
22 periods.

23 121. Consistent with Defendants' corporate policy, practice and pattern, Defendants failed  
24 to provide or allow Plaintiff and Class Members to take or timely take mandated rest periods due to  
25 their misclassification as independent contractors.

26 122. Plaintiff is informed and believe and based thereon allege that Defendants willfully  
27 failed to pay Plaintiff and Class Members proper rest period premium wages for all non-compliant or  
28 missed rest periods. Plaintiff is informed and believe and based thereon alleges that Defendants'

1 willful failure to provide all such rest period wages due and owing upon separation from employment  
 2 results in a continued payment of wages up to thirty (30) days from the time the wages were due.  
 3 Therefore, members of the Sub-Class who have separated from employment are entitled to  
 4 compensation pursuant to California *Labor Code* § 203.

5 123. Such a pattern, practice and uniform administration of unlawful corporate policy  
 6 regarding employee compensation as described herein creates an entitlement to recovery by Plaintiff,  
 7 Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest,  
 8 costs and attorney's fees.

9 124. Plaintiff and all members of the Class were regularly scheduled as a matter of uniform  
 10 company policy to work, and in fact worked, without rest breaks in violation of California *Labor Code*  
 11 §§ 226.7 and 512 and the Wage Order, in that they are not and were not permitted to take one (1) ten  
 12 (10) minute rest break for every four (4) hours worked.

13 125. Accordingly, Plaintiff and all members of the Class are entitled to one (1) hour of  
 14 compensation at their regular hourly rate for each workday that the proper rest periods were not  
 15 provided and one (1) hour of compensation at their regular hourly rate for each workday that the proper  
 16 rest periods were not provided in penalty wages pursuant to California *Labor Code* § 226.7 and the  
 17 Wage Order.

18 126. Plaintiff and Class Members are further entitled to civil penalties under California  
 19 *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00) for each pay period for  
 20 which the employee was underpaid, in addition to any amount sufficient to recover underpaid wages;  
 21 and, for each subsequent violation, One Hundred Dollars (\$100.00) for each pay period for which the  
 22 employee was underpaid, in addition to any amount sufficient to recover.

### 23 SEVENTH CAUSE OF ACTION

#### 24 Waiting Time Penalties

25 (California *Labor Code* §§ 201-203)

26 -By Plaintiff and Sub-Class Members Against All Defendants-

27 127. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
 28 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

128. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion during and at the end of their employment, pursuant to California *Labor Code* §§ 201 through 203.

129. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Sub-Class Members their final wages pursuant to California *Labor Code* §§ 201 through 203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

130. The conduct of Defendants and their agents and managerial employees as described herein was willful, and in violation of the rights of Plaintiff and the Sub-Class Members.

131. Plaintiff is informed and believes and based thereon alleges that Defendants' willful failure to pay wages due and owing to Sub-Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

#### EIGHTH CAUSE OF ACTION

##### **Failure to Provide Accurate Itemized Wage Statements**

**(California *Labor Code* § 226(a))**

**-By Plaintiff and Class Members Against All Defendants-**

132. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

133. At all times relevant hereto, California *Labor Code* § 226(a) provides, and provided, that every employer shall furnish each of its employees an accurate itemized wage statement in writing showing nine (9) pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly



1 rates in effect during the pay period and the corresponding number of hours worked at each hourly  
2 rate by the employee.

3 134. Defendants failed and continue to fail in their affirmative obligation to keep accurate  
4 payroll records reflecting the actual hours worked, and the amount of compensation due to their  
5 California employees. Defendants, as a matter of policy and practice, did not maintain accurate records  
6 in violation of California *Labor Code* § 226.

7 135. For example, as a matter of policy and practice, among the violations of California  
8 *Labor Code* § 226, Defendants failed to keep accurate records reflecting total number of hours worked,  
9 rates of pay, rates of overtime pay (as a result of Defendants' failure to record proper overtime hours  
10 worked, and to properly calculate the overtime rate of pay), and daily or weekly overtime pay. As a  
11 result, Defendants failed to provide true and accurate wage statements to Plaintiff and Class Members,  
12 as required by California *Labor Code* § 226.

13 136. Such a pattern, practice and uniform administration of corporate policy as described  
14 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class Members in a civil  
15 action for all damages and/or penalties pursuant to California *Labor Code* § 226, including interest  
16 thereon, penalties, reasonable attorney's fees, and costs of suit according to the mandate of California  
17 *Labor Code* § 226, in amount according to proof.

18 137. Class Members, including Plaintiff, are entitled to recover from Defendants the greater  
19 of their actual damages caused by Defendants' failure to comply with California *Labor Code* § 226(a),  
20 or an aggregate penalty not exceeding Four Thousand Dollars (\$4,000.00) per employee.

21 **NINTH CAUSE OF ACTION**

22 **Failure to Reimburse Business Expenses**

23 **(California *Labor Code* § 2800, and 2802)**

24 **-By Plaintiff and Class Members Against All Defendants-**

25 138. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
26 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

27 139. While acting on the direct instruction of Defendants and discharging his duties for  
28 them, Plaintiff and putative class members incurred work-related expenses.

1 140. Such expenses include but are not limited to the costs associated with travel, including  
2 fuel, maintenance, vehicle depreciation, and others, as well as the cost of maintaining a personal cell  
3 phone for purposes of using for Defendants' business. Plaintiff necessarily incurred these substantial  
4 expenses and losses as a direct result of performing their job duties for Defendants.

5 141. Defendants have failed to indemnify or in any manner reimburse Plaintiff for these  
6 expenditures and losses. By requiring Plaintiff to pay expenses and cover losses that he incurred in  
7 direct consequence of the discharge of his duties for Defendants and/or in obedience to Defendants'  
8 direction, Defendants have violated Cal. Labor Code § 2802

9 142. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered  
10 substantial losses according to proof, as well as pre-judgment interest, costs, and attorney fees for the  
11 prosecution of this action.

12 143. The conduct of Defendants and their agents and managerial employees as described  
13 herein was willful, and in violation of the rights of Plaintiff and the Sub-Class Members.

14 144. Plaintiff requests relief as described below.

15 **TENTH CAUSE OF ACTION**

16 **Willful Misclassification of Individual as Independent Contractor**

17 **(California Labor Code § 226.8)**

18 **-By Plaintiff and Class Members Against All Defendants-**

19 145. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
20 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

21 146. Defendants intentionally and willfully characterized Plaintiff and members of the Class  
22 as independent contractors rather than employees in violation of Labor Code §226.8.

23 147. Defendants have been engaging in a pattern and practice of misclassifying employees  
24 as independent contractors for their own financial benefit.

25 148. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,  
26 Plaintiff and Class Members are entitled to recover damages in an amount to be determined at trial,  
27 civil penalties, plus interest thereon, and attorneys' fees, and costs of suit pursuant to Labor Code §  
28 226.8.

1 149. Defendants have engaged in or are engaging in a pattern or practice of misclassifying  
2 the Dashers, and Plaintiff seeks recovery for civil penalties of not less than ten thousand dollars  
3 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to  
4 any other penalties or fines permitted by law.

5 150. Plaintiff realleges and incorporates herein by reference each and every allegation  
6 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

7 **ELEVENTH CAUSE OF ACTION**

8 **Unfair Business Practices**

9 **(California Business and Professions Code §§ 17200, et seq.)**

10 **-By Plaintiff and Class Members Against All Defendants-**

11 151. Plaintiff re-alleges and incorporates herein by reference each and every allegation  
12 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

13 152. Defendants, and each of them, have engaged in unfair business practices in California  
14 by practicing, employing and utilizing the employment practices outlined above, including but not  
15 limited to, requiring Class Members to perform the labor complained of herein without overtime  
16 compensation, regular compensation or minimum wage for all hours worked, failing to provide meal  
17 and rest breaks, failing to reimburse/indemnify business expenses, and failing to provide itemized  
18 wage statements. Defendants' utilization of such unfair business practices constitutes unfair  
19 competition and provides an unfair advantage over Defendants' competitors.

20 153. Plaintiff and the Class Members, and other similarly situated members of the general  
21 public, seek full restitution and disgorgement of monies, as necessary and according to proof, to restore  
22 any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair  
23 practices complained of herein. Plaintiff seeks, on their own behalf and on behalf of the Class Members  
24 and general public, the appointment of a receiver, as necessary. The acts complained of herein  
25 occurred, at least in part, within the last four (4) years preceding the filing of the original complaint in  
26 this action.

27 154. Plaintiff is informed and believes and on that basis alleges that, at all times herein  
28 mentioned, Defendants have engaged in unlawful, deceptive and unfair business practices, as

1 proscribed by California *Business and Professions Code* §§ 17200, *et seq.*, as set forth above, thereby  
2 depriving Plaintiff, Class Members, and other members of the general public the minimum working  
3 condition standards and conditions due to them under the California labor laws and the Wage Order  
4 as specifically described herein.

5 155. Plaintiff, Class Members, and all persons similarly situated, are further entitled to and  
6 do seek a declaration that the above-described business practices are unfair, unlawful and/or  
7 fraudulent.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment for themselves and all others on whose behalf this  
10 suit is brought against Defendants, jointly and severally, as follows:

- 11 a) That the Court determine that this action may be maintained as a class action under Code of  
12 Civil Procedure § 382;
- 13 b) That the Plaintiff be appointed as the representatives of the Class;
- 14 c) That counsel for Plaintiff be appointed as Class Counsel;
- 15 d) That the Court find that Defendants have been in violation of applicable provisions of the  
16 California Labor Code by failing to pay each member of the proposed Classes for all hours  
17 worked, including minimum wage;
- 18 e) That the Court find that Defendants have been in violation of applicable provisions of the  
19 California Labor Code §§510, 1194 *et seq.*, and IWC Wage Order by failing to pay overtime  
20 wages to Plaintiff and members of the Class;
- 21 f) That the Court find that Defendants have been in violation of California Labor Code §§226.7  
22 and 512 by failing to provide Plaintiff and members of the Class with meal periods and therefore  
23 owe compensation under California Labor Code §226.7(b);
- 24 g) That the Court find that Defendants have been in violation of California Labor Code §§226.7  
25 by failing to authorize and permit rest periods for Plaintiff and members of the Class, and  
26 therefore owe compensation under California Labor Code §226.7(b);
- 27 h) That the Court find that Defendants have been in violation of California Labor Code § 2802,  
28 by failing to reimburse the Plaintiff and the Class reasonable business expenses and losses;

1 i) That the Court find that Defendants have violated the recordkeeping provisions of California  
2 Labor Code §§ 1174 and 1174.5 as to Plaintiff and the Class;

3 j) That the Court find that Defendants have been in violation of California Labor Code § 226  
4 by failing to timely furnish Plaintiff and members of the Class with itemized statements  
5 accurately showing the total hours worked, vacation benefits, bonus benefits, and wages earned  
6 by each of them during each pay period;

7 l) That the Court find that Defendants have been in violation of California Labor Code §§201  
8 and 202 and therefore owe waiting time penalties under California Labor Code §203 for willful  
9 failure to pay all compensation owed at the time of termination of employment to Plaintiff and  
10 other formerly employed members of the Class;

11 m) That the Court find that Defendants have been in violation of California Labor Code §226.8  
12 and therefore owe civil penalties under California Labor Code §226.8 and all damages  
13 proximately caused by Defendants' wrongful conduct of engaging in a pattern or practice of  
14 willfully misclassifying Dasher as independent contractors;

15 n) That the Court find that Defendants have committed unfair and unlawful business practices  
16 in violation of California Business and Professions Code §17200, et seq., by their violations of  
17 the Labor Code and Wage Orders as described above;

18 o) That the Court find that Defendants' violations of the California Labor Code described herein  
19 have been willful;

20 p) That the Court award to Plaintiff and the proposed Class Members restitution for the  
21 reasonable business expenses and deductions incurred by Dashers, including interest thereon,  
22 liquidated damages and/or statutory penalties and other statutory penalties in amounts subject  
23 to proof at trial;

24 q) That the Court award to Plaintiff and the proposed Class Members restitution for the amounts  
25 of unpaid wages, including interest thereon, liquidated damages and/or statutory penalties for  
26 failure to timely furnish accurate itemized wage statements, and waiting time and other statutory  
27 penalties in amounts subject to proof at trial;

1 r) That Defendants be ordered and enjoined to pay restitution and penalties to Plaintiff and the  
2 proposed Class Members due to Defendants' unlawful and/or unfair activities, pursuant to  
3 Business and Professions Code §§17200-17205;

4 s) That Defendants further be enjoined to cease and desist from unlawful and/or unfair activities  
5 in violation of Business and Professions Code §17200, pursuant to §17203;

6 t) That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant to Labor  
7 Code §§ 203, 225.5, 226, 1194, 1197, and 2804, Code of Civil Procedure § 1021.5, and/or other  
8 applicable law;

9 u) That the Court award any other relief this Court deems just, equitable, and proper;

10 v) That these Defendants be ordered to refrain from retaliating against any Class Members who  
11 are current employees;

12 w) Any and all other applicable statutory penalties, as provided by law; and

13 x) Any other and further relief the Court deems just and proper.

14  
15  
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff requests a trial by jury on all applicable claims.

18  
19 Dated: May 1, 2017

By: 

20 Law Offices of Todd M. Friedman, P.C.

21 Todd M. Friedman

22 Adrian R. Bacon, Esq.  
23  
24  
25  
26  
27  
28

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>114a</b> Todd M. Friedman, Esq. SBN 216752 Law Offices of Todd M. Friedman 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367 TELEPHONE NO.: 877-206-4741 FAX NO.: 866-633-0228 ATTORNEY FOR (Name): Plaintiff, Daniel Marko		FOR COURT USE ONLY  <b>FILED</b> <b>SUPERIOR COURT OF CALIFORNIA</b> <b>COUNTY OF LOS ANGELES</b>  <b>MAY 02 2017</b>  Sherri R. Carter, Executive Officer/Clerk By <u>Shaunya Bolden</u> , Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Los Angeles</b> STREET ADDRESS: <b>111 N Hill St</b> MAILING ADDRESS: <b>111 N Hill St</b> CITY AND ZIP CODE: <b>Los Angeles 90012</b> BRANCH NAME: <b>Stanley Mosk Courthouse</b>		CASE NUMBER: <b>BC 659841</b>  JUDGE:  DEPT:
CASE NAME: <b>Daniel Marko, et al. v. DoorDash, Inc., et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PI/D/W/D (23) <b>Non-PI/PI/D/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PI/D/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☒ punitive
4. Number of causes of action (specify): **11**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 1, 2017  
 Todd M. Friedman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)--Personal Injury/Property  
Damage/Wrongful Death  
Uninsured Motorist (46) (*if the  
case involves an uninsured  
motorist claim subject to  
arbitration, check this item  
instead of Auto*)

Other PI/PD/WD (Personal Injury/  
Property Damage/Wrongful Death)  
Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/  
Wrongful Death  
Product Liability (*not asbestos or  
toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice--  
Physicians & Surgeons  
Other Professional Health Care  
Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip  
and fall)  
Intentional Bodily Injury/PD/WD  
(e.g., assault, vandalism)  
Intentional Infliction of  
Emotional Distress  
Negligent Infliction of  
Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business  
Practice (07)  
Civil Rights (e.g., discrimination,  
false arrest) (*not civil  
harassment*) (08)  
Defamation (e.g., slander, libel)  
(13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice  
(*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer  
or wrongful eviction*)  
Contract/Warranty Breach--Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/  
Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open  
book accounts) (09)  
Collection Case--Seller Plaintiff  
Other Promissory Note/Collections  
Case  
Insurance Coverage (*not provisionally  
complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse  
Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent  
domain, landlord/tenant, or  
foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal  
drugs, check this item; otherwise,  
report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ--Administrative Mandamus  
Writ--Mandamus on Limited Court  
Case Matter  
Writ--Other Limited Court Case  
Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal--Labor  
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal.  
Rules of Court Rules 3.400--3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims  
(*arising from provisionally complex  
case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of  
County)  
Confession of Judgment (*non-  
domestic relations*)  
Sister State Judgment  
Administrative Agency Award  
(*not unpaid taxes*)  
Petition/Certification of Entry of  
Judgment on Unpaid Taxes  
Other Enforcement of Judgment  
Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified  
above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-  
harassment*)  
Mechanics Lien  
Other Commercial Complaint  
Case (*non-tort/non-complex*)  
Other Civil Complaint  
(*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate  
Governance (21)  
Other Petition (*not specified  
above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult  
Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late  
Claim  
Other Civil Petition



ORIGINAL

116a

BC 659841

SHORT TITLE: Daniel Marko, et al. v. DoorDash, Inc., et al.

CASE NUMBER

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

**Step 1:** After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

**Step 2:** In Column B, check the box for the type of action that best describes the nature of the case.

**Step 3:** In Column C, circle the number which explains the reason for the court filing location you have chosen.

**Applicable Reasons for Choosing Court Filing Location (Column C)**

- Class actions must be filed in the Stanley Mosk Courthouse, Central District.
- Permissive filing in central district.
- Location where cause of action arose.
- Mandatory personal injury filing in North District.
- Location where performance required or defendant resides.
- Location of property or permanently garaged vehicle.
- Location where petitioner resides.
- Location wherein defendant/respondent functions wholly.
- Location where one or more of the parties reside.
- Location of Labor Commissioner Office.
- Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury).

Auto  
TortOther Personal Injury/Property  
Damage/ Wrongful Death Tort

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	1, 11
	<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11
	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11

BY FAX

11/17/17 11:54

SHORT TITLE: Daniel Marko, et al. v. DoorDash, Inc., et al.

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input checked="" type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach - Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE:

Daniel Marko, et al. v. DoorDash, Inc., et al.

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above	
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6	
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5	
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2	
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8	
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3	
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8	
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8	
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8	
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8	
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9	
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8	
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8 2, 8 1, 2, 8 1, 2, 8	
	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8	
	Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9 2, 3, 9 2, 3, 9 2 2, 7 2, 3, 8 2, 9

SHORT TITLE:

Daniel Marko, et al. v. DoorDash, Inc., et al.

CASE NUMBER

**Step 4: Statement of Reason and Address:** Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

<b>REASON:</b> <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			<b>ADDRESS:</b> 111 N Hill St
<b>CITY:</b> Los Angeles	<b>STATE:</b> CA	<b>ZIP CODE:</b> 90012	

**Step 5: Certification of Assignment:** I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: 1 May 2017

(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

# EXHIBIT B

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**Attorneys for Plaintiff,  
 DANIEL MARKO**

**SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES**

DANIEL MARKO, BROCK BAKER and	)	CASE NO.: BC659481
JESUS CORONA, individually and on	)	
behalf of all others similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	
vs.	)	<b>FIRST AMENDED CLASS ACTION</b>
	)	<b>COMPLAINT FOR DAMAGES</b>
DOORDASH, INC.; and DOES 1 to 50,	)	
inclusive,	)	<b>JURY DEMAND</b>
	)	
Defendants.	)	
	)	

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Plaintiffs DANIEL MARKO, BROCKBAKER and JESUS CORONA (hereinafter “Plaintiffs”), on behalf of themselves and all those similarly situated, alleges the following as and for a complaint against Defendants DOORDASH, INC., a Delaware corporation that is headquartered in California, and DOES 1 through 50 (hereinafter sometimes collectively referred to as “Defendants”).

Plaintiffs brings this Class Action against Defendants, and each of them, pursuant to California *Code of Civil Procedure* § 382. All allegations in this Class Action Complaint (“Complaint”) are based upon information and belief, except for those allegations which pertain to the Plaintiffs named herein and his counsel. Plaintiffs’ information and beliefs are based upon, *inter alia*, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

**INTRODUCTION**

1. This action is within the Court's jurisdiction pursuant to the provisions of California *Labor Code* §§ 201-204, 226, 226.7, 510, 1194, 1194.2 and 1199, and California *Business and Professions Code* §§ 17200, *et seq.*

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California *Labor Code*, *Business and Professions Code*, and applicable Industrial Welfare Commission ("IWC") wage order against employees of Defendants.

3. Plaintiffs are informed and believe and based thereon alleges that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard of the rights of all employees in, among other things, failing to provide the statutorily required meal and rest periods and failing to pay the statutorily required meal period and rest period premium wages when not provided, failing to pay all minimum, regular and overtime wages due, failing to pay wages in a timely fashion, including at the end of employment, mis-classifying employees so as to avoid payment of wages, failing to indemnify employees for business expenses, and failing to keep statutorily required payroll records.

4. Plaintiffs are informed and believe and based thereon alleges that Defendants have engaged in, among other things, a system of willful violations of the California *Labor Code*, *Business and Professions Code*, and applicable IWC wage order, including, but not limited to, Labor Code §§ 201-203, 221, 222.5, 223, 226.8, 226.3, 226.7, 400-410, 450, 510, 512, 1182, 1174, 1194, 1197, 1197.1, and 2802; California Code of Regulations, Title 8 §11090 section 7 & 11-12; California Wage Order No. 1-2001 (8 Cal. Code Reg., § 11090); and Industrial Wage Commission Wage (hereinafter "IWC") Order No. 9. Specifically, Plaintiffs challenge Defendants' acts of creating and maintaining policies, practices and customs of: (1) classifying Dashers as independent contractors instead of employees; (2) failing to reimburse Plaintiffs and the Class for reasonable business expenses; (3) making deductions from Plaintiffs' and the Class' wages; (4) requiring Plaintiffs and the Class to pay for pre-employment medical and physical examinations; (5) coercing or compelling Plaintiffs and the Class to purchase things of value from Defendants; (6) failing to provide, authorize, permit and/or make available meal and rest periods to Plaintiffs and the Class as required by California law; (7)

denying Plaintiffs and the Class full compensation for all hours worked; (8) failing to pay Plaintiffs and the Class minimum wage; (9) failing to pay Plaintiffs and the Class overtime and double time; (10) failing to provide Plaintiffs and the Class with accurate, itemized wage statements; (11) failing to timely pay Plaintiffs and the Class full wages upon termination or resignation; and (12) engaging in a pattern or practice of willfully misclassifying employees as independent contractors. Plaintiffs seek compensation, damages, penalties and interest to the full extent permitted by the Labor Code and IWC Wage Orders.

5. The policies, practices and customs of Defendants described above and below have resulted in the unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California *Labor Code* and the *Business and Professions Code*.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the alleged violations of the California *Labor Code* §§ 201-204, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, 1198 and 1199, and California *Business and Professions Code* §§ 17200, *et seq.*

7. This case is subject to the jurisdiction of this Court pursuant to California *Labor Code*, California *Business and Professions Code*, California *Code of Civil Procedure*, and the California Department of Industrial Relations. On information and belief, and at all times relevant, Defendants operate and are doing business under the brand name of DOORDASH, INC. Defendants, and each of them, do business throughout the State of California. Further, Defendants' principle place of business and corporate headquarters is in San Francisco, California.

8. The unlawful acts alleged herein have a direct effect on Plaintiffs and other employees similarly situated within the State of California. Plaintiffs and the Class Members have suffered damages and will continue to suffer the same harm as the Representative Plaintiffs as a result of Defendants', and each Defendant's, wrongful conduct unless the relief requested herein is granted.

### **PARTIES**

9. Plaintiffs are informed and believe and based thereon alleges that Defendant DOORDASH, INC. is a Delaware corporation, which regularly does business throughout the State of California. Further, Defendants' principle place of business and corporate headquarters is in San



Francisco California. Plaintiffs are informed and believe and thereon alleges that Defendants, at all times herein mentioned, is and was doing business in the County of Los Angeles, State of California.

10. Whenever in this Complaint reference is made to “DoorDash,” such allegations collectively mean and refer to Defendants DOORDASH, INC., and its subsidiaries and divisions.

11. Plaintiff DANIEL MARKO is, and at relevant times herein was, a resident of the County of Los Angeles, California. Plaintiff is currently a Dasher (known as a “Dasher”) employed by Defendants. Plaintiff was employed as an independent contractor Dasher, and worked throughout Los Angeles County, California.

12. Plaintiff BROCK BAKER is, and at relevant times herein was, a resident of the County of Los Angeles, California. Plaintiff is currently a Dasher (known as a “Dasher”) employed by Defendants. Plaintiff was employed as an independent contractor Dasher, and worked throughout Los Angeles County, California.

13. Plaintiff JESUS CORONA is, and at relevant times herein was, a resident of the County of Los Angeles, California. Plaintiff is currently a Dasher (known as a “Dasher”) employed by Defendants. Plaintiff was employed as an independent contractor Dasher, and worked throughout Los Angeles County, California.

14. Although Plaintiffs were classified as an independent contractor, and not classified as an employee, Plaintiffs’ employment nonetheless was subject to substantial control by Defendants over his wages, hours, and working conditions.

15. Plaintiffs are informed and believe and based thereon alleges that at all times herein mentioned Defendants are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

16. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true names and capacities of said Doe Defendants become known to Plaintiffs. Plaintiffs are informed and believe and thereon alleges that each of said fictitious Defendants were responsible in

some way for the matters alleged herein, and proximately caused Plaintiffs, as well as members of the Class and members of the general public, damages as more specifically identified below.

17. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and, furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment.

18. Plaintiffs are informed and believe and based thereon alleges that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

19. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acted within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20. Plaintiffs are further informed and believe and based thereon alleges, at all times herein material, each Defendants were completely dominated and controlled by its Co-Defendants, and each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any conduct by Defendants or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employments.

21. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of

herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

### **FACTUAL ALLEGATIONS**

22. At all times herein mentioned, Class Members, including Plaintiffs, were employees of Defendants in the State of California, and Defendants were and are employers employing persons in the State of California. As such, Class Members, including Plaintiffs, were the type of persons contemplated to be protected by the California *Labor Code* and the Wage Order, and said laws and regulations were intended to apply to Defendants and to prevent the type of injury and damage herein.

23. Plaintiffs are informed and believe and based thereon alleges that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and hour laws.

24. During the relevant time period of this action, Defendants have employed, and continue to employ, Plaintiffs and other similarly situated individuals ("Dashers") to provide delivery services for its customers. Defendants' entire business model is premised on outsourcing its core business function onto Dashers as independent contractors, as a method of cutting costs in the delivery services market, and thereby gain a competitive advantage.

25. Defendants has devised an elaborate scheme to skirt the requirements under the California Labor Code, by misclassifying its Dashers as independent contractors rather than employees, denying them the benefits of employment, and shifting the vast majority of the cost of doing business onto the employees who carry out the day to day customer service duties for Defendants, in fulfillment of their core business function of food delivery.

26. Defendants characterize its Dashers as independent contractors who merely utilize Defendants' logistics software to independently provide Delivery services to facilitate private transactions between private vehicle drivers and food service patrons. In fact, these Dashers are subject to high levels of control by Defendants over their wages, hours, and working conditions, such that the conditions of their employment are in fact dominated and controlled in every material aspect by Defendants.

27. Defendants' control over Plaintiffs' and Class Members' wages, hours, and working conditions begins with Defendants' requirement that each Dasher enter into a written agreement with Defendants as to the terms of their employment. This agreement specifies that Dashers must adhere to strict rules and regulations put in place at Defendants' sole discretion.

28. Defendants maintain sole discretion over the terms of the independent contractor agreement, and require applicants to sign these agreements with no ability to negotiate the terms, but rather as a condition of employment.

29. The Agreements are drafted exclusively by Defendants and/or its legal counsel.

30. The Agreement purports to classify Dashers as independent contractors so as to conceal the true nature of the relationship between Defendants and their Dashers: that of employer and employees.

31. Defendants retain the right to terminate Dashers without notice if they fail to adhere to any part of the Agreement. Defendants require Dashers to comply with their numerous policies and procedures, or face possible termination

32. Defendants maintain exclusive control over the rates of pay that Dashers will receive, which is based on an hourly rate and other factors, determined at the sole discretion of Defendants. Defendants reserve the right to make adjustments to their rates of pay, at any time, without notice to Dashers directly impacting the wages earned by Plaintiffs and Class Members.

33. Dashers are required to agree to Defendants' pay schedule, which is subject to change, in order to activate Defendants' application on their Smartphone devices and accept fares from Defendants' customers.

34. Defendants' managers also supervise and oversee the work performed by Dashers, and are in regular email and telephone communication with Dashers about Defendants' policies and procedures, and about the job duties of Dashers.

35. Defendants perform background and DMV checks on prospective Dashers.

36. Dashers must utilize Defendants' Smartphone application in order to access Defendants' network of customers. Defendants' application place serious limitations and

requirements on Dashers in how they are required to carry out their job duties. Having a Smartphone is a condition of employment with Defendants as a Dashers.

37. Defendant also monitors Dashers through use of the GPS device in Dashers' Smartphones, and by using Defendant's application, which must be loaded onto Dashers' devices as a condition of their employment.

38. Despite requiring a smartphone as a condition of employment, Defendants do not indemnify Dashers for these business expenses.

39. Defendants also require Dashers to utilize their personal vehicles for business purposes, including to transport company marketing material between different zones throughout the city at the benefit of the Defendants, yet fails to indemnify these business expenses. Defendants do not compensate Dashers in any fashion for these services.

40. Defendants require Valet to wear a company uniform, including a red Door Dash t-shirt.

41. Defendants require Dashers to utilize motor vehicles in order to expedite the Dasher process, so that they can more quickly travel between a food pickup location, and the customer delivery location, and Defendants allow Dashers to forego use of a motor vehicle and use a bicycle or walk only in select "markets" determined entirely by Defendants.

42. Furthermore, Defendants do not indemnify Dashers for any kind of damage sustained by their motor vehicles. Moreover, Defendants require, as an express material condition of employment, Dashers to have and maintain their own motor vehicle insurance for which Defendants do not reimburse Dashers.

43. Defendants determine where Dashers are required to work, when they are required to work, and how they are required to work. Specifically, Defendants will set Dasher work schedules, which instruct them where and when to work.

44. Defendants require Dasher to log in to the attendant application on their smartphone devices in order to start and end their shifts. Defendants maintain attendance records, and have the ability to maintain accurate time records for all hours worked by Dashers.

45. Defendants secure Dashers contracts with an underlying \$10 per hour wage. However, Defendants fail to account for all time worked by Dashers, and fail to fully compensate Dashers for all working time. Further, where Dashers work more than 40 hours in a week or 8 hours in a day, Defendants fail to pay Dashers overtime wages, including by not paying for all compensable hours, and by using an improper regular rate of pay for purposes of said calculations.

46. Defendants provide Dashers with no meal or rest breaks, and do not provide Dashers with any of the other benefits of employment.

47. Defendant fails to provide breaks, provides them late, does not provide breaks that are duty free, and otherwise provides non-compliant breaks, such that a compliant meal break is the exception rather than the norm. Further, Defendant fails to maintain accurate time records regarding meal breaks for Dashers.

48. Defendants also require Plaintiffs and other Class Member Dashers to utilize their cellular phones for business purposes, in order to perform and carry out their work duties, at considerable personal expense.

49. Defendants do not issue pay stubs of any kind to Plaintiffs and other Class Members. Rather these employees are paid via direct deposit.

50. Plaintiffs are informed and believe and based thereon alleges that Defendants know, should know, knew or should have known that Class Members, including Plaintiffs, were entitled to receive duty-free meal periods within the first five (5) hours of any shift of six (6) or more hours worked, and that any failure to do so requires Defendants to pay Class Members one (1) hour of wages per day for untimely, missed, or on-duty meal periods.

51. Plaintiffs are informed and believe and based thereon allege that, during the Class Period, Defendants had a consistent policy or practice of requiring Class Members, including Plaintiffs, to continue working through meal periods, or were required to stay on the premises during their meal periods, or were interrupted during their meal periods, or Defendants otherwise failing to provide a duty-free meal period within the first five (5) hours of any shift of six (6) or more hours worked.

52. Plaintiffs are informed and believe and based thereon alleges, during the Class Period, Defendants had a consistent policy or practice of failing to compensate Class Members, including Plaintiffs, for duty-free meal periods that were not provided within the first five (5) hours of any shift of six (6) or more hours worked, and for on-duty meal periods.

53. Plaintiffs are informed and believe and based thereon alleges that Defendants know, should know, knew or should have known that Class Members, including Plaintiffs, were and are entitled to one (1) ten (10) minute rest break for each shift of four (4) hours or more, and that any failure to allow said breaks requires Defendants to pay Class Members, including Plaintiffs, one (1) hour of wages per day for missed or on-duty rest breaks.

54. Plaintiffs are informed and believe and based thereon alleges that during the Class Period, Defendants had a consistent policy or practice of failing to provide to Class Members, including Plaintiffs, one (1) ten (10) minute break for each shift of four (4) hours or more worked.

55. Plaintiffs are informed and believe and based thereon alleges that, during the Class Period, Defendants had a consistent policy or practice of failing to compensate Class Members, including Plaintiffs, for missed rest breaks that were not provided within each four (4) hours of a shift.

56. Plaintiffs are informed and believe and based thereon allege that, during the Class Period, Defendants had a consistent policy or practice of failing to compensate Class Members, including Plaintiffs, overtime pay for all overtime hours, and regular pay for any regular hours worked, and at least minimum wage for all hours worked.

57. Plaintiffs are informed and believe and based thereon alleges that, during the Class Period, Defendants had a consistent policy or practice of failing to provide Class Members, including Plaintiffs, with accurate wage statements reflecting the true number of hours worked due to Defendants' failure to provide lawful, timely, and duty-free meal and rest periods and failure to document all hours worked.

### **CLASS ALLEGATIONS**

58. Plaintiffs bring this action individually, as well as on behalf of each and all other persons similarly situated and, thus, seek class certification under California *Code of Civil Procedure* § 382.

59. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

60. Plaintiffs seek only class-wide injunctive relief, and do not seek monetary relief on behalf of the Class.

61. On April 6, 2017 in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), the California Supreme Court ruled that any contract that waives the statutory remedy of public injunctive relief under the Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act is contrary to California public policy and thus unenforceable under California Law. Plaintiffs seek injunctive relief under the Unfair Competition Law, Cal. Bus. & Prof. C. § 17200 et. seq., and various provisions of the California Labor Code that have been violated due to Defendant's misclassification of Dashers as Independent Contractors. Plaintiffs seek to enjoin Defendant's illegal collection practices misclassifying its Dashers in California. The arbitration agreement Defendant seeks to enforce explicitly waives the statutory remedy of public injunctive relief as it requires all claims to be submitted to arbitration and bars the arbitrator from awarding relief on behalf of any person not named party to the arbitration. Plaintiff alleges this provision of the agreement to be unenforceable, per the instructions of the California Supreme Court in *McGill*.

62. The "Class Period" is designated as the time from four years prior to the filing of this Complaint, to the trial date, based upon the allegation that the violations of California's wage and hour laws, as described more fully below, have been ongoing for at least the four years prior to the filing of this Complaint.

63. Pursuant to California *Code of Civil Procedure* § 382, Plaintiffs bring this action on behalf of the following class:

All persons who have been, or currently are, employed by Defendants and who performed at least one delivery service in California for Defendants as an independent contractor Dasher during the Class Period and who held, or hold, the position of Dasher. This definition includes any and all prior job titles assigned to this position during the Class Period (collectively, the "Class" or "Class Members"). Excluded from the Class are all persons who were employed by



Defendants as Managers, or in managerial or corporate positions equal, or superior, to Managers, during the Class Period.

64. The Class seeks declaratory and injunctive relief that Defendant has violated the Labor Code, specifically with respect to owing Dashers unpaid wages for meal period and rest periods, regular hours and overtime hours worked, penalties, equitable relief, interest, and reasonable attorneys' fees and costs, for failure to comply with applicable sections of the California *Labor Code*, Industrial Welfare Commission Wage Order No. 7-2001 ("Wage Order"), California *Business and Professions Code* §§ 17200, *et seq.*, and California *Code of Civil Procedure* § 1021.5. The Class does not seek damages,

65. This action is also brought by Plaintiffs on behalf of a sub-class, as follows:

All Class Members whose employment ended at any time during the Class Period (collectively, the "Former Employee Sub-Class" or "Former Employee Sub-Class Members").

66. The Former Employee Sub-Class Members seek waiting time penalties of up to thirty (30) days wages each, pursuant to California *Labor Code* § 203, due to Defendants' failure to pay all wages due and owing at the time of termination of the employment relationship.

67. Under California *Business and Professions Code* §§ 17200, *et seq.* ("Unfair Practices Act"), and pursuant to both the class action and representative action procedures provided for in these statutes, Plaintiffs, on behalf of himself and the proposed Class Members, also seeks restitution of all benefits Defendants have received from its unlawful actions as alleged herein.

68. During Plaintiffs' and Class Members' employment with Defendants, Defendants did not provide meal or rest periods in compliance with California law, and did not compensate Plaintiffs and members of the Class for all regular hours worked, for all overtime hours worked, or for meal or rest periods that did not comply with California law (including, but not limited to, missed meal and rest periods). Plaintiffs and the Class Members he seeks to represent did not voluntarily or willfully waive their meal or rest periods. Defendants maintained and implemented a course of conduct requiring Plaintiffs and Class Members to involuntarily waive their meal or rest periods as a condition of employment and failed to obtain uncoerced waivers.

69. During Plaintiffs' and Class Members' employment with Defendants, Defendants did not reimburse Dashers for business expenses incurred in the course of their employment, in violation of California *Labor Code* §§ 2800 *et. seq.*

70. Defendants did not keep accurate records of the hours worked by Plaintiffs and members of the Class, or of the amount of wages due to them. Plaintiffs were and is a victim of the policies, practices and customs of Defendants complained of in this action in ways that have deprived them of the rights guaranteed by California *Labor Code* §§ 201-204, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, 1198 and 1199, and California *Business and Professions Code* §§ 17200, *et seq.* (Unfair Practices Act).

71. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California *Labor Code* §§ 201-204, 226, 226.7, 227.3, 1194, 1194.2 and 2802, and California *Business and Professions Code* §§ 17200, *et seq.* (Unfair Practices Act).

72. This action is brought, and may properly be maintained, as a Class Action under California *Code of Civil Procedure* § 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable. This action satisfies the predominance, typicality, numerosity, superiority, and adequacy requirements of these provisions.

73. **Numerosity:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants' records, including payroll records. Plaintiffs are informed and believe and based thereon alleges that: (a) Class Members regularly were denied payment of all regular and overtime wages due and denied payment of overtime wages at the proper rate of overtime pay; (b) Class Members were not provided meal periods or rest periods in compliance with California *Labor Code* §§ 226.7 and 512 and the applicable IWC wage order, and were not paid all meal period or rest period premium wages for non-compliant periods; (c) Class Members were not reimbursed for business expenses incurred in the course of their employment, in violation of California *Labor Code* §§ 2800 *et. seq.*; (d) Class Members were not paid all wages in a timely fashion, including all wages at the end of employment based on Defendants' own records; and (e) Defendants did not maintain

accurate records and provide accurate wage statements to Class Members, pursuant to California *Labor Code* § 226. Based on information and belief, there are more than 100 persons who are potentially Class Members.

74. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above with whom they have a well-defined community of interests and typicality of claims as demonstrated herein. Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the Class and the representative Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts. Further, Plaintiffs' counsel is competent and experienced in litigation class actions involving California *Business and Professions Code* §§ 17200, *et seq.*

75. Defendants uniformly administered corporate policies and practices that did not afford Plaintiffs and Class Members proper meal and rest periods, as required by California *Labor Code* §§ 226.7 and 512 and the applicable IWC wage order, that failed to pay all earned regular and overtime wages, minimum wages, and all wages owed, and that uniformly paid their employees late wages. Plaintiffs are informed and believe and based thereon alleges that this corporate conduct was accomplished with the advance knowledge and designed intent to willfully withhold appropriate wages for work performed by Class Members.

76. Plaintiffs are informed and believe and based thereon alleges that Defendants, in violation of California *Labor Code* §§ 201 through 203, had a consistent and uniform policy, procedure and practice of willfully failing to pay Plaintiffs and Sub-Class Members all wages due them upon termination. Plaintiffs and other Sub-Class Members did not secret or absent themselves from Defendants, nor refuse to accept the earned and unpaid wages from Defendants upon termination. Accordingly, Defendants are liable for waiting time compensation for the unpaid wages to the Sub-Class Members pursuant to California *Labor Code* § 203.

77. In addition, Defendants uniformly administered a corporate policy, procedure and practice of not maintaining accurate records, and failing to provide true and accurate wage statements, as required by California *Labor Code* § 226.

78. Plaintiffs are informed and believe and based thereon alleges that the foregoing corporate conduct was accomplished with the advance knowledge and designed intent to willfully and intentionally fail to accurately record proper rates of pay, hours worked, net wages, and deductions.

79. As a pattern and practice and matter of corporate policy, in violation of the aforementioned labor laws, Defendants committed unfair practices based on the claims alleged in the preceding paragraphs.

80. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest among Plaintiffs and the Class Members concerning whether:

- a) Class Members are independent contractors or employees under applicable law;
- b) Defendants have the right to control the manner and means by which the Dashers perform their work;
- c) Defendants direct and/or supervise the work that the Dashers perform;
- d) Defendants' policy manuals and handbooks instruct the Dashers on how to conduct themselves and perform their work;
- e) The Dashers use and receive forms and materials provided by Defendants;
- f) The Dashers attend meetings or training conducted by Defendants regarding their work assignments and performance;
- g) Defendants assign the Dashers schedules and routes;
- h) Defendants exercise control, directly or indirectly, over Class Members' work hours;
- i) Defendants exercise control, directly or indirectly, over Class Members' working conditions;
- j) Defendants exercise control, directly or indirectly, over the kinds equipment the Dashers use;
- k) Dashers wear uniforms as specified by Defendants;
- l) Defendants' logos and/or names are affixed on the Dashers' uniforms;
- m) Dashers need special training, skills or education to perform their work;
- n) Defendants supply tools and equipment to the Dashers;
- o) The Dasher work is part of the regular business of Defendants;

- p) The method by which Defendants pay the Dashers;
- q) The Dasher tenure with the company is indefinite and/or whether the contracts signed by the Dasher contain automatic renewal clauses and can be terminated by either party;
- r) Defendants have the authority to discipline and/or terminate a Dasher;
- s) The Class Members are entitled to be reimbursed for Defendants' business expenses and deductions;
- t) Defendants failed to provide Plaintiffs and the Class Members with meal and rest periods in compliance with California law;
- u) Defendants failed to pay Plaintiffs and the Class Members statutory meal and rest period premium wages for non-compliant meal and rest periods;
- v) Plaintiffs and the Class Members regularly were denied payment of all overtime wages due for overtime hours worked;
- w) Plaintiffs and the Class Members regularly were denied payment of all regular wages due for regular hours worked;
- x) Plaintiffs and the Class Members regularly were denied payment of at least minimum wage for all hours worked;
- y) Defendants failed to pay all wages due in a timely fashion under California law;
- z) Waiting time penalties are owed to Plaintiffs and the Class Members;
- aa) Defendants failed to maintain accurate records of hours worked by Plaintiffs and the Class Members, and failed to provide accurate wage statements that comply with California *Labor Code* § 226; and
- bb) Defendants' employment practices towards Plaintiffs and Class Members constitute unfair business practices pursuant to California *Business and Professions Code* §§ 17200, *et seq.*

81. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class. Plaintiff are members of the Class and have suffered harm as a result of the violations of the Wage Order and California *Labor Code* alleged herein, including but not limited to California *Labor Code* §§ 201-204, 226, 226.7, 227.3, 1194, 1194.2 and 2802.

82. The Wage Order and the California *Labor Code* upon which Plaintiffs base these claims contain provisions that are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power by establishing onerous terms and conditions of employment.

83. The nature of this action and the format of laws available to Plaintiffs and members of the Class identified herein make the Class Action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual Plaintiffs with their vastly superior financial and legal resources. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by current employees for fear of retaliation, and even by former employees, for fear of retaliation within the industry.

84. The prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class Members against the Defendants, which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications, or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

85. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class identified herein, in a civil action, for the unpaid balance of the full amount of unpaid wages, overtime and vacation wages, including interest thereon, applicable penalties, reasonable attorney's fees, and costs of suit according to the mandate of California *Labor Code* §§

218.6, 226, 226.7, 227.3, & 1194, 1194.2 and 2802, California *Code of Civil Procedure* § 1021.5, and applicable IWC wage order.

86. Proof of a common business practice or factual pattern, which the named Plaintiffs experienced and is representative of, will establish the right of each of the Class Members to recovery on the causes of action alleged herein.

87. The Class Members are commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class Members are commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire Class and will result in the creation of a common fund.

### **FIRST CAUSE OF ACTION**

#### **Unpaid Overtime Wages**

**(California *Labor Code* §§ 510, 1194 and 1198,**

**and Industrial Welfare Commission Wage Order No. 9)**

**-By Plaintiffs and Class Members Against All Defendants-**

88. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

89. This action is brought, in part, pursuant to the Wage Order and *California Labor Code* §§ 510, 1194 and 1198. Under the Wage Order and *California Labor Code* § 510, Defendants were required to compensate Plaintiffs and all Class Members for all overtime, calculated at one and one-half (1-½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day, and two (2) times the regular rate of pay for hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) day of work.

90. While employed by Defendants, Plaintiffs and the Class Members were required to work more than eight (8) hours in a day or forty (40) hours in a week. Regardless of the number of actual hours worked, and even though Plaintiffs and all Class Members are not exempt from California overtime laws, Plaintiffs and all Class Members were not and are not afforded overtime compensation for any hours in excess of eight (8) hours in a workday and/or forty (40) hours per week. By failing

to compensate Plaintiffs and all Class Members for the hours actually worked, Defendants have failed and continue to fail to pay the overtime compensation owed to Plaintiffs and all Class Members pursuant to the Wage Order and the California *Labor Code*.

91. Plaintiffs are informed and believe and based thereon alleges that Defendants' policy and practice of requiring overtime work and not paying for said work according to the overtime mandates of California law is, and at all times herein mentioned was, in violation of *California Labor Code* § 1194, applicable regulations, and the Wage Order. Defendants' employment policies and practices wrongfully and illegally failed to compensate Plaintiffs and Class Members for overtime compensation earned as required by California law.

92. The conduct of Defendants and their agents and employees as described herein was willful and intentional and part of a corporate policy, procedure and practice. Furthermore, Defendants willfully failed to pay Plaintiffs and Class Members proper compensation for all overtime hours worked at the appropriate rate of overtime pay.

93. Plaintiffs are informed and believe and based thereon alleges that Defendants' willful failure to provide all overtime wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and other members of the Class who have separated from employment are entitled to compensation pursuant to California *Labor Code* § 203.

94. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs and each Class Member for damages and wages owed, and for penalties, interest, costs and attorney's fees, in an amount to be proven at time of trial.

## **SECOND CAUSE OF ACTION**

### **Failure to Pay All Regular Wages**

**(California Labor Code § 204)**

#### **-By Plaintiffs and Class Members Against All Defendants-**

95. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.



96. At all times relevant herein, Defendants were required, by California *Labor Code* § 204, to compensate Plaintiffs and Class Members correct and proper regular wages for all regular hours worked.

97. As a pattern and practice, Defendants regularly required Plaintiffs and Class Members to work more than eight (8) hours in a day, and forty (40) hours in a week; and required Plaintiffs and Class Members to work through meal and rest breaks. Regardless of the number of hours worked, Plaintiffs and Class Members received the same pay, without payment of wages for all hours actually worked.

98. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and Class Members the proper wages for all hours worked

99. Plaintiffs are informed and believe and based thereon alleges that Defendants willfully failed to pay Plaintiffs and Class Members all regular wages for all hours worked. Plaintiffs are informed and believe and based thereon alleges that Defendants' willful failure to provide all regular wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

100. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs, Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest, costs and attorney's fees.

### **THIRD CAUSE OF ACTION**

#### **Failure to Pay Minimum Wages**

**(California *Labor Code* § 1194, 11.942 and 1197.1)**

**-By Plaintiffs and Class Members Against All Defendants-**

101. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

102. This cause of action is brought pursuant to California *Labor Code* § 1194, which provides that non-exempt employees are entitled to the statutory hourly minimum wage for work performed.

103. At all times relevant herein, Defendants were required to compensate Plaintiffs and Class Members at least the statutorily mandated minimum wage for all regular hours worked.

104. As a pattern and practice, Defendants regularly required Plaintiffs and Class Members to work without recording the time worked in any capacity, due to the misclassification of Dashers as independent contractors.

105. As a result, Defendants regularly failed to pay Plaintiffs and Class Members the statutorily required minimum wage for all hours worked.

106. Defendants' conduct as alleged herein is in violation of California *Labor Code* § 1194 and the Wage Order. Defendants' employment policies and practices wrongfully and illegally failed to compensate Plaintiffs and Class Members for all hours worked at minimum wages as required by California law.

107. Plaintiffs are informed and believe and based thereon alleges that Defendants willfully failed to pay Plaintiffs and Class Members minimum wages for all hours worked. Plaintiffs are informed and believe and based thereon alleges that Defendants' willful failure to provide wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and Sub-Class Members who have separated from employment are entitled to compensation pursuant to *California Labor Code* § 203.

108. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs, Class Members and Sub-Class Members for damages and wages owed, and for liquidated damages, penalties, interest, costs and attorney's fees.

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**FOURTH CAUSE OF ACTION**

**Failure to Pay All Regular Wages**

***(California Labor Code §§ 1197.1 and 1199, and the Wage Order)***

**-By Plaintiffs and Class Members Against All Defendants-**

109. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

110. At all times relevant herein, Defendants were required by California *Labor Code* §§ 1197.1 and 1199 and the Wage Order to compensate Plaintiffs and Class Members correct and proper wages for all hours worked.

111. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and Class Members for all hours worked in excess of eight (8) hours in one day or forty (40) hours in a week.

112. Plaintiffs are informed and believe and based thereon alleges that Defendants willfully failed to pay Plaintiffs and Class Members wages for all hours worked. Plaintiffs are informed and believe and based thereon alleges that Defendants' willful failure to provide all wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

113. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs, Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest, costs and attorney's fees, in an amount according to proof.

**FIFTH CAUSE OF ACTION**

**Failure to Allow or Pay for Meal Periods**

***(California Labor Code §§ 226.7 and 512)***

**-By Plaintiffs and Class Members Against All Defendants-**

114. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

115. At all times relevant herein, Defendants were required to provide Plaintiffs and Class Members with meal periods that comply with the California *Labor Code* and applicable regulations and the Wage Order, including California *Labor Code* §§ 226.7 and 512.

116. Consistent with Defendants' corporate policy, practice and pattern, Defendants regularly failed to provide, and in fact denied, Plaintiffs' and Class Members' statutorily compliant meal periods.

117. Consistent with Defendants' policy, practice and pattern, Defendants regularly failed to provide any breaks to Dashers, allow Plaintiffs and Class Members to take or timely take uninterrupted, duty-free meal periods. As a pattern and practice, Defendants regularly failed to accurately record meal periods.

118. Plaintiffs are informed and believe and based thereon alleges that Defendants willfully failed to pay Plaintiffs and Class Members proper meal period premium wages for all non-compliant or missed meal periods. Plaintiffs re informed and believe and based thereon alleges that Defendants' willful failure to provide all such meal period wages due and owing to Sub-Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

119. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs, Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest, costs and attorney's fees.

120. Accordingly, Plaintiffs and all members of the Class are entitled to one (1) hour of compensation at their regular hourly rate for each workday that the proper meal periods were not provided and one (1) hour of compensation at their regular hourly rate for each workday that the proper meal periods were not provided in penalty wages pursuant to California *Labor Code* § 226.7 and the Wage Order.

121. Plaintiffs and Class Members are further entitled to civil penalties under California *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00) for each pay period for

which the employee was underpaid, in addition to any amount sufficient to recover underpaid wages; and, for each subsequent violation, One Hundred Dollars (\$100.00) for each pay period for which the employee was underpaid, in addition to any amount sufficient to recover underpaid wages.

### **SIXTH CAUSE OF ACTION**

#### **Failure to Allow or Pay For Rest Periods**

#### **(California *Labor Code* §226.7)**

#### **-By Plaintiffs and Class Members Against All Defendants-**

122. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

123. At all times relevant herein, Defendants were required to provide Plaintiffs and Class Members with rest periods that comply with the California *Labor Code* and applicable regulations and IWC wage order, including California *Labor Code* § 226.7.

124. Consistent with Defendants' corporate policy, practice and pattern, Defendants regularly failed to provide, and in fact denied, Plaintiffs and Class Members statutorily compliant rest periods.

125. Consistent with Defendants' corporate policy, practice and pattern, Defendants failed to provide or allow Plaintiffs and Class Members to take or timely take mandated rest periods due to their misclassification as independent contractors.

126. Plaintiffs are informed and believe and based thereon allege that Defendants willfully failed to pay Plaintiffs and Class Members proper rest period premium wages for all non-compliant or missed rest periods. Plaintiffs are informed and believe and based thereon alleges that Defendants' willful failure to provide all such rest period wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, members of the Sub-Class who have separated from employment are entitled to compensation pursuant to California *Labor Code* § 203.

127. Such a pattern, practice and uniform administration of unlawful corporate policy regarding employee compensation as described herein creates an entitlement to recovery by Plaintiffs,

Class Members and Sub-Class Members for damages and wages owed, and for penalties, interest, costs and attorney's fees.

128. Plaintiffs and all members of the Class were regularly scheduled as a matter of uniform company policy to work, and in fact worked, without rest breaks in violation of California *Labor Code* §§ 226.7 and 512 and the Wage Order, in that they are not and were not permitted to take one (1) ten (10) minute rest break for every four (4) hours worked.

129. Accordingly, Plaintiffs and all members of the Class are entitled to one (1) hour of compensation at their regular hourly rate for each workday that the proper rest periods were not provided and one (1) hour of compensation at their regular hourly rate for each workday that the proper rest periods were not provided in penalty wages pursuant to *California Labor Code* § 226.7 and the Wage Order.

130. Plaintiffs and Class Members are further entitled to civil penalties under California *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00) for each pay period for which the employee was underpaid, in addition to any amount sufficient to recover underpaid wages; and, for each subsequent violation, One Hundred Dollars (\$100.00) for each pay period for which the employee was underpaid, in addition to any amount sufficient to recover.

### **SEVENTH CAUSE OF ACTION**

#### **Waiting Time Penalties**

#### **(California *Labor Code* §§ 201-203)**

#### **-By Plaintiffs and Sub-Class Members Against All Defendants-**

131. Plaintiffs re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

132. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion during and at the end of their employment, pursuant to California *Labor Code* §§ 201 through 203.

133. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and Sub-Class Members their final wages pursuant to California *Labor Code* §§ 201 through 203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

134. The conduct of Defendants and their agents and managerial employees as described herein was willful, and in violation of the rights of Plaintiffs and the Sub-Class Members.

135. Plaintiffs are informed and believe and based thereon alleges that Defendants' willful failure to pay wages due and owing to Sub-Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Sub-Class Members are entitled to compensation pursuant to California *Labor Code* § 203.

### **EIGHTH CAUSE OF ACTION**

#### **Failure to Provide Accurate Itemized Wage Statements**

#### **(California *Labor Code* § 226(a))**

#### **-By Plaintiffs and Class Members Against All Defendants-**

136. Plaintiffs re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

137. At all times relevant hereto, California *Labor Code* § 226(a) provides, and provided, that every employer shall furnish each of its employees an accurate itemized wage statement in writing showing nine (9) pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

138. Defendants failed and continue to fail in their affirmative obligation to keep accurate payroll records reflecting the actual hours worked, and the amount of compensation due to their California employees. Defendants, as a matter of policy and practice, did not maintain accurate records in violation of California *Labor Code* § 226.

139. For example, as a matter of policy and practice, among the violations of California *Labor Code* § 226, Defendants failed to keep accurate records reflecting total number of hours worked, rates of pay, rates of overtime pay (as a result of Defendants' failure to record proper overtime hours worked, and to properly calculate the overtime rate of pay), and daily or weekly overtime pay. As a result, Defendants failed to provide true and accurate wage statements to Plaintiffs and Class Members, as required by California *Labor Code* § 226.

140. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class Members in a civil action for all damages and/or penalties pursuant to California *Labor Code* § 226, including interest thereon, penalties, reasonable attorney's fees, and costs of suit according to the mandate of California *Labor Code* § 226, in amount according to proof.

141. Class Members, including Plaintiffs, are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California *Labor Code* § 226(a), or an aggregate penalty not exceeding Four Thousand Dollars (\$4,000.00) per employee.

### **NINTH CAUSE OF ACTION**

#### **Failure to Reimburse Business Expenses**

#### **(California *Labor Code* § 2800, and 2802)**

#### **-By Plaintiffs and Class Members Against All Defendants-**

142. Plaintiffs re-alleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

143. While acting on the direct instruction of Defendants and discharging his duties for them, Plaintiffs and putative class members incurred work-related expenses.

144. Such expenses include but are not limited to the costs associated with travel, including fuel, maintenance, vehicle depreciation, and others, as well as the cost of maintaining a personal cell phone for purposes of using for Defendants' business. Plaintiffs necessarily incurred these substantial expenses and losses as a direct result of performing their job duties for Defendants.

145. Defendants have failed to indemnify or in any manner reimburse Plaintiffs for these expenditures and losses. By requiring Plaintiffs to pay expenses and cover losses that he incurred in



direct consequence of the discharge of his duties for Defendants and/or in obedience to Defendants' direction, Defendants have violated Cal. Labor Code § 2802

146. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial losses according to proof, as well as pre-judgment interest, costs, and attorney fees for the prosecution of this action.

147. The conduct of Defendants and their agents and managerial employees as described herein was willful, and in violation of the rights of Plaintiffs and the Sub-Class Members.

148. Plaintiffs request relief as described below.

### **TENTH CAUSE OF ACTION**

#### **Willful Misclassification of Individual as Independent Contractor**

**(California Labor Code § 226.8)**

#### **-By Plaintiffs and Class Members Against All Defendants-**

149. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

150. Defendants intentionally and willfully characterized Plaintiffs and members of the Class as independent contractors rather than employees in violation of Labor Code §226.8.

151. Defendants have been engaging in a pattern and practice of misclassifying employees as independent contractors for their own financial benefit.

152. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, Plaintiffs and Class Members are entitled to recover damages in an amount to be determined at trial, civil penalties, plus interest thereon, and attorneys' fees, and costs of suit pursuant to Labor Code § 226.8.

153. Defendants have engaged in or are engaging in a pattern or practice of misclassifying the Dashers, and Plaintiffs seek recovery for civil penalties of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

154. Plaintiffs reallege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

**ELEVENTH CAUSE OF ACTION****Unfair Business Practices****(California *Business and Professions Code* §§ 17200, *et seq.*)****-By Plaintiffs and Class Members Against All Defendants-**

155. Plaintiffs re-allege and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

156. Defendants, and each of them, have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined above, including but not limited to, requiring Class Members to perform the labor complained of herein without overtime compensation, regular compensation or minimum wage for all hours worked, failing to provide meal and rest breaks, failing to reimburse/indemnify business expenses, and failing to provide itemized wage statements. Defendants' utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over Defendants' competitors.

157. Plaintiffs and the Class Members, and other similarly situated members of the general public, seek full restitution and disgorgement of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Plaintiffs seek, on their own behalf and on behalf of the Class Members and general public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the original complaint in this action.

158. Plaintiffs are informed and believe and on that basis alleges that, at all times herein mentioned, Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California *Business and Professions Code* §§ 17200, *et seq.*, as set forth above, thereby depriving Plaintiffs, Class Members, and other members of the general public the minimum working condition standards and conditions due to them under the California labor laws and the Wage Order as specifically described herein.

159. Plaintiffs, Class Members, and all persons similarly situated, are further entitled to and do seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent.

### **TWELFTH CAUSE OF ACTION**

#### REMEDIES UNDER CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CALIFORNIA LABOR CODE §§ 2698, et seq.)

#### *Plaintiffs Individually and on Behalf of the Class Against Defendants*

160. Plaintiff incorporate all preceding paragraphs as though fully set forth herein.

161. Under Labor Code § 2699, any employee aggrieved by an employer's violation of the Labor Code has the right to file an action on behalf of all aggrieved employees for the penalties established by § 2699 and/or other Labor Code sections.

162. The aforementioned wrongful acts and omissions of Defendants were violations of the Labor Code, as set forth herein. Plaintiff is an employee who was aggrieved by Defendants' violations of the aforementioned Labor Code provisions.

163. Plaintiff claims herein all penalties permitted by the Private Attorneys General Act of 2004 (PAGA), Labor Code § 2698, et seq., and have complied with the procedures for bringing suit specified by Labor Code § 2699.3. By letter dated May 1, 2017, Plaintiffs gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. At least 60 days have elapsed since the notice to the LWDA and no action has been taken by the LWDA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

- a) That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
- b) That the Plaintiffs be appointed as the representatives of the Class;

- c) That counsel for Plaintiffs be appointed as Class Counsel;
- d) That the Court find that Defendants have been in violation of applicable provisions of the California Labor Code by failing to pay each member of the proposed Classes for all hours worked, including minimum wage;
- e) That the Court find that Defendants have been in violation of applicable provisions of the California Labor Code §§510, 1194 et seq., and IWC Wage Order by failing to pay overtime wages to Plaintiffs and members of the Class;
- f) That the Court find that Defendants have been in violation of California Labor Code §§226.7 and 512 by failing to provide Plaintiffs and members of the Class with meal periods and therefore owe compensation under California Labor Code §226.7(b);
- g) That the Court find that Defendants have been in violation of California Labor Code §§226.7 by failing to authorize and permit rest periods for Plaintiffs and members of the Class, and therefore owe compensation under California Labor Code §226.7(b);
- h) That the Court find that Defendants have been in violation of California Labor Code § 2802, by failing to reimburse the Plaintiffs and the Class reasonable business expenses and losses;
- i) That the Court find that Defendants have violated the recordkeeping provisions of California Labor Code §§ 1174 and 1174.5 as to Plaintiffs and the Class;
- j) That the Court find that Defendants have been in violation of California Labor Code § 226 by failing to timely furnish Plaintiffs and members of the Class with itemized statements accurately showing the total hours worked, vacation benefits, bonus benefits, and wages earned by each of them during each pay period;
- l) That the Court find that Defendants have been in violation of California Labor Code §§201 and 202 and therefore owe waiting time penalties under California Labor Code §203 for willful failure to pay all compensation owed at the time of termination of employment to Plaintiffs and other formerly employed members of the Class;
- m) That the Court find that Defendants have been in violation of California Labor Code §226.8 and therefore owe civil penalties under California Labor Code §226.8 and all damages

proximately caused by Defendants' wrongful conduct of engaging in a pattern or practice of willfully misclassifying Dasher as independent contractors;

n) That the Court find that Defendants have committed unfair and unlawful business practices, in violation of California Business and Professions Code §17200, et seq., by their violations of the Labor Code and Wage Orders as described above;

o) That the Court find that Defendants' violations of the California Labor Code described herein have been willful;

p) That the Court award to Plaintiffs individually restitution for the reasonable business expenses and deductions incurred by Dashers, including interest thereon, liquidated damages and/or statutory penalties and other statutory penalties in amounts subject to proof at trial;

q) That the Court award to Plaintiffs individually restitution for the amounts of unpaid wages, including interest thereon, liquidated damages and/or statutory penalties for failure to timely furnish accurate itemized wage statements, and waiting time and other statutory penalties in amounts subject to proof at trial;

r) That Defendants be ordered and enjoined to reclassify its Dashers as employees, including reclassifying Plaintiffs and the proposed Class Members, due to Defendants' unlawful and/or unfair activities, pursuant to Business and Professions Code §§17200-17205;

s) That Defendants further be enjoined to cease and desist from unlawful and/or unfair activities in violation of Business and Professions Code §17200, pursuant to §17203;

t) That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs pursuant to Labor Code §§ 203, 225.5, 226, 1194, 1197, and 2804, Code of Civil Procedure § 1021.5, and/or other applicable law;

u) That the Court award any other relief this Court deems just, equitable, and proper;

v) That these Defendants be ordered to refrain from retaliating against any Class Members who are current employees; and

x) Any other and further relief the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs request a trial by jury on all applicable claims.

Dated: August 15, 2017

By: 

Law Offices of Todd M. Friedman, P.C.

Todd M. Friedman

Adrian R. Bacon, Esq.

**PROOF OF SERVICE**

STATE OF CALIFORNIA, )  
 ) SS.  
 COUNTY OF LOS ANGELES )

I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles in the office at whose direction such service was made. I am not a party to the within action. My business address is 21550 Oxnard St., Suite 780, Woodland Hills, CA 91367

On August 2, 2017, I caused the foregoing document(s) described as **FIRST AMENDED COMPLAINT** ("Document(s)") to be served on the interested parties in this case at the office address as last given by such interested parties as stated in the following:

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION): Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from Case Anywhere to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SOPHIA BEHNIA, Bar No. 289318  
sbehnia@littler.com  
 LITTLER MENDELSON, P.C.

☒ (State) I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 15, 2017, at Orange, California.

  
 Adrian R Bacon

# EXHIBIT C



1 ANDREW M. SPURCHISE, Bar No. 245998  
aspurchise@littler.com  
2 LITTLER MENDELSON, P.C.  
900 Third Avenue  
3 New York, NY 10022.3298  
Telephone: 212.583.9600  
4 Fax No.: 212.832.2719

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAY 29 2018

Sherri R. Carter, Executive Officer/Clerk

By: Benigno Del Barrio, Deputy

5 SOPHIA BEHNIA, Bar No. 289318  
sbehnia@littler.com  
6 BLAIR A. COPPLE, Bar No. 313580  
bcopple@littler.com  
7 LITTLER MENDELSON, P.C.  
333 Bush Street, 34th Floor  
8 San Francisco, CA 94105  
Telephone: 415.433.1940  
9 Fax No.: 415.399.8940

10 Attorneys for Defendant  
DOORDASH, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 DANIEL MARKO, BROCK BAKER, and  
JESUS CORONA, individually and on  
15 behalf of all others similarly situated,

16 Plaintiffs,

17 v.

18 DOORDASH, INC.; and DOES 1 to 50,  
19 inclusive,

20 Defendant.

Case No. BC659841

ASSIGNED FOR ALL PURPOSES TO HON.  
WILLIAM HIGHBERGER – DEPT. 322

**[PROPOSED] ORDER GRANTING IN  
PART DEFENDANT DOORDASH, INC.'S  
PETITION TO COMPEL ARBITRATION**

Date: March 21, 2018

Time: 9:30 a.m.

Dept.: 322 (now Dept. 10)

Complaint Filed: May 2, 2017

FAC filed: August 15, 2017

23  
24  
25 **RECEIVED**  
LOS ANGELES SUPERIOR COURT

26  
27 APR 23 2018

28 R. NAZARYAN

Defendant Doordash, Inc.'s Petition to Compel Arbitration ("Petition") was heard on March 21, 2018 at 9:30 a.m. in Department 322 of the Superior Court of California, County of Los Angeles. All parties were represented by counsel of record. The Court, having considered the supporting and opposing papers to Defendant's Petition, the papers and pleadings on file in this matter, and having heard and considered the oral arguments of counsel, and good cause appearing therefrom, ORDERS as follows:

Defendant's Petition to Compel Arbitration is GRANTED, in part.

As required by the Federal Arbitration Act ("FAA") and the California Code of Civil Procedure sections 1281.2 and 1281.4, and in light of the arbitration agreement entered into between Plaintiffs and Defendant, Plaintiffs shall arbitrate their independent contractor status and claims for damages on an individual basis, rather than on a class basis, in accordance with the Independent Contractor Agreement accepted by each of them. Defendant's request to enforce the class action waiver as to Plaintiffs' claim for injunctive relief is DENIED without prejudice, and Plaintiffs' claim for injunctive relief is STAYED pending arbitration. The Court will renew its consideration of the parties' arguments as to whether Plaintiffs' claim for injunctive relief qualifies as public injunctive relief pursuant to *McGill v. Citibank*, 2 Cal. 5th 945 (2017) once arbitration is complete. Plaintiffs' claims for civil penalties under the Private Attorneys General Act are also hereby STAYED.

Further, the parties have met and conferred regarding the selection of neutral arbitrators and agreed upon the following individuals: Hon. Louis M. Meisinger (Ret.), Hon. Layn R. Phillips (Ret.), and Hon Margaret A. Nagle (Ret.). Each arbitrator shall be assigned to hear one Plaintiff's claims.

A non-appearance case review is set for October 12, 2018 at 9:00 a.m. for a status report on the three arbitrations, with a joint report due on October 9, 2018.

**IT IS SO ORDERED.**

Dated: 5/29, 2018

**WILLIAM F. HIGHBERGER, JUDGE**

**HONORABLE WILLIAM HIGHBERGER**  
Judge of the Superior Court

# EXHIBIT D

159a  
LICHTEN & LISS-RIORDAN, P.C.

ATTORNEYS AT LAW

HAROLD L. LICHTEN\*†  
SHANNON LISS-RIORDAN\*◊Δ

729 BOYLSTON STREET, SUITE 2000  
BOSTON, MASSACHUSETTS 02116

WWW.LLRLAW.COM

BENJAMIN J. WEBER\*◊  
PETER M. DELANO\*  
MATTHEW W. THOMSON\*  
JILL S. KAHN\*◊  
ADELAIDE H. PAGANO\*  
THOMAS P. FOWLER\*◊  
OLENA SAVYTSKA\*

TELEPHONE 617-994-5800  
FACSIMILE 617-994-5801

\_\_\_\_\_  
\* ADMITTED IN MASSACHUSETTS  
Δ ADMITTED IN CALIFORNIA  
◊ ADMITTED IN NEW YORK  
† ADMITTED IN MAINE  
◻ ADMITTED IN TENNESSEE

MATTHEW D. CARLSON<sup>Δ</sup>  
OF COUNSEL

May 11, 2018

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

901 Market St.  
6<sup>th</sup> Floor  
San Francisco, CA 94105

Re: **Arbitration Demands:**  
**Brian Love v. Doordash, Inc.**

Dear Sir or Madam:

Enclosed please find an arbitration demand for Brian Love. Thank you for your attention to this matter.

Kind regards,



William Heikkinen  
Paralegal

Encl.



Complete this form to start arbitration under an arbitration agreement in a contract.

1. Which party is sending in the filing documents? (check one) <input checked="" type="checkbox"/> Consumer <input type="checkbox"/> Business					
2. Briefly explain the dispute: See Exhibit A.					
3. Specify the amount of money in dispute, if any: \$ TBD					
4. State any other relief you are seeking: Attorney Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input checked="" type="checkbox"/> Other; explain: See Exhibit A.					
5. Identify the requested city and state for the hearing if an in-person hearing is held: Los Angeles, CA					
6. Please provide contact information for both the Consumer and the Business. Attach additional sheets or forms as needed.					
<b>Consumer:</b>			<b>Business:</b>		
Name: Brian Love			Name: DoorDash, Inc.		
Address: Brian Love c/o Lichten & Liss-Riordan, P.C. 729 Boylston St., STE. 2000			Address: 901 Market St., 6th Floor		
City: Boston	State: MA	Zip Code: 02116	City: San Francisco	State: CA	Zip Code: 94103
Telephone: 617-994-5800	Fax: 617-994-5801		Telephone:	Fax:	
Email Address:			Email Address:		
<b>Consumer's Representative (if known):</b>			<b>Business' Representative (if known):</b>		
Name: Shannon Liss-Riordan & Anne Kramer			Name:		
Firm: Lichten & Liss-Riordan, P.C.			Firm:		
Address: 729 Boylston St., STE. 2000			Address:		
City: Boston	State: MA	Zip Code: 02116	City:	State:	Zip Code:
Telephone: 617-994-5800	Fax: 617-994-5801		Telephone:	Fax:	
Email Address: sliss@llrlaw.com; akramer@llrlaw.com			Email Address:		
Date: 5/11/18					

**7. Send a copy of this completed form to the AAA together with:**

- A clear, legible copy of the contract containing the parties' agreement to arbitrate disputes;
- The proper filing fee (filing fee information can be found in the Costs of Arbitration section of the Consumer Arbitration Rules); and
- A copy of the court order, if arbitration is court-ordered.

**8. Send a copy of the completed form and any attachments to all parties and retain a copy of the form for your records.**

Cases may be filed with the AAA by mail, facsimile, email, or on-line. To file by mail send the initial filing documents and the filing fee to: AAA Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. To file via fax send the initial filing documents and a completed

charge card authorization form for the filing fee to 877-304-8457. To file by email send the filing documents and a check or a completed charge card authorization form for the filing fee to **CaseFiling@adr.org**. Charge card authorization forms are available at [www.adr.org/Services/Forms](http://www.adr.org/Services/Forms). To file on-line via AAA WebFile, visit [www.adr.org](http://www.adr.org) and click on File & Manage a Case and follow directions to register. To avoid the creation of duplicate filings, the AAA requests that the filing documents and payment be submitted together. When filing electronically no hard copies are required.

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to a completed Affidavit for Waiver of Fees, available on our website.

# EXHIBIT A

**Arbitration Demand**

Claimant Brian Love brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of him as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Brian Love worked as a DoorDash delivery driver from approximately June 2016 to March 2018 in the Venice, California area. Like all other DoorDash delivery drivers, he was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout his time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Brian Love regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice his regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge his classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.



# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT E



Complete this form to start arbitration under an arbitration agreement in a contract.

1. Which party is sending in the filing documents? (check one) <input checked="" type="checkbox"/> Consumer <input type="checkbox"/> Business					
2. Briefly explain the dispute:  See Exhibit A.					
3. Specify the amount of money in dispute, if any: \$ TBD					
4. State any other relief you are seeking: Attorney Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input checked="" type="checkbox"/> Other; explain: See Exhibit A.					
5. Identify the requested city and state for the hearing if an in-person hearing is held: San Francisco, CA					
6. Please provide contact information for both the Consumer and the Business. Attach additional sheets or forms as needed.					
<b>Consumer:</b>			<b>Business:</b>		
Name: Theo Van Buren			Name: DoorDash, Inc.		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Address: 901 Market St. 6th Floor		
City: Boston	State: MA	Zip Code: 02116	City: San Francisco	State: CA	Zip Code: 94103
Telephone: 617-994-5800	Fax: 617-994-5801		Telephone:	Fax:	
Email Address:			Email Address:		
<b>Consumer's Representative (if known):</b>			<b>Business' Representative (if known):</b>		
Name: Shannon Liss-Riordan & Anne Kramer			Name:		
Firm: Lichten & Liss-Riordan, P.C.			Firm:		
Address: 729 Boylston Street, Suite 2000			Address:		
City: Boston	State: MA	Zip Code: 02116	City:	State:	Zip Code:
Telephone: 617-994-5800	Fax: 617-994-5801		Telephone:	Fax:	
Email Address: sliss@llrlaw.com; akramer@llrlaw.com			Email Address:		
Date: 5/21/18					

**7. Send a copy of this completed form to the AAA together with:**

- A clear, legible copy of the contract containing the parties' agreement to arbitrate disputes;
- The proper filing fee (filing fee information can be found in the Costs of Arbitration section of the Consumer Arbitration Rules); and
- A copy of the court order, if arbitration is court-ordered.

**8. Send a copy of the completed form and any attachments to all parties and retain a copy of the form for your records.**

Cases may be filed with the AAA by mail, facsimile, email, or on-line. To file by mail send the initial filing documents and the filing fee to: AAA Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. To file via fax send the initial filing documents and a completed

charge card authorization form for the filing fee to 877-304-8457. To file by email send the filing documents and a check or a completed charge card authorization form for the filing fee to **CaseFiling@adr.org**. Charge card authorization forms are available at [www.adr.org/Services/Forms](http://www.adr.org/Services/Forms). To file on-line via AAA WebFile, visit **www.adr.org** and click on File & Manage a Case and follow directions to register. To avoid the creation of duplicate filings, the AAA requests that the filing documents and payment be submitted together. When filing electronically no hard copies are required.

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to a completed Affidavit for Waiver of Fees, available on our website.

# EXHIBIT A

**Arbitration Demand**

Claimant Theo Van Buren brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of him as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.



Theo Van Buren has worked as a DoorDash delivery driver since approximately August 2017 in the San Francisco, California area. Like all other DoorDash delivery drivers, he was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout his time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge his classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; & (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of <sup>175</sup> this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

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7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this MUTUAL ARBITRATION PROVISION. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT F



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.

**Parties (Claimant)**

Name of Claimant: Christine Beatleston			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C.		
			Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02111	City: Boston	State: MA	Zip Code: 02111
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@llrlaw.com; akramer@llrlaw.com		

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 901 Market St., 6th Floor			Firm (if applicable):		
			Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
*Note: This question is required by California law.*

Amount of Claim: Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

See Exhibit A

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: San Francisco, CA ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

5/31/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A



**Arbitration Demand**

Claimant Christine Beatleson brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of her as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Christine Beatleson worked as a DoorDash delivery driver from approximately April 2016 to January 2017 in the San Francisco, California area. Like all other DoorDash delivery drivers, she was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout her time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Christine Beatleson regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice her regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge her classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT G



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.**Parties (Claimant)**

Name of Claimant: Eduardo Borantes			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C.		
			Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02114	City: Boston	State: MA	Zip Code: 02114
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@llrlaw.com; akramer@llrlaw.com		

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 901 Market St., 6th Floor			Firm (if applicable):		
			Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
 Note: This question is required by California law.

Amount of Claim: Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

See Exhibit A

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: San Francisco, CA ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

5/31/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.



# EXHIBIT A

**Arbitration Demand**

Claimant Eduardo Borantes brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of him as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Eduardo Borantes has worked as a DoorDash delivery driver since approximately September 2016 in the San Francisco, California area. Like all other DoorDash delivery drivers, he was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout his time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Eduardo Borantes regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice his regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge his classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT H





To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.

**Parties (Claimant)**

Name of Claimant: Anique Evans			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C. Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02114	City: Boston	State: MA	Zip Code: 02114
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@llrlaw.com; akramer@llrlaw.com		

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 901 Market St., 6th Floor			Firm (if applicable): Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
Note: This question is required by California law.

Amount of Claim: Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

See Exhibit A

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: Los Angeles, CA ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

*Shannon Liss-Riordan*

Date:

5/31/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Anique Evans brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of her as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Anique Evans has worked as a DoorDash delivery driver since approximately 2016 in the Los Angeles, California area. Like all other DoorDash delivery drivers, he/she was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout her time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge her classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; & (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the



# EXHIBIT I



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.

#### Parties (Claimant)

Name of Claimant: <b>Michael Goldstein</b>			Representative's Name (if known): <b>Shannon Liss-Riordan, Anne Kramer</b>		
Address: <b>c/o Lichten &amp; Liss-Riordan, P.C. 729 Boylston Street, Suite 2000</b>			Firm (if applicable): <b>Lichten &amp; Liss-Riordan, P.C.</b>		
			Representative's Address: <b>729 Boylston Street, Suite 2000</b>		
City: <b>Boston</b>	State: <b>MA</b>	Zip Code: <b>02114</b>	City: <b>Boston</b>	State: <b>MA</b>	Zip Code: <b>02114</b>
Phone No.: <b>617-994-5800</b>		Fax No.: <b>617-994-5801</b>	Phone No.: <b>617-994-5800</b>		Fax No.: <b>617-994-5801</b>
Email Address:			Email Address: <b>sliss@lrlaw.com; akramer@lrlaw.com</b>		

#### Parties (Respondent)

Name of Respondent: <b>DoorDash, Inc.</b>			Representative's Name (if known):		
Address: <b>901 Market St., 6th Floor</b>			Firm (if applicable):		
			Representative's Address:		
City: <b>San Francisco</b>	State: <b>CA</b>	Zip Code: <b>94111</b>	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
Note: This question is required by California law.

Amount of Claim: Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

See Exhibit A

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: **Los Angeles, CA** ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

5/31/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Michael Goldstein brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of him as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Michael Goldstein has worked as a DoorDash delivery driver since approximately August 2017 in the Los Angeles, California area. Like all other DoorDash delivery drivers, he was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout his time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge his classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; & (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of



Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

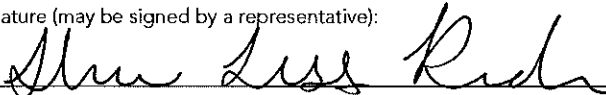
## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT J



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

<b>Mediation:</b> If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box <input type="checkbox"/> .					
<b>Parties (Claimant)</b>					
Name of Claimant: Giovanni Jones			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C.		
			Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02114	City: Boston	State: MA	Zip Code: 02114
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@lrlaw.com; akramer@lrlaw.com		
<b>Parties (Respondent)</b>					
Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 901 Market St., 6th Floor			Firm (if applicable):		
			Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		
Claim: What was/is the employee/worker's annual wage range? <input checked="" type="checkbox"/> Less than \$100,000 <input type="checkbox"/> \$100,000-\$250,000 <input type="checkbox"/> Over \$250,000 Note: This question is required by California law.					
Amount of Claim:			Claim involves: <input checked="" type="checkbox"/> Statutorily Protected Rights <input type="checkbox"/> Non-Statutorily Protected Rights		
In detail, please describe the nature of each claim. You may attach additional pages if necessary:  See Exhibit A					
Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input type="checkbox"/> Other					
Please describe the qualifications for arbitrator(s) to hear this dispute:					
Hearing: Estimated time needed for hearings overall: _____ hours or _____ days					
Hearing Locale: San Francisco, CA			<input type="checkbox"/> Requested by Claimant <input checked="" type="checkbox"/> Locale provision included in the contract		
Filing Fee requirement or \$300 (max amount per AAA) Filing by Company: <input type="checkbox"/> \$2,200 single arbitrator <input type="checkbox"/> \$2,800 three arbitrator panel					
Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.					
Signature (may be signed by a representative):			Date:		
			5/31/2018		
Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.					

# EXHIBIT A

**Arbitration Demand**

Claimant Giovanni Jones brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of him as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Giovanni Jones has worked as a DoorDash delivery driver since approximately October 2016 in the San Jose, California area. Like all other DoorDash delivery drivers, he was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout his time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge his classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; & (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable



shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT K



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.

**Parties (Claimant)**

Name of Claimant: Jay B Lee			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C.		
			Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02118	City: Boston	State: MA	Zip Code: 02118
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@lrlaw.com; akramer@lrlaw.com		

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 901 Market St., 6th Floor			Firm (if applicable):		
			Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
 Note: This question is required by California law.

Amount of Claim:	Claim involves: <input checked="" type="checkbox"/> Statutorily Protected Rights <input type="checkbox"/> Non-Statutorily Protected Rights
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In detail, please describe the nature of each claim. You may attach additional pages if necessary:

See Exhibit A

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: Los Angeles, CA ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

*Shannon Liss-Riordan*

Date:

5/31/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Jay Lee brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of him as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Jay Lee has worked as a DoorDash delivery driver since approximately September 2016 in the La Habra, California area. Like all other DoorDash delivery drivers, he was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout his time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge his classification as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; & (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked.

# EXHIBIT B



3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT L



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.

**Parties (Claimant)**

Name of Claimant: Edward Beck

Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer

Address:

c/o Lichten & Liss-Riordan, P.C.  
729 Boylston Street, Suite 2000

Firm (if applicable): Lichten &amp; Liss-Riordan, P.C.

Representative's Address:

729 Boylston Street, Suite 2000

City: Boston

State: MA

Zip Code: 02111

City: Boston

State: MA

Zip Code: 02111

Phone No.: 617-994-5800

Fax No.: 617-994-5801

Phone No.: 617-994-5800

Fax No.: 617-994-5801

Email Address:

Email Address: sliss@llrlaw.com; akramer@llrlaw.com

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.

Representative's Name (if known):

Address:

901 Market St., 6th Floor

Firm (if applicable):

Representative's Address:

City: San Francisco

State: CA

Zip Code: 94111

City:

State:

Zip Code:

Phone No.:

Fax No.:

Phone No.:

Fax No.:

Email Address:

Email Address:

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000

Note: This question is required by California law.

Amount of Claim:

Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

See Exhibit A

Hearing: Estimated time needed for hearings overall:

hours or

days

Hearing Locale: San Francisco, CA

☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

7/18/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Edward Beck brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Edward Beck has worked as a DoorDash delivery driver from approximately September 2017 to April 2017 in the Sunnyvale, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194, as well as the San Francisco Minimum Wage Ordinance for failure to pay minimum wage for all hours worked.



# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT M



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

<b>Mediation:</b> If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box <input type="checkbox"/> .					
<b>Parties (Claimant)</b>					
Name of Claimant: Mervyn Cole			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C. Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02114	City: Boston	State: MA	Zip Code: 02114
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@lrlaw.com; akramer@lrlaw.com		
<b>Parties (Respondent)</b>					
Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 5901 Market St., 6th Floor			Firm (if applicable): Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		
Claim: What was/is the employee/worker's annual wage range? <input checked="" type="checkbox"/> Less than \$100,000 <input type="checkbox"/> \$100,000-\$250,000 <input type="checkbox"/> Over \$250,000 Note: This question is required by California law.					
Amount of Claim:			Claim involves: <input checked="" type="checkbox"/> Statutorily Protected Rights <input type="checkbox"/> Non-Statutorily Protected Rights		
In detail, please describe the nature of each claim. You may attach additional pages if necessary:					
Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input type="checkbox"/> Other					
Please describe the qualifications for arbitrator(s) to hear this dispute: See Exhibit A					
Hearing: Estimated time needed for hearings overall: _____ hours or _____ days					
Hearing Locale: Los Angeles, CA <input type="checkbox"/> Requested by Claimant <input checked="" type="checkbox"/> Locale provision included in the contract					
Filing Fee requirement or \$300 (max amount per AAA) Filing by Company: <input type="checkbox"/> \$2,200 single arbitrator <input type="checkbox"/> \$2,800 three arbitrator panel					
Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.					
Signature (may be signed by a representative): 			Date: 7/18/2018		
Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.					

# EXHIBIT A

**Arbitration Demand**

Claimant Mervyn Cole brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.



Mervyn Cole has worked as a DoorDash delivery driver since approximately August 2016 in the Los Angeles, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Mervyn Cole regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice the regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194, Los Angeles County Minimum Wage Ordinance (Ord. 2015-0039 § 3, 2015) for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
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3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding ~~any~~<sup>247a</sup> other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
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Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
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## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT N



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

Mediation: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box <input type="checkbox"/> .					
<b>Parties (Claimant)</b>					
Name of Claimant: Thomas Denham			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C. Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02111	City: Boston	State: MA	Zip Code: 02111
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@llrlaw.com; akramer@llrlaw.com		
<b>Parties (Respondent)</b>					
Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 5901 Market St., 6th Floor			Firm (if applicable): Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		
Claim: What was/is the employee/worker's annual wage range? <input checked="" type="checkbox"/> Less than \$100,000 <input type="checkbox"/> \$100,000-\$250,000 <input type="checkbox"/> Over \$250,000 Note: This question is required by California law.					
Amount of Claim:			Claim involves: <input checked="" type="checkbox"/> Statutorily Protected Rights <input type="checkbox"/> Non-Statutorily Protected Rights		
In detail, please describe the nature of each claim. You may attach additional pages if necessary:					
Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input type="checkbox"/> Other					
Please describe the qualifications for arbitrator(s) to hear this dispute: See Exhibit A					
Hearing: Estimated time needed for hearings overall: _____ hours or _____ days					
Hearing Locale: San Diego, CA <input type="checkbox"/> Requested by Claimant <input checked="" type="checkbox"/> Locale provision included in the contract					
Filing Fee requirement or \$300 (max amount per AAA) Filing by Company: <input type="checkbox"/> \$2,200 single arbitrator <input type="checkbox"/> \$2,800 three arbitrator panel					
Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.					
Signature (may be signed by a representative): 			Date: 7/18/2018		
Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.					

# EXHIBIT A



**Arbitration Demand**

Claimant Thomas Denham brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Thomas Denham worked as a DoorDash delivery driver from approximately January 2017 to April 2018 in the Oceanside, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Thomas Denham regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice the regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding ~~256a~~ any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order 2578 excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT O



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

Mediation: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.**Parties (Claimant)**

Name of Claimant: David Erickson

Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer

Address:

c/o Lichten & Liss-Riordan, P.C.  
729 Boylston Street, Suite 2000

Firm (if applicable): Lichten &amp; Liss-Riordan, P.C.

Representative's Address:

729 Boylston Street, Suite 2000

City: Boston

State: MA

Zip Code: 02111

City: Boston

State: MA

Zip Code: 02111

Phone No.: 617-994-5800

Fax No.: 617-994-5801

Phone No.: 617-994-5800

Fax No.: 617-994-5801

Email Address:

Email Address: sliss@llrlaw.com; akramer@llrlaw.com

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.

Representative's Name (if known):

Address:

901 Market St., 6th Floor

Firm (if applicable):

Representative's Address:

City: San Francisco

State: CA

Zip Code: 94111

City:

State:

Zip Code:

Phone No.:

Fax No.:

Phone No.:

Fax No.:

Email Address:

Email Address:

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000

Note: This question is required by California law.

Amount of Claim:

Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

See Exhibit A

Hearing: Estimated time needed for hearings overall:

hours or

days

Hearing Locale: San Diego, CA

☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

7/18/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.



# EXHIBIT A

**Arbitration Demand**

Claimant David Erickson brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

David Erickson has worked as a DoorDash delivery driver since approximately February 2016 in the El Cajon, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

David Erickson regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice the regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding <sup>26.5a</sup>any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order ~~2068~~ excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT P





To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

Mediation: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.**Parties (Claimant)**

Name of Claimant: Ernest Fogg			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C. Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02111	City: Boston	State: MA	Zip Code: 02111
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@lrlaw.com; akramer@lrlaw.com		

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 5901 Market St., 6th Floor			Firm (if applicable): Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94103	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
Note: This question is required by California law.Amount of Claim: Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

See Exhibit A

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: San Francisco, CA ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

7/18/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Ernest Fogg brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Ernest Fogg worked as a DoorDash delivery driver from approximately 2016 to 2017 in California. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, ~~275a~~ excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the



# EXHIBIT Q



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.

**Parties (Claimant)**

Name of Claimant: Frank Hseih			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C. Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02118	City: Boston	State: MA	Zip Code: 02118
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@llrlaw.com; akramer@llrlaw.com		

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 5901 Market St., 6th Floor			Firm (if applicable): Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94111	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
Note: This question is required by California law.

Amount of Claim: Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

See Exhibit A

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: Los Angeles, CA ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

*Shannon Liss-Riordan*

Date:

7/18/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Frank Hseih brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Frank Hseih has worked as a DoorDash delivery driver from approximately 2016 to June 2018 in the Irvine, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Frank Hseih regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice the regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194, as well as the Los Angeles County Minimum Wage Ordinance (Ord. 2015-0039 § 3, 2015) for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and ~~hold~~ harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding <sup>283a</sup>any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of



Congress or lawful, enforceable Executive Order 284a excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT R



# EMPLOYMENT ARBITRATION RULES DEMAND FOR ARBITRATION

To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.

## Parties (Claimant)

Name of Claimant: <b>Marlene Mendoza</b>			Representative's Name (if known): <b>Shannon Liss-Riordan, Anne Kramer</b>		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): <b>Lichten &amp; Liss-Riordan, P.C.</b>		
			Representative's Address: 729 Boylston Street, Suite 2000		
City: <b>Boston</b>	State: <b>MA</b>	Zip Code: <b>02118</b>	City: <b>Boston</b>	State: <b>MA</b>	Zip Code: <b>02118</b>
Phone No.: <b>617-994-5800</b>		Fax No.: <b>617-994-5801</b>		Phone No.: <b>617-994-5800</b>	
				Fax No.: <b>617-994-5801</b>	
Email Address:			Email Address: <b>sliss@llrlaw.com; akramer@llrlaw.com</b>		

## Parties (Respondent)

Name of Respondent: <b>DoorDash, Inc.</b>			Representative's Name (if known):		
Address: <b>5901 Market St., 6th Floor</b>			Firm (if applicable):		
			Representative's Address:		
City: <b>San Francisco</b>	State: <b>CA</b>	Zip Code: <b>94104</b>	City:	State:	Zip Code:
Phone No.:		Fax No.:		Phone No.:	
				Fax No.:	
Email Address:			Email Address:		

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000  
Note: This question is required by California law.

Amount of Claim:	Claim involves: <input checked="" type="checkbox"/> Statutorily Protected Rights <input type="checkbox"/> Non-Statutorily Protected Rights
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In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

See Exhibit A

Hearing: Estimated time needed for hearings overall: \_\_\_\_\_ hours or \_\_\_\_\_ days

Hearing Locale: **Los Angeles, CA** ☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

*Shannon Liss-Riordan*

Date:

7/18/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Marlene Mendoza brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Marlene Mendoza has worked as a DoorDash delivery driver since approximately November 2017 in the Palm Springs, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194, as well as the Los Angeles County Minimum Wage Ordinance (Ord. 2015-0039 § 3, 2015) for failure to pay minimum wage for all hours worked.

# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable



shall be enforced in arbitration. Notwithstanding ~~2020~~ <sup>2021</sup> any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, 2013, is excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
2. CONTRACTOR's and DOORDASH's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon DOORDASH'S provision of notice to CONTRACTOR via e-mail.

## XIII. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT S



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

Mediation: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box <input type="checkbox"/> .					
<b>Parties (Claimant)</b>					
Name of Claimant: Gary Teitelbaum			Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer		
Address: c/o Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000			Firm (if applicable): Lichten & Liss-Riordan, P.C. Representative's Address: 729 Boylston Street, Suite 2000		
City: Boston	State: MA	Zip Code: 02111	City: Boston	State: MA	Zip Code: 02111
Phone No.: 617-994-5800	Fax No.: 617-994-5801		Phone No.: 617-994-5800	Fax No.: 617-994-5801	
Email Address:			Email Address: sliss@llrlaw.com; akramer@llrlaw.com		
<b>Parties (Respondent)</b>					
Name of Respondent: DoorDash, Inc.			Representative's Name (if known):		
Address: 5901 Market St., 6th Floor			Firm (if applicable): Representative's Address:		
City: San Francisco	State: CA	Zip Code: 94104	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		
Claim: What was/is the employee/worker's annual wage range? <input checked="" type="checkbox"/> Less than \$100,000 <input type="checkbox"/> \$100,000-\$250,000 <input type="checkbox"/> Over \$250,000 Note: This question is required by California law.					
Amount of Claim:			Claim involves: <input checked="" type="checkbox"/> Statutorily Protected Rights <input type="checkbox"/> Non-Statutorily Protected Rights		
In detail, please describe the nature of each claim. You may attach additional pages if necessary:					
Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input type="checkbox"/> Other					
Please describe the qualifications for arbitrator(s) to hear this dispute: See Exhibit A					
Hearing: Estimated time needed for hearings overall: _____ hours or _____ days					
Hearing Locale: Los Angeles, CA <input type="checkbox"/> Requested by Claimant <input checked="" type="checkbox"/> Locale provision included in the contract					
Filing Fee requirement or \$300 (max amount per AAA) Filing by Company: <input type="checkbox"/> \$2,200 single arbitrator <input type="checkbox"/> \$2,800 three arbitrator panel					
Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.					
Signature (may be signed by a representative): 			Date: 7/18/2018		
Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.					

# EXHIBIT A

**Arbitration Demand**

Claimant Gary Teitelbaum brings this claim against DoorDash, Inc. ("DoorDash") challenging DoorDash's misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash's phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer's order and then drives to the customer's location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver's license.

Delivery drivers receive customer ratings in the form of "star ratings" at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Gary Teitelbaum has worked as a DoorDash delivery driver since approximately September 2016 in the Los Angeles, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Gary Teitelbaum regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice the regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194, as well as the Los Angeles County Minimum Wage Ordinance (Ord. 2015-0039 § 3, 2015) for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.

# EXHIBIT B



3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

## XI. MUTUAL ARBITRATION PROVISION

1. CONTRACTOR and DOORDASH mutually agree to resolve any justiciable disputes between them exclusively through final and binding arbitration instead of filing a lawsuit in court. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of this Agreement, and all other aspects of CONTRACTOR's relationship with DOORDASH, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with DOORDASH. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or DOORDASH are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.
2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
3. Class Action Waiver. CONTRACTOR and DOORDASH mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable

shall be enforced in arbitration. Notwithstanding ~~any~~<sup>301b</sup> other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of DOORDASH or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.
  - b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, as determined by the Arbitrator, the parties agree that DOORDASH shall pay all of the Arbitrator's fees and costs.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or DOORDASH may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. DOORDASH will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of

Congress or lawful, enforceable Executive Order, <sup>302a</sup> excluded from the coverage of this Mutual Arbitration Provision.

7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for "AAA Commercial Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking DOORDASH's General Counsel to provide a copy.
8. **CONTRACTOR's Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR's contractual relationship with DOORDASH, and therefore CONTRACTOR may submit a statement notifying DOORDASH that CONTRACTOR wishes to opt out and not be subject to this **MUTUAL ARBITRATION PROVISION**. In order to opt out, CONTRACTOR must notify DOORDASH of CONTRACTOR's intention to opt out by sending an email to [dasheroptout@doordash.com](mailto:dasheroptout@doordash.com) stating CONTRACTOR's intention to opt out. In order to be effective, CONTRACTOR's opt out notice must be provided within 30 days of the effective date of this Agreement. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from DOORDASH as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and DOORDASH shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR's choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## XII. TERMINATION OF AGREEMENT

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
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1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with DOORDASH and consider whether to continue his/her contractual relationship with DOORDASH. This Agreement supersedes any prior contract between the parties. To the extent DOORDASH's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the

# EXHIBIT T



To ensure your demand is processed promptly, please include a copy of the Arbitration Agreement, Plan or Contract.

Mediation: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box ☐.**Parties (Claimant)**

Name of Claimant: Outhai Xayavongsa

Representative's Name (if known): Shannon Liss-Riordan, Anne Kramer

Address:

c/o Lichten & Liss-Riordan, P.C.  
729 Boylston Street, Suite 2000

Firm (if applicable): Lichten &amp; Liss-Riordan, P.C.

Representative's Address:

729 Boylston Street, Suite 2000

City: Boston

State: MA

Zip Code: 02118

City: Boston

State: MA

Zip Code: 02118

Phone No.: 617-994-5800

Fax No.: 617-994-5801

Phone No.: 617-994-5800

Fax No.: 617-994-5801

Email Address:

Email Address: sliss@lrlaw.com; akramer@lrlaw.com

**Parties (Respondent)**

Name of Respondent: DoorDash, Inc.

Representative's Name (if known):

Address:

5901 Market St., 6th Floor

Firm (if applicable):

Representative's Address:

City: San Francisco

State: CA

Zip Code: 94103

City:

State:

Zip Code:

Phone No.:

Fax No.:

Phone No.:

Fax No.:

Email Address:

Email Address:

Claim: What was/is the employee/worker's annual wage range? ☒ Less than \$100,000 ☐ \$100,000-\$250,000 ☐ Over \$250,000

Note: This question is required by California law.

Amount of Claim:

Claim involves: ☒ Statutorily Protected Rights ☐ Non-Statutorily Protected Rights

In detail, please describe the nature of each claim. You may attach additional pages if necessary:

Other Relief Sought: ☒ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other

Please describe the qualifications for arbitrator(s) to hear this dispute:

See Exhibit A

Hearing: Estimated time needed for hearings overall:

hours or

days

Hearing Locale: Sacramento, CA

☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee requirement or \$300 (max amount per AAA)

Filing by Company: ☐ \$2,200 single arbitrator ☐ \$2,800 three arbitrator panel

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Signature (may be signed by a representative):

Date:

7/18/2018

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-800-778-7879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185. Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879.

# EXHIBIT A

**Arbitration Demand**

Claimant Outhai Xayavongsa brings this claim against DoorDash, Inc. (“DoorDash”) challenging DoorDash’s misclassification of Claimant as an independent contractor and its resulting wage violations.

DoorDash provides on-demand food delivery services to customers at their homes and businesses through its mobile phone application and website. To use DoorDash, a customer orders takeout food from a list of restaurants on DoorDash’s phone application or website, and a nearby DoorDash delivery driver is notified. Once the delivery driver accepts the request by tapping a button on their phone, he or she drives to the restaurant to pick up the customer’s order and then drives to the customer’s location to deliver it. After the delivery, DoorDash collects the payment from the customer, takes its fee, and then distributes the remainder to the delivery driver. Delivery drivers must provide or pay for their own smartphone and car. DoorDash delivery drivers do not need special qualifications or experience apart from a valid driver’s license.

Delivery drivers receive customer ratings in the form of “star ratings” at the end of every delivery. These ratings are out of 5 stars, with 5 stars being the highest rating and 1 star being the lowest. DoorDash utilizes this real-time customer feedback about delivery drivers to monitor drivers and decide when a delivery driver may need to be issued a warning or terminated. DoorDash also tracks other metrics for delivery drivers such as their acceptance rates and may suspend or terminate delivery drivers whose ratings it deems to be too low. When delivery drivers refuse too many orders, DoorDash may end their shifts.

Outhai Xayavongsa has worked as a DoorDash delivery driver from approximately 2014 to 2016 in the Elk Grove, California area. Like all other DoorDash delivery drivers, Claimant was subject to a standard form contract, provided by DoorDash, which drivers were not able to negotiate. Throughout Claimant's time working for DoorDash, Claimant was classified as an independent contractor rather than an employee. By misclassifying workers like Claimant, DoorDash has required them to pay necessary business expenses (such as for their vehicles, gas, smartphone, and data plan expenses). In addition, Claimant has not been paid minimum wage for all hours worked.

Outhai Xayavongsa regularly worked in excess of forty hours per week, but was not paid at time-and-a-half for the hours in excess of forty. Moreover, Claimant was not paid time-and-a-half for working more than eight hours in a day, or twice the regular hourly rate for working more than twelve hours in a day.

Claimant brings this claim to challenge this misclassification of Claimant as an independent contractor, rather than an employee under California law, and the resulting violations of the California Labor Code stemming from that practice including: (1) violation of Cal. Lab. Code § 2802 for failure to reimburse necessary business expenses; (2) violation of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage for all hours worked; & (3) violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554 for failure to pay the appropriate overtime premium for overtime hours worked.



# EXHIBIT B

3. CONTRACTOR agrees to indemnify, protect and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from any and all tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to CONTRACTOR and CONTRACTOR's Personnel.
4. CONTRACTOR shall be responsible for, indemnify and hold harmless DOORDASH, including all parent, subsidiary, and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, and employees, from all costs of CONTRACTOR's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.

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2. If either CONTRACTOR or DOORDASH wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to General Counsel, 901 Market Street, 6<sup>th</sup> Floor, San Francisco, California 94103.
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1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. DOORDASH may terminate this Agreement and deactivate CONTRACTOR'S Dasher account only for the reasons set forth in the DOORDASH Deactivation Policy (<http://www.doordash.com/deactivationpolicy>), or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, DoorDash reserves the right to modify the Deactivation Policy if, in DoorDash's good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the DoorDash platform. DOORDASH shall provide notice of any such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the DOORDASH platform following DOORDASH's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.
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# EXHIBIT U



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Sep-23-2015 2:06 pm

Case Number: CGC-15-548101

Filing Date: Sep-23-2015 1:57

Filed by: ARLENE RAMOS

Juke Box: 001 Image: 05087583

COMPLAINT

CYNTHIA MARCIANO VS. DOORDASH, INC.

001C05087583

**Instructions:**

Please place this sheet on top of the document to be scanned.

# SUMMONS

(CITACION JUDICIAL) 314a

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**  
DoorDash, Inc.

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
Cynthia Marciano

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): San Francisco Superior Court  
400 McAllister St., San Francisco, CA 94102

CASE NUMBER:  
(Número del Caso):

CGC-15-548101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Carlson Legal Services, 100 Pine St., Ste. 1250, San Francisco, CA 94111; Ph - 510-239-4710

DATE:  
(Fecha) SEP 23 2015

CLERK OF THE COURT

Clerk, by  
(Secretario)

Arlene Ramos  
ARLENE RAMOS

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): DoorDash, Inc.

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Matthew D. Carlson

Carlson Legal Services

100 Pine St., Ste. 1250

San Francisco, CA 94111

TELEPHONE NO.: 510-239-4710

Plaintiff

FAX NO.:

315a

ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister St.

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Civil Division

CASE NAME:

Marciano v. DoorDash, Inc.

FOR COURT USE ONLY

**FILED**Superior Court of California  
County of San Francisco

SEP 23 2015

CLERK OF THE COURT

By: Adam Ramon  
Deputy Clerk**CIVIL CASE COVER SHEET**

- ☒ **Unlimited** (Amount demanded exceeds \$25,000) ☐ **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**

- ☐ **Counter** ☐ **Joinder**  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

**C6C-15-548101**

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

**Auto Tort**

- ☐ Auto (22)  
☐ Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- ☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**

- ☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)

**Employment**

- ☐ Wrongful termination (36)  
☒ Other employment (15)

**Contract**

- ☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)

**Real Property**

- ☐ Eminent domain/Inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

**Unlawful Detainer**

- ☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

**Judicial Review**

- ☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☐ Other judicial review (39)

**Provisionally Complex Civil Litigation**  
(Cal. Rules of Court, rules 3.400–3.403)

- ☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

**Enforcement of Judgment**

- ☐ Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

- ☐ RICO (27)  
☐ Other complaint (not specified above) (42)

**Miscellaneous Civil Petition**

- ☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses  
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1


5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 9/23/15

Matthew D. Carlson

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



1 SHANNON LISS-RIORDAN, *pro hac vice* anticipated  
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2 ADELAIDE PAGANO, *pro hac vice* anticipated  
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10 Telephone: (415) 817-1470

**FILED**

Superior Court of California  
County of San Francisco

SEP 23 2015

CLERK OF THE COURT

BY: *Arline Ramon*  
Deputy Clerk

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

14 CYNTHIA MARCIANO,

15 Plaintiff,

16 v.

17 DOORDASH, INC.,

18 Defendant.

Case No. CGC-15-548101

**COMPLAINT**

1. PRIVATE ATTORNEY GENERAL  
ACT (PAGA) CLAIM FOR CIVIL  
PENALTIES (CAL. LAB. CODE  
§ 2698 *et seq.*)

1 **I. INTRODUCTION**

2 1. Plaintiff Cynthia Marciano brings this suit as a representative action on behalf of  
3 the state of California and all other similarly situated aggrieved employees of DoorDash, Inc.  
4 ("DoorDash") who have worked as delivery drivers for DoorDash in California during the past  
5 year. DoorDash has classified Plaintiff and other similarly situated drivers as independent  
6 contractors and, in so doing, has violated various provisions of the California Labor Code,  
7 including: (1) Cal. Labor Code §2802 by requiring drivers to pay various expenses that should  
8 have been borne by the employer and (2) Cal. Lab. Code § 226(a) by failing to provide itemized  
9 wage statements. Pursuant to the Private Attorney General Act ("PAGA"), Cal. Lab. Code  
10 §2699, *et seq.*, Plaintiff Marciano brings this claim on behalf of the state of California and all  
11 similarly situated aggrieved DoorDash drivers, seeking penalties provided for under the  
12 California Labor Code.  
13

14 **II. PARTIES**

15 2. Plaintiff Cynthia Marciano is an adult resident of Palo Alto, California, where she  
16 has worked as a DoorDash driver since September 2014.

17 3. Defendant Doordash, Inc. ("DoorDash") is a Delaware corporation with its  
18 principal place of business in Palo Alto, California.

19 **III. JURISDICTION**

20 4. This Court has jurisdiction over Plaintiff's claim under the Private Attorney  
21 General Act of 2004, Cal. Lab. Code § 2699, *et seq.* pursuant to California Code of Civil  
22 Procedure § 410.10.

23 **IV. STATEMENT OF FACTS**

24 5. DoorDash is a Palo Alto-based food delivery service, which provides food  
25 delivery services in cities throughout the country via an on demand dispatch system.

26 6. DoorDash offers customers the ability to request a driver on a mobile phone  
27

1 application or online through their website, who will go to the restaurant and pick up their food,  
2 then deliver it to the customer at their home or business.

3 7. DoorDash's website advertises that it offers "Your favorite local restaurants  
4 delivered to you" and that "We deliver from the best restaurants."

5 8. DoorDash drivers receive a flat fee for each delivery completed plus any  
6 gratuities added by the customer.

7 9. Although classified as independent contractors, DoorDash drivers are actually  
8 employees. Drivers are required to sign up for shifts in advance. DoorDash directs drivers'  
9 work in detail, instructing drivers where to report for their shifts, how to dress, and where to go  
10 to pick up or await deliveries. Drivers are required to follow requirements imposed on them by  
11 DoorDash regarding handling of the food and timeliness of the deliveries or risk termination.  
12

13 10. In addition, DoorDash is in the business of providing food delivery services to  
14 customers, and that is the very service that DoorDash drivers provide. The drivers' services are  
15 fully integrated into DoorDash's business, and without the drivers, DoorDash's business would  
16 not exist.

17 11. However, based on their misclassification as independent contractors, DoorDash  
18 has required drivers to bear many of the expenses of their employment, including expenses for  
19 their vehicle, gas, parking, phone data, and other expenses.

20 **V. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

21 12. On August 13, 2015, Plaintiff Marciano gave written notice of DoorDash's  
22 violations of various provisions of the California Labor Code as alleged in this complaint to the  
23 Labor and Workforce Development Agency ("LWDA") as well as to DoorDash.

24 13. More than thirty-three days have lapsed since the LWDA was notified of the  
25 Labor Code violations asserted in this Complaint, and the LWDA has not provided any notice  
26 that it will or will not investigate the alleged violations. See Cal. Lab. Code § 2699.3(a)(2)(A).  
27

1           14. Plaintiff alleges that DoorDash violated PAGA in the following ways: (1) failure  
2 to reimburse its drivers for all necessary expenditures incurred in performing their duties,  
3 including but not limited to fuel, car maintenance, phones, and data, in violation of Labor Code  
4 §2802, and (2) failure to provide itemized wage statements in violation of § 226(a).  
5

6                           **COUNT I**

7                   **Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004**  
8                   **(Representative Action)**

9           15. Plaintiff realleges and incorporates by reference the allegations in the preceding  
10 paragraphs as if fully alleged herein. Plaintiff is an aggrieved employee as defined by Cal. Lab.  
11 Code § 2699(c) as she was employed by DoorDash during the applicable statutory period and  
12 suffered injury as a result of DoorDash's Labor Code violations. Accordingly, Plaintiff seeks to  
13 recover on behalf of the State of California, as well as herself and all other current and former  
14 aggrieved employees of DoorDash who have worked in California, the civil penalties provided  
15 by PAGA, plus reasonable attorney's fees and costs.

16           16. DoorDash drivers are entitled to penalties for DoorDash's violations of Cal. Lab.  
17 Code §§ 2802 and 226(a) as set forth by Cal. Lab. Code § 2699(f). Plaintiff seeks civil penalties  
18 pursuant to PAGA for (1) failure to reimburse delivery driver employees for all necessary  
19 expenditures incurred in performing their duties, including but not limited to fuel, car  
20 maintenance, parking, phones, and data, in violation of Labor Code § 2802, and (2) failure to  
21 provide itemized wage statements in violation of § 226(a).

22           17. Cal. Lab. Code § 2699(f) provides for civil penalties for violation of all Labor  
23 Code provisions for which no civil penalty is specifically provided. There is no specified civil  
24 penalty for violations of Cal. Lab. Code § 2802. With respect to violations of Labor Code  
25 § 226(a), Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided  
26 by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one  
27 thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code  
28

1 § 226(a).

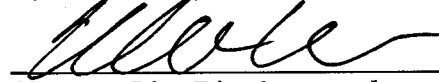
2 18. Plaintiff Marciano complied with the notice requirement of Cal. Lab. Code  
3 § 2699.3 and mailed a written notice to the California Labor & Workforce Development Agency  
4 ("LWDA"), and Defendant via Certified Mail, return receipt requested, on August 13, 2015. It  
5 has been 33 days or more since the LWDA was notified of the Labor Code violations asserted in  
6 this Complaint, and the LWDA has not provided any notice that it will or will not investigate the  
7 alleged violations.  
8

9  
10 WHEREFORE, Plaintiff requests that this Court enter judgment in her favor on her  
11 PAGA claim pursuant to Cal. Lab. Code § 2699(c); award pre- and post-judgment  
12 interest; award reasonable attorneys' fees, costs, and expenses; and award any other  
13 relief to which the plaintiff may be entitled.  
14

15 Respectfully submitted,

16 CYNTHIA MARCIANO,

17 By her attorneys,

18 

19 Shannon Liss-Riordan, *pro hac vice* anticipated  
20 Adelaide Pagano, *pro hac vice* anticipated  
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Email: mcarlson@carlsonlegalservices.com

Dated: September 23, 2015

# EXHIBIT V

Dept. # 54 Assigned RUNE 322a

Jeremy F. Bollinger (SBN 240132)

Dennis F. Moss (SBN 77512)

Ari E. Moss (SBN 238579)

**MOSS BOLLINGER LLP**

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ari@mossbollinger.com

Attorneys for Plaintiff DAMONE BROWN

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

DAMONE BROWN, individually and on  
behalf of the State of California and other  
aggrieved persons,

Plaintiffs,

vs.

DOORDASH, INC., a Delaware corporation,  
and DOES 1-50,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES  
PURSUANT TO PRIVATE ATTORNEY  
GENERAL ACT OF 2004 (LABOR CODE  
§§ 2698 ET SEQ.)**

**DEMAND FOR JURY TRIAL**

**FILED**  
Superior Court of California  
County of Los Angeles

JUL 06 2018

Sherri R. Carter, Executive Officer, Clerk of Court  
By Judi Lara, Deputy

**BC 7 12973**

RECEIPT #: CCHS20872031  
DATE PAID: 07/06/18 03:48 PM  
PAYMENT: \$435.00  
RECEIVED:  
CHECK: \$435.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

**COMPLAINT**

CIT/CASE: BC712973  
LEA/DEF#:

1 Plaintiff DAMONE BROWN ("PLAINTIFF") on behalf of himself, and all other  
2 similarly aggrieved employees and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a representative action by PLAINTIFF on behalf of himself, other  
5 similarly aggrieved employees, and the State of California against defendant DOORDASH,  
6 INC., and Doe Defendants 1-50 ("collectively DEFENDANT") pursuant to the California  
7 Private Attorney General Act, Labor Code sections 2698 *et seq.* ("PAGA") to recover civil  
8 penalties (75% payable to the Labor Workforce Development Agency and 25% payable to  
9 aggrieved employees) for failure to pay all minimum and overtime wages, failure to provide  
10 adequate meal and rest breaks, failure to pay meal and rest break premiums, failure to provide  
11 adequate wage statements, and failure to pay all wages upon cessation of employment to  
12 PLAINTIFF and others engaged as couriers and misclassified as independent contractors by  
13 DEFENDANT in California.

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over PLAINTIFF's claims for penalties pursuant to  
16 PAGA.

17 3. Venue is proper in this Judicial district and the County of Los Angeles pursuant to  
18 California Code of Civil Procedure § 395.5 because DEFENDANT employed PLAINTIFF as a  
19 courier throughout the County of Los Angeles, and the acts, omissions, and conduct alleged by  
20 PLAINTIFF herein occurred in this county.

21 **PARTIES**

22 4. Defendant DOORDASH, INC. is a for-profit company that operates a delivery  
23 service by engaging persons throughout California to make deliveries to its customers.  
24 DOORDASH, INC. was incorporated in the state of Delaware, and has its headquarters in San  
25 Francisco, California.



1           5.       DEFENDANT offers its customers the ability to request one of DEFENDANT's  
2 couriers, referred to as "Dashers", on their mobile phone using the DoorDash mobile phone app  
3 to deliver anything from DEFENDANT's partner merchants.

4           6.       Plaintiff DAMONE BROWN is a resident of California. PLAINTIFF has worked  
5 for DEFENDANT as a Dasher in Los Angeles, California, from approximately July 2017  
6 through the present. Dashers, like PLAINTIFF, receive a fee from DEFENDANT for each  
7 delivery completed and may receive tips from customers in addition to their delivery fees.  
8 Dashers do not receive an hourly wage.

9           7.       PLAINTIFF is informed and believes that DOES 1 through 50 are corporations,  
10 individuals, limited liability partnerships, limited liability companies, general partnerships, sole  
11 proprietorships or are other business entities or organizations of a nature not currently known to  
12 PLAINTIFF.

13          8.       PLAINTIFF is unaware of the true names of Defendants DOES 1 through 50.  
14 PLAINTIFF sues said Defendants by said fictitious name, and will amend this complaint when  
15 the true names and capacities are ascertained or when such facts pertaining to liability are  
16 ascertained, or as permitted by law or by the Court. PLAINTIFF is informed and believes that  
17 each of the fictitiously named Defendants is in some manner responsible for the events and  
18 allegations set forth in this complaint.

19          9.       PLAINTIFF is informed and believes, and thereon alleges, that at all times herein  
20 mentioned each Defendant, including all Defendants sued under fictitious names, was the  
21 employee, or representative of each of the remaining Defendants, and in doing the things  
22 hereinafter alleged, was at times acting within the course and scope of this employment, and at  
23 other times, acting in his or her own individual capacity. In the alternative, each of the  
24 individually named Defendants, acted in concert and in furtherance of a fraudulent plan and  
25 scheme and each actively participated in the wrongful acts alleged in this complaint.

**COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

10. On or about May 2, 2018, PLAINTIFF, through his counsel, sent a certified letter to the California Labor and Workforce Development Agency ("LWDA") informing them that DEFENDANT failed to meet its obligations under California law ("PAGA Letter"). Attached hereto as **Exhibit A** is a true and correct copy of the May 2, 2018 PAGA letter also sent to Defendant DOORDASH, INC. at the office of its Agent for Service of Process.

11. To date, 65 days after the PAGA Letter was mailed, the LWDA has not responded.

12. The PAGA Letter outlined PLAINTIFF's claims for violations of the California Labor Code and the applicable wage orders.

13. Accordingly, PLAINTIFF exhausted administrative remedies as required by Labor Code § 2699.3.

**FIRST CAUSE OF ACTION**

**CIVIL PENALTIES UNDER PAGA**

**(By Plaintiff, the State of California, and Aggrieved Employees against Defendant)**

14. PLAINTIFF incorporates paragraphs 1 through 13 of this complaint as if fully alleged herein.

15. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"), private parties may recover civil penalties for violations of the California Labor Code, including sections 510, 512, 1194, 1197, 201, 202, 226, 226.7, 2802 and the Industrial Welfare Commission's ("IWC") Wage Orders. PAGA penalties are in addition to any other relief available under the Labor Code.

16. As set forth above, DEFENDANT violated the California Labor Code within the one year prior to the date of PLAINTIFF's PAGA Letter by consistently misclassifying PLAINTIFF and other aggrieved employees as independent contractors exempt from California's labor laws.

1        17.    In *Dynamex Operations v. Superior Court*, the California Supreme Court  
 2 articulated the test for whether a worker is properly classified as an independent contractor to  
 3 whom California's wage orders do not apply. There, the Court held that the hiring entity must  
 4 establish:

5            (A) that the worker is free from the control and direction of the hirer in  
 6 connection with the performance of the work, both under the contract for  
 7 the performance of such work and in fact; (B) that the worker performs  
 8 work that is outside the usual course of the hiring entity's business; and  
 9 (C) that the worker is customarily engaged in an independently established  
 10 trade, occupation, or business of the same nature as the work performed  
 11 for the hiring entity.

12 *Dynamex Operations v. Superior Court*, 4 Cal. 5th 903, 916-917 (2018). Under *Dynamex*, if the  
 13 hiring entity fails to meet any one of the criteria above, the classification fails and the worker is  
 14 deemed an employee. As discussed above, DEFENDANT is in the business of providing  
 15 delivery services to customers, and that is the service that DEFENDANT's Dashers provide. The  
 16 Dashers' services are fully integrated into DEFENDANT's business, and without the Dashers,  
 17 DEFENDANT's business would not exist. Moreover, other than choosing when to work,  
 18 DEFENDANT dictates and controls what and how its Dashers perform their work.  
 19 DEFENDANT requires PLAINTIFF and other similarly aggrieved Dashers to follow detailed  
 20 requirements, grades its Dashers, and Dashers are subject to termination based on  
 21 DEFENDANT's discretion and/or the Dashers failure to follow DEFENDANT's requirements  
 22 (such as rules regarding Dashers' conduct with customers, their timeliness in picking up items  
 23 and delivering them to customers, the accurateness of their orders, etc.).

24        18.    At all times relevant to this action, under *Dynamex*, PLAINTIFF and other  
 25 similarly situated aggrieved Dashers were employees of DEFENDANT entitled to the benefits of  
 26 the California Labor Code and the Industrial Welfare Commission's ("IWC") Wage Orders.

27        19.    At all times relevant hereto, California Labor Code § 2802 has required  
 28 DEFENDANT to reimburse PLAINTIFF and other aggrieved employees for all expenses  
 incurred by them in direct consequence of the discharge of their job duties or obedience to the  
 directions of the employer if the employer either knows or has reason to know that the employee

1 has incurred the expenses. *Stuart v. RadioShack Corp.*, 641 F.Supp.2d 901, 904 (N.D. Cal.  
2 2009). "Once the employer has such knowledge, then it has the duty to exercise due diligence  
3 and take any and all reasonable steps to ensure that the employee is paid the expense." *Id.*

4 20. DEFENDANT requires its Dashers, like PLAINTIFF, to use their own vehicles to  
5 make deliveries to DEFENDANT's customers. PLAINTIFF and other aggrieved employees pay  
6 for all expenses related to the use of their personal vehicle for business-related purposes,  
7 including but not limited to insurance, maintenance, parking, and gasoline.

8 21. DEFENDANT requires its Dashers, like PLAINTIFF, to use their own mobile  
9 phone to access DEFENDANT's mobile app to receive requests for deliveries during working  
10 hours and track their deliveries and payments. PLAINTIFF and other aggrieved employees have  
11 to pay for all expenses related to the use of their personal mobile phone for business-related  
12 purposes. DEFENDANT does not contribute any money toward the costs of maintaining a  
13 mobile phone or use of cellular data to work as a Dasher for DEFENDANT.

14 22. DEFENDANT hired PLAINTIFF as a Dasher, knowing that he would need to use  
15 his personal vehicle to make deliveries and to use his personal mobile phone to access the  
16 DoorDash mobile phone app. DEFENDANT did not reimburse PLAINTIFF and other similarly  
17 paid Dashers for expenses related to the use of their personal vehicles and mobile phones.

18 23. At all times relevant hereto, California Labor Code §§ 1194(a) and 1197 and the  
19 applicable wage orders, have required DEFENDANT to pay its employees the applicable  
20 minimum wage for all hours worked.

21 24. PLAINTIFF and the other aggrieved Dashers were not paid by DEFENDANT,  
22 during the relevant period, the applicable minimum wage for all hours worked because  
23 DEFENDANT misclassified PLAINTIFF and other Dashers as independent contractors.  
24 PLAINTIFF and other similarly paid Dashers were compensated with a delivery fee and  
25 discretionary tips from customers. Often their compensation did not meet the minimum wage for  
26 the hours they worked making deliveries for DEFENDANT. In addition, because PLAINTIFF  
27 and similarly paid Dashers had to bear the cost of gas and wear and tear on the vehicles they  
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1 used to make DoorDash deliveries and the cost of their mobile phone and data usage in order to  
 2 use the DoorDash app, even when the delivery fees met the minimum wage, these expenses  
 3 caused their total compensation to drop below the minimum wage. Under California law,  
 4 customers' tips cannot count toward an employer's minimum wage obligations.

5 25. At all relevant times, PLAINTIFF and the other aggrieved Dashers were  
 6 employees of DEFENDANT covered by Labor Code §§ 510 and 1194 and the applicable wage  
 7 orders, entitling them to overtime wages.

8 26. By failing to pay PLAINTIFF and the other aggrieved employees for all hours  
 9 worked on days in which they worked 8 or more hours or in weeks in which they worked 40 or  
 10 more hours, DEFENDANT willfully breached its obligation to pay overtime wages, violating the  
 11 provisions of Labor Code §§ 510 and 1194 and the applicable wage orders.

12 27. At all relevant times, PLAINTIFF and the other aggrieved Dashers were  
 13 employees of DEFENDANT covered by the rest period provisions of Labor Code §§ 226.7 and  
 14 512, and the applicable wage orders.

15 28. Pursuant to Labor Code §§ 226.7 and 512, and the applicable wage orders,  
 16 PLAINTIFF and the other aggrieved Dashers were entitled to a rest period of at least 10  
 17 uninterrupted minutes for each four-hour period of work, or major fraction thereof, and one hour  
 18 of additional pay for every day a required rest period was not provided.

19 29. By misclassifying PLAINTIFF and other aggrieved Dashers as independent  
 20 contractors, DEFENDANT failed to provide PLAINTIFF and other aggrieved employees rest  
 21 periods in accordance with Labor Code § 226.7 and the applicable wage orders.

22 30. The plain language of California's Wage Orders relating to rest periods requires  
 23 employers to count "rest period time" as "hours worked for which *there shall be no deduction*  
 24 *from wages.*" See, e.g., Cal. Code Regs. tit. 8, § 11070, subd. 12(A), italics added.<sup>1</sup> In *Bluford v.*  
 25 *Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013), the court interpreted this language to require

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<sup>1</sup> The other Wage Orders contain the same provision.

1 employers to “separately compensate[ ]” employees for rest periods where the employer uses an  
2 “activity based compensation system” that does not directly compensate for rest periods. *Id.* at  
3 872. In *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th 98 (2017), as modified (Mar. 20,  
4 2017), *review denied* (June 21, 2017), the Court of Appeal held that the wage order requirement  
5 that employees be separately paid for rest periods applies to “applies equally to commissioned  
6 employees”. *Id.* at 111. DEFENDANT paid PLAINTIFF and other Dashers on a per delivery  
7 basis. It did not separately pay PLAINTIFF and other similarly paid Dashers for their rest  
8 periods in conformity with California law during the relevant period.

9 31. DEFENDANT failed to provide PLAINTIFF and other aggrieved employees the  
10 additional hour of pay required by Labor Code § 226.7 and the applicable wage orders.  
11 PLAINTIFF is informed and believes and thereon alleges that at all relevant times within the  
12 applicable limitations period, DEFENDANT maintained and continues to maintain a policy or  
13 practice of not paying additional pay to employees for rest period violations.

14 32. At all relevant times, PLAINTIFF and other aggrieved Dashers were employees  
15 of DEFENDANTS covered by meal period provisions of Labor Code §§ 226.7 and 512, and the  
16 applicable wage orders.

17 33. Pursuant to Labor Code §§ 226.7 and 512, and the applicable wage orders,  
18 PLAINTIFF and other aggrieved Dashers were entitled to a meal period of at least 30 minutes  
19 for each workday they worked more than 5 hours in any workday, and one additional hour of pay  
20 for every day that a timely meal period was not provided.

21 34. DEFENDANT failed to provide PLAINTIFF and other aggrieved Dashers with  
22 uninterrupted, duty free meal periods in accordance with Labor Code § 226.7 and 512, and the  
23 applicable wage orders. During the applicable limitations period, DEFENDANT maintained and  
24 continues to maintain a policy or practice of requiring aggrieved employees to work during meal  
25 periods taken by PLAINTIFF and the other aggrieved employees, as alleged above.

26 35. DEFENDANT failed to provide PLAINTIFF and other aggrieved employees the  
27 additional hour of pay required by Labor Code § 226.7 and the applicable wage orders for meal  
28

1 period violations. PLAINTIFF is informed and believes and thereon alleges that at all relevant  
 2 times within the applicable limitations period, DEFENDANT maintained and continues to  
 3 maintain a policy or practice of not paying additional pay to employees for meal period  
 4 violations.

5 36. Section 226(a) of the California Labor Code requires DEFENDANT to accurately  
 6 report total hours worked by PLAINTIFF and other aggrieved employees and the corresponding  
 7 applicable rates of pay, and to accurately set forth gross and net wages earned, among other  
 8 things. DEFENDANT has knowingly and intentionally failed to comply with Labor Code §  
 9 226(a) on each wage statement provided to PLAINTIFF and other aggrieved Dashers during pay  
 10 periods in which DEFENDANT failed to pay minimum and/or overtime wages or a break  
 11 premium owed to PLAINTIFF or any other aggrieved employee.

12 37. PLAINTIFF and other aggrieved Dashers were employees of DEFENDANT  
 13 covered by Labor Code §§ 201 or 202 whose employment with DEFENDANT ended during the  
 14 relevant class period.<sup>2</sup>

15 38. Pursuant to Labor Code §§ 201 or 202, aggrieved Dashers were entitled upon  
 16 cessation of employment with DEFENDANT to timely payment of all wages earned and unpaid  
 17 prior to termination. Discharged Dashers were entitled to payment of all wages earned and  
 18 unpaid prior to discharge immediately upon termination. Dashers who resigned were entitled to  
 19 payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice  
 20 of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all  
 21 wages earned and unpaid prior to resignation at the time of resignation.

22 39. DEFENDANT failed to pay aggrieved Dashers all wages earned and unpaid prior  
 23

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24 <sup>2</sup> Although Plaintiff Brown does not contend that his employment was terminated, he may still  
 25 pursue PAGA penalties for violations of Labor Code §§201 and 202 on behalf of other aggrieved  
 26 employees and the State. *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 233 Cal.  
 27 Rptr. 3d 502, 513 (Ct. App. 2018), *reh'g denied* (June 13, 2018) (“The trial court correctly found  
 28 that so long as Huff was affected by at least one of the Labor Code violations alleged in the  
 complaint, he can recover penalties [under PAGA] for all the violations he proves.”).

1 to termination timely in accordance with Labor Code §§ 201 or 202. PLAINTIFF is informed  
 2 and believes and thereon alleges that at all relevant times within the applicable limitations  
 3 period, DEFENDANT maintained and continues to maintain a policy or practice of not paying  
 4 terminated Dashers all final wages earned before termination due under Labor Code §§ 201 or  
 5 202.

6 40. DEFENDANT's failure to pay aggrieved Dashers all wages earned prior to  
 7 termination in accordance with Labor Code §§ 201 or 202 was willful. DEFENDANT had the  
 8 ability to pay all wages earned by Dashers prior to termination in accordance with Labor Code  
 9 §§ 201 or 202, but intentionally adopted policies or practices incompatible with the requirements  
 10 of Labor Code §§ 201 or 202.

11 41. Under PAGA, PLAINTIFF and all other aggrieved Dashers are entitled to recover  
 12 the maximum civil penalties permitted by law from DEFENDANT for the violations of Labor  
 13 Code alleged in this Complaint.

14 42. PLAINTIFF and all other aggrieved Dashers are also entitled to recover their  
 15 attorneys' fees and costs under Labor Code § 2699.


16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees and the  
 18 State of California, prays for relief and judgment against Defendants as follows:

- 19 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and  
 20 25% payable to aggrieved employees);
- 21 2. Costs;
- 22 3. Reasonable attorney's fees; and
- 23 4. Such other and further relief as this Court may deem just and proper.

24 Dated: July 6, 2018

MOSS BOLLINGER LLP

By:   
 Jeremy F. Bollinger  
 Attorneys for Plaintiff DAMONE BROWN

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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for himself and all other aggrieved employees on all claims so triable.

Dated: July 6, 2018

MOSS BOLLINGER LLP

By: 

Jeremy F. Bollinger

Attorneys for Plaintiff DAMONE BROWN

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>333a</b> <b>Jeremy F. Bollinger (SBN 240132)</b> <b>MOSS BOLLINGER LLP</b> <b>15300 Ventura Blvd., Suite 207</b> <b>Sherman Oaks, CA 91403</b> TELEPHONE NO.: <b>310-982-2984</b> FAX NO.: <b>818-983-5954</b> ATTORNEY FOR (Name): <b>Plaintiff Damone Brown</b>		FOR COURT USE ONLY  <b>FILED</b> <b>Superior Court of California</b> <b>County of Los Angeles</b>  <b>JUL 06 2018</b> <i>Sherri R. Carter, Executive Officer, Clerk of Court</i> By <i>Judi Lara</i> , Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Los Angeles</b> STREET ADDRESS: <b>111 North Hill Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles, CA 90012</b> BRANCH NAME: <b>Stanley Mosk Courthouse</b>		CASE NUMBER: <div style="border: 1px solid black; padding: 2px; display: inline-block; font-weight: bold;">BC 7 12 973</div>	
CASE NAME: <b>Damone Brown v. DoorDash, Inc.</b>		JUDGE: DEPT:	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |   |  |   |
|---|--|---|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input checked="" type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400–3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☐ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): **1**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 6, 2018  
 Jeremy F. Bollinger

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE:

Brown v. DoorDash, Inc.

CASE NUMBER

BC 7 12 97 3

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

**Item I.** Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 5 ☐ HOURS/ ☒ DAYS

**Item II.** Indicate the correct district and courthouse location (4 steps – If you checked “Limited Case”, skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/ Property Damage/ Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 3. 1., 4.

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Brown v. DoorDash, Inc.

CASE NUMBER

Non-Personal Injury/ Property  
Damage/ Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels_____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE:

Brown v. DoorDash, Inc.

CASE NUMBER

Judicial Review

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE:

Brown v. DoorDash, Inc.

CASE NUMBER

**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON:</b> Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			<b>ADDRESS:</b> 6201 Hollywood Boulevard
<b>CITY:</b> Los Angeles	<b>STATE:</b> CA	<b>ZIP CODE:</b> 90028	

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: July 6, 2018

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

# EXHIBIT W

339a  
Dept. # 42 Assigned Kendry

1 Arnab Banerjee (SBN 252618)  
2 Arnab.Banerjee@capstonelawyers.com  
3 Brandon K. Brouillette (SBN 273156)  
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9 Los Angeles, California 90067  
10 Telephone: (310) 556-4811  
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12 Attorneys for Plaintiff Dana Lowe

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DANA LOWE, as an aggrieved employee  
pursuant to the Private Attorneys General  
Act ("PAGA"),

Plaintiff,

vs.

DOORDASH, INC., a Delaware  
corporation; and DOES 1 through 10,  
inclusive,

Defendants.

Case No.:

**PAGA ENFORCEMENT ACTION**

(1) Claim for Civil Penalties for Violations  
of California Labor Code, Pursuant to  
PAGA, §§ 2698, *et seq.*

**Jury Trial Demanded**

**BC 715 425**

**FILED**  
Superior Court of California  
County of Los Angeles

**JUL 26 2018**

Sherri R. Carter, Executive Officer/Clerk  
By [Signature] Deputy  
Shamya Bolden

**BY FAX**

CIT/CASE: BC715425  
LEA/DEF#:   
RECEIPT #: CCH465980123  
DATE PAID: 07/26/18 03:41 PM  
PAYMENT: \$435.00 310  
RECEIVED:   
CHECK: \$435.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

PAGA COMPLAINT



1 Plaintiff Dana Lowe, as an aggrieved employee and on behalf of all other aggrieved  
2 employees, alleges as follows:

### 3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General  
5 Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA") to recover civil penalties  
6 and any other available relief on behalf of Plaintiff, the State of California, and other current  
7 and former employees who worked for Defendants in California as a Dasher performing  
8 courier services, and against whom one or more violations of any provision in Division 2 Part  
9 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the  
10 applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth  
11 in this complaint, at any time between one year prior to the filing of this complaint until  
12 judgment ("non-party Aggrieved Employees"). Plaintiff's share of civil penalties sought in  
13 this action does not exceed \$75,000.

14 2. This Court has jurisdiction over this action pursuant to the California  
15 Constitution, Article VI, section 10. The statute under which this action is brought does not  
16 specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over all Defendants because, on information and  
18 belief, Defendants are either citizens of California, have sufficient minimum contacts in  
19 California, or otherwise intentionally avail themselves of the California market so as to render  
20 the exercise of jurisdiction over them by the California courts consistent with traditional  
21 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction  
22 in this action given that the State of California, as the real party in interest in this action, is not  
23 a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,  
24 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be  
25 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction  
26 in this action, and that diversity jurisdiction cannot be established when Plaintiffs' share of the  
27 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

28 4. Venue is proper in this Court, because Defendants employ persons in this

1 county and employed Plaintiff in this county, and thus a substantial portion of the transactions  
2 and occurrences related to this action occurred in this county.

3 5. California Labor Code sections 2698 *et seq.*, the "Labor Code Private Attorneys  
4 General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys  
5 general their current or former employers for various civil penalties for violations of various  
6 provisions in the California Labor Code.

### 7 THE PARTIES

8 6. Plaintiff DANA LOWE is a resident of Los Angeles, in Los Angeles County,  
9 California. Defendants employed Plaintiff as a "Dasher" or courier from approximately  
10 August 2015 to April or May 2018, performing food delivery and pickups from various Los  
11 Angeles-area restaurants, such as Lemonade and Tender Greens. Plaintiff typically worked  
12 eight (8) to ten (10) hours or more per day, four (4) to five (5) days or more per week, and  
13 approximately 40 hours or more per week. Plaintiff earned a delivery service fee of either \$5  
14 or \$25, as explained further below, plus tips.

15 7. Defendant DOORDASH, INC. was and is, upon information and belief, a  
16 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees  
17 are engaged throughout this county, the State of California, or the various states of the United  
18 States of America.

19 8. Plaintiff is unaware of the true names or capacities of the Defendants sued  
20 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to  
21 amend the complaint and serve such fictitiously named Defendants once their names and  
22 capacities become known.

23 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10  
24 are the partners, agents, owners, shareholders, managers, or employees of DOORDASH, INC.  
25 at all relevant times.

26 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
27 acts and omissions alleged herein was performed by, or is attributable to, DOORDASH, INC.  
28 and/or DOES 1 through 10 (collectively, "Defendants" or "DOORDASH"), each acting as the

1 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the  
 2 other co-Defendants and was acting within the course and scope of such agency, employment,  
 3 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts  
 4 of any and all Defendants were in accordance with, and represent, the official policy of  
 5 Defendants.

6 11. At all relevant times, Defendants, and each of them, ratified each and every act  
 7 or omission complained of herein. At all relevant times, Defendants, and each of them, aided  
 8 and abetted the acts and omissions of each and all the other Defendants in proximately causing  
 9 the damages herein alleged.

10 12. Plaintiff is informed and believes, and thereon alleges, that each of said  
 11 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
 12 omissions, occurrences, and transactions alleged herein.

### 13 **PAGA REPRESENTATIVE ALLEGATIONS**

14 13. Defendants operate an on-demand food/catering delivery service and mobile  
 15 application ("app") in over 56 markets in more than 600 cities in the United States.  
 16 Defendants are a Delaware corporation headquartered in San Francisco, California.

17 14. Defendants launched in 2013 as a mobile application that uses logistics services  
 18 to offer food delivery from restaurants. Defendants hold themselves out as a technology  
 19 company providing an on-demand mobile app and website providing food delivery services to  
 20 various restaurants. However, in reality, Defendants do more than simply offer software for  
 21 use by restaurants and application users. Rather, Defendants have engaged in an elaborate  
 22 scheme to create the façade that it does not employ Dashers, or delivery drivers.

23 15. The reality is, Defendants exert virtually complete control over the working  
 24 hours and conditions of its Dashers, including Plaintiff and other non-party Aggrieved  
 25 Employees. For example, as detailed further below, Defendants set their schedules; set their  
 26 pay; require that they undergo an interview process to be hired; require them to wear uniforms  
 27 bearing Defendants' logo while performing their deliveries; discipline them for Defendants'  
 28 policy violations, including terminating and discharging them from their work; and provide

1 tools for the performance of their services, including, but not limited to, lists of items to be  
2 delivered, delivery routes via a mobile application, and uniforms.

3 16. However, Defendants uniformly treat all Dashers as independent contractors in  
4 order to circumvent labor laws designed to protect employees, including not providing them  
5 with minimum wages and overtime pay.

6 17. As a result of Defendants' intentional misclassification of Dashers as  
7 independent contractors instead of employees, Defendants have denied Plaintiff and other  
8 non-party Aggrieved Employees numerous wage-and-hour protections provided by the  
9 California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage  
10 Orders including, but not limited to, overtime wages, minimum wages, meal and rest periods,  
11 and reimbursement of business-related expenses.

12 18. Despite Defendants' efforts to evade California wage-and-hour laws by  
13 engaging in an alleged independent contractor scheme, the reality is that Plaintiff and other  
14 non-party Aggrieved Employees are, in fact, employees according to the law. As stated,  
15 Defendants exercised control over the wages, hours, and working conditions of Plaintiff and  
16 other non-party Aggrieved Employees by, among other things: setting the work schedules for  
17 Plaintiff and other non-party Aggrieved Employees; negotiating the rates at which Plaintiff  
18 and other non-party Aggrieved Employees were paid for performing delivery services, i.e., a  
19 flat "service fee"; dictating the order in which Plaintiff and other non-party Aggrieved  
20 Employees made deliveries, the time frames in which deliveries were to be made, and/or  
21 deciding delivery driving routes on a daily basis; mandating that Plaintiff and other non-party  
22 Aggrieved Employees wear uniforms bearing the Defendants' DOORDASH logo while  
23 performing deliveries; providing training at Defendants' offices and requiring trial  
24 deliveries/catering runs; discouraging Plaintiff and other non-party Aggrieved Employees  
25 from working for other on-demand or online delivery companies, such as Uber and Lyft;  
26 disciplining Plaintiff and other non-party Aggrieved Employees or kicking them off jobs if  
27 they did not show up on time for deliveries, if customers make complaints about them when  
28 Dashers fail to meet certain metrics (such as customer ratings, job acceptance ratings, and

1 delivery completion ratings), or for missing scheduled shifts, cancelling shifts, or for declining  
2 jobs; and maintaining the authority and power to discharge or terminate Plaintiff and other  
3 non-party Aggrieved Employees from jobs.

4 19. Thus, Defendants exercised substantial control over Plaintiff's and other non-  
5 party Aggrieved Employees' wages, hours, and working conditions. Indeed, almost all  
6 aspects of Plaintiff's and other non-party Aggrieved Employees' job performance were  
7 controlled by Defendants. Defendants knew Plaintiff and other non-party Aggrieved  
8 Employees were providing services for Defendants' benefit and knew that Defendants  
9 negotiated the rates at which Plaintiff and other non-party Aggrieved Employees were paid—  
10 i.e., they did not have the opportunity to negotiate the rates paid for various jobs.

11 20. Furthermore, Defendants are in the business of delivering food through a  
12 mobile online application. As part of its operation, Defendants offer food delivery services to  
13 customers. Plaintiff and other non-party Aggrieved Employees are Defendants' delivery  
14 personnel. The work that Plaintiff and other non-party Aggrieved Employees perform, i.e.,  
15 delivering food and catering orders to customers, is therefore not a distinct occupation or an  
16 incidental or tangential part of Defendants' operations, but rather is central to Defendants'  
17 business. Defendants provide tools, instrumentalities and locations where Plaintiff and other  
18 non-party Aggrieved Employees perform their jobs, including, without limitation, the lists of  
19 items to be delivered, delivery routes via a mobile application, and uniforms. Further,  
20 Plaintiff and other non-party Aggrieved Employees were not free to set their own hours and  
21 days of work. Instead, Defendants determined their schedules and hours of work and required  
22 that they report for specific shifts. In addition, Defendants would discipline Plaintiff and  
23 other non-party Aggrieved Employees if they were late for deliveries or pickups.  
24 Furthermore, Plaintiff and other non-party Aggrieved Employees were not free to decline jobs  
25 or refuse the schedule provided to them.

26 21. The job duties Plaintiff and other non-party Aggrieved Employees performed  
27 for Defendants, namely, making deliveries, are not those typically done by a specialist and  
28 require no special skill, higher degree, or special education. As stated, the delivery and pick-

up assignments and schedules were set by Defendants without any input from or consultation with Plaintiff and other non-party Aggrieved Employees. Moreover, the rates paid to Plaintiff and other non-party Aggrieved Employees constituted the majority of their pay.

22. Based on the work relationship described above and the degree of control Defendants exercised over Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved Employees were and/or are Defendants' employees—not independent contractors. Thus, Defendants' conduct constitutes an intentional, willful pattern and/or practice of misclassification. As a result of this conduct, Defendants have violated numerous wage-and-hour provisions, including, but not limited to, failing to pay all gratuities, failing to pay at least minimum wages for all hours worked, failing to pay overtime wages for all overtime hours worked, failing to provide meal or rest breaks, unlawfully shifting the costs of doing business to Dashers by failing to provide reimbursement for necessary business-related expenses, and not paying all wages earned and due during employment and upon termination, among other violations.

23. Pursuant to California Labor Code section 3357, Plaintiff and other non-party Aggrieved Employees are entitled to a presumption that they are in fact employees of Defendants. Moreover, the existence of any document purporting to create an independent contractor relationship is not determinative.

24. Defendants employed Plaintiff as a Dasher in the Los Angeles County, California area, but knowingly and willfully misclassified her as an independent contractor and on that basis committed the violations against her as set forth herein.

25. Defendants continue to employ Dashers, or delivery drivers, throughout California and continue to misclassify these employees as independent contractors.

26. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other

1 non-party Aggrieved Employees were not paid for all hours worked because all hours worked  
2 were not recorded.

3 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
4 mentioned, Defendants knew or should have known that employers are prohibited from  
5 sharing in or keeping any portion of a gratuity given to or left for employees by a customer.  
6 In violation of the California Labor Code, Defendants deducted from wages due to employees  
7 on account of a gratuity and/or required Plaintiff and other non-party Aggrieved Employees to  
8 credit the amount of a gratuity against and as a part of the wages due to the employee from the  
9 employer.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
12 receive certain wages for overtime compensation and that they were not receiving certain  
13 wages for overtime compensation.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
16 be paid at a regular rate of pay, and corresponding overtime rate of pay, that included as  
17 eligible income all income derived from incentive pay, nondiscretionary bonuses, and/or other  
18 forms of compensation.

19 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
21 receive at least minimum wages for compensation and that they were not receiving at least  
22 minimum wages for work that was required to be done off-the-clock. In violation of the  
23 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at  
24 least minimum wages for work done off-the-clock.

25 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
27 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay  
28 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty

1 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were  
2 not provided with all meal periods or payment of one (1) additional hour of pay at their  
3 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal  
4 period.

5 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
7 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment  
8 of one (1) additional hour of pay at their regular rates of pay when they were not provided  
9 with a compliant rest period and that Plaintiff and other non-party Aggrieved Employees were  
10 not provided compliant rest periods or payment of one (1) additional hour of pay at their  
11 regular rates of pay when they were not provided a compliant rest period.

12 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
14 receive complete and accurate wage statements in accordance with California law. In  
15 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees  
16 were not provided complete and accurate wage statements.

17 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
18 should have known that they had a duty to maintain accurate and complete payroll records,  
19 including hours worked, in accordance with the Labor Code and applicable IWC Wage Order,  
20 but willfully, knowingly, and intentionally failed to do so.

21 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
23 timely payment of all wages earned upon termination of employment. In violation of the  
24 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive  
25 payment of all wages due, including, but not limited to, overtime wages, minimum wages, and  
26 meal and rest period premiums, within permissible time periods.

27 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to



1 timely payment of wages during their employment. In violation of the California Labor Code,  
2 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,  
3 including, but not limited to, overtime wages, minimum wages, and meal and rest period  
4 premiums, within permissible time periods.

5 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known that they were prohibited from requiring Plaintiff and other non-party  
7 Aggrieved Employees to execute a release of their claims as a condition to receiving wages  
8 due to them. In violation of the California Labor Code, Defendants required Plaintiff and  
9 other non-party Aggrieved Employees to execute a release of their claims as a condition to  
10 receiving wages due to them.

11 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
12 should have known that they could not lawfully collect or receive any part of wages  
13 previously paid to Plaintiff and other non-party Aggrieved Employees. In violation of the  
14 California Labor Code, Defendants deducted a portion of Plaintiff's and other non-party  
15 Aggrieved Employees' previously-paid wages from their paychecks by withholding gratuities.

16 40. Plaintiff is informed and believes, and thereon alleges that Defendants knew or  
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
18 payment of wages as designated by statute. In violation of the California Labor Code,  
19 Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages that  
20 required by statute while purporting to pay them proper wages.

21 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
22 should have known that they were required to pay Plaintiff and other non-party Aggrieved  
23 Employees the statutorily designated wage scale but did not do so.

24 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
25 mentioned, that Defendants knew or should have known that they had a duty to cover the costs  
26 and expenses other non-party Aggrieved Employees incurred obtaining mandatory physical  
27 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

28 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
2 paid sick leave benefits, including three (3) days of paid sick leave, and written notice of paid  
3 sick leave or paid time off available. In violation of the California Labor Code, Defendants  
4 did not provide Plaintiff and other non-party Aggrieved Employees with sufficient paid sick  
5 leave benefits and written notice of paid sick leave or paid time off available, within  
6 permissible time periods.

7 44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
9 one day's rest in seven. In violation of the California Labor Code, Defendants required  
10 Plaintiff and other non-party Aggrieved Employees to work more than six consecutive days  
11 without a day of rest, where the total hours worked exceeded 30 hours in any week or six  
12 hours in any one day thereof.

13 45. Plaintiff is informed and believes, and thereon alleges that Defendants knew or  
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to  
15 receive reimbursement for all business-related expenses and costs they incurred during the  
16 course and scope of their employment, and that they did not receive reimbursement of  
17 applicable business-related expenses and costs they incurred.

18 46. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
19 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff  
20 and other non-party Aggrieved Employees with written notice of the material terms of their  
21 employment with Defendants as required by the California Wage Theft Prevention Act, but  
22 willfully, knowingly, and intentionally failed to do so.

23 47. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
24 mentioned, Defendants knew or should have known that they had a duty to compensate  
25 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants  
26 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally  
27 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees  
28 that they were properly denied wages, all in order to increase Defendants' profits.

1        48. At all times herein set forth, PAGA provides that any provision of law under  
 2 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be  
 3 assessed and collected by the LWDA for violations of the California Labor Code and  
 4 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a  
 5 civil action brought on behalf of themselves and other current or former employees pursuant  
 6 to procedures outlined in California Labor Code section 2699.3.

7        49. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any  
 8 person who was employed by the alleged violator and against whom one or more of the  
 9 alleged violations was committed."

10       50. Plaintiff and other current and former employees of Defendants are "aggrieved  
 11 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current  
 12 or former employees and one or more of the alleged violations were committed against them.

13       51. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
 14 employee, including Plaintiff, may pursue a civil action arising under PAGA after the  
 15 following requirements have been met:

16           (a) The aggrieved employee or representative shall give written notice by  
 17 online filing with the LWDA and by certified mail to the employer of  
 18 the specific provisions of the California Labor Code alleged to have  
 19 been violated, including the facts and theories to support the alleged  
 20 violation.

21           (b) An aggrieved employee's notice filed with the LWDA pursuant to  
 22 2699.3(a) and any employer response to that notice shall be  
 23 accompanied by a filing fee of seventy-five dollars (\$75).

24           (c) The LWDA shall notify the employer and the aggrieved employee or  
 25 representative by certified mail that it does not intend to investigate the  
 26 alleged violation ("LWDA's Notice") within sixty (60) calendar days of  
 27 the postmark date of the aggrieved employee's notice. Upon receipt of  
 28 the LWDA Notice, or if no LWDA Notice is provided within sixty-five

1 (65) calendar days of the postmark date of the aggrieved employee's  
2 notice, the aggrieved employee may commence a civil action pursuant  
3 to California Labor Code section 2699 to recover civil penalties.

4 52. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,  
5 through Plaintiff, may pursue a civil action arising under PAGA for violations of any  
6 provision other than those listed in Section 2699.5 after the following requirements have been  
7 met:

- 8 (a) The aggrieved employee or representative shall give written notice by  
9 online filing with the LWDA and by certified mail to the employer of  
10 the specific provisions of the California Labor Code alleged to have  
11 been violated (other than those listed in Section 2699.5), including the  
12 facts and theories to support the alleged violation.
- 13 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
14 2699.3(c) and any employer response to that notice shall be  
15 accompanied by a filing fee of seventy-five dollars (\$75).
- 16 (c) The employer may cure the alleged violation within thirty-three (33)  
17 calendar days of the postmark date of the notice sent by the aggrieved  
18 employee or representative. The employer shall give written notice  
19 within that period of time by certified mail to the aggrieved employee or  
20 representative and by online filing with the LWDA if the alleged  
21 violation is cured, including a description of actions taken, and no civil  
22 action pursuant to Section 2699 may commence. If the alleged violation  
23 is not cured within the 33-day period, the aggrieved employee may  
24 commence a civil action pursuant to Section 2699.

25 53. On May 21, 2018, Plaintiff provided written notice by online filing to the  
26 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor  
27 Code alleged to have been violated, including facts and theories to support the alleged  
28 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written

1 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The  
2 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notices and assigned  
3 Plaintiff PAGA Case Number LWDA-CM-539580-18. A true and correct copy of Plaintiff's  
4 written notices to the LWDA and Defendants dated May 21, 2018, are attached hereto as  
5 "Exhibit 1."

6 54. On July 20, 2018, Plaintiff sent an amended written notice by online filing to  
7 the LWDA and by certified mail to Defendants of the specific provisions of the California  
8 Labor Code alleged to have been violated, supplementing and clarifying the facts and theories  
9 to support the alleged violations set forth in her original LWDA notice, in accordance with  
10 California Labor Code section 2699.3. A true and correct copy of Plaintiff's amended written  
11 notice to the LWDA and Defendants dated July 20, 2018, is attached hereto as "Exhibit 2."

12 55. As of the filing date of this complaint, over 65 days have passed since Plaintiff  
13 sent her initial notices described above to the LWDA, and the LWDA has not responded that  
14 it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

15 56. Thus, Plaintiff has satisfied the administrative prerequisites under California  
16 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for  
17 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 221, 222.5, 223, 224,  
18 226(a), 226.7, 226.8, 246, 351, 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1,  
19 1198, 2802, and 2810.5.

20 57. Defendants, at all times relevant to this complaint, were employers or persons  
21 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved  
22 Employees' rights by violating various sections of the California Labor Code as set forth  
23 above.

24 58. As set forth below, Defendants have violated numerous provisions of both the  
25 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage  
26 Order.

27 59. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),  
28 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney

1 general, seeks assessment and collection of civil penalties for herself, all other non-party  
 2 Aggrieved Employees, and the State of California against Defendants for violations of  
 3 California Labor Code sections 201, 202, 203, 204, 206.5, 221, 222.5, 223, 224, 226(a), 226.7,  
 4 226.8, 246, 351, 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802,  
 5 and 2810.5.

### 6 FIRST CAUSE OF ACTION

7 For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

8 (Against all Defendants)

9 60. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
 10 and every allegation set forth above.

11 61. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover  
 12 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code  
 13 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5,  
 14 221, 222.5, 223, 224, 226(a), 226.7, 351, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1,  
 15 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including  
 16 Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in  
 17 section 2699.5, including section 226.8, 246, 1182.12, and 2810.5.

18 62. Defendants' conduct, as alleged herein, violates numerous sections of the  
 19 California Labor Code, including, but not limited to, the following:

- 20 (a) Violation of Labor Code 226.8 for Defendants' improper classification
- 21 of Plaintiff and other non-party Aggrieved Employees as "independent
- 22 contractors" rather than employees as set forth below;
- 23 (b) Violation of Labor Code section 351 for collecting and/or withholding
- 24 gratuities intended for Plaintiff and other non-party Aggrieved
- 25 Employees as set forth below;
- 26 (c) Violation of Labor Code sections 510, 1198, and the applicable IWC
- 27 wage order for Defendants' failure to compensate Plaintiff and other
- 28 non-party Aggrieved Employees with all required overtime pay and

- 1 failure to properly calculate the overtime rates paid to Plaintiff and other  
2 non-party Aggrieved Employees as set forth below;
- 3 (d) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,  
4 and the applicable IWC wage order for Defendants' failure to  
5 compensate Plaintiff and other non-party Aggrieved Employees with at  
6 least minimum wages for all hours worked as set forth below;
- 7 (e) Violation of Labor Code sections 226.7, 512, 1198, and the applicable  
8 IWC wage order for Defendants' failure to provide Plaintiff and other  
9 non-party Aggrieved Employees with meal and/or rest periods, as set  
10 forth below;
- 11 (f) Violation of Labor Code sections 226(a), 1198, and the applicable IWC  
12 wage order for failure to provide accurate and complete wage statements  
13 to Plaintiff and other non-party Aggrieved Employees, as set forth  
14 below;
- 15 (g) Violations of Labor Code sections 1174(d), 1198, and the applicable  
16 IWC wage order for failure to maintain payroll records as set forth  
17 below;
- 18 (h) Violation of Labor Code section 204 for failure to pay all earned wages  
19 during employment as set forth below;
- 20 (i) Violation of Labor Code sections 201, 202, and 203 for failure to pay all  
21 earned wages upon termination as set forth below;
- 22 (j) Violation of Labor Code section 206.5 for requiring Plaintiff and other  
23 non-party Aggrieved Employees to execute a release of claims as a  
24 condition to receiving wages due to them;
- 25 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting  
26 a portion of wages previously paid to Plaintiff and other non-party  
27 Aggrieved Employees, as set forth below;
- 28 (l) Violation of Labor Code section 222.5 for failure to compensate other

1 non-party Aggrieved Employees for mandatory physical examinations  
2 and/or drug testing as set forth below;

3 (m) Violation of Labor Code section 223 for secretly paying Plaintiff and  
4 other non-party Aggrieved Employees lower wages than required by  
5 statute while purporting to pay the proper wages, as set forth below;

6 (n) Violations of Labor Code section 246 for failure to provide paid sick  
7 leave benefits and failure to provide written notice of paid sick leave  
8 available, or paid time off, as set forth below;

9 (o) Violation of Labor Code sections 551 and 552 for failure to provide one  
10 day's rest in seven to Plaintiff and other non-party Aggrieved  
11 Employees as set forth below;

12 (p) Violation of Labor Code section 2802 for failure to reimburse Plaintiff  
13 and other non-party Aggrieved Employees for all business expenses  
14 necessarily incurred, as set forth below; and

15 (q) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to  
16 provide written notice of information material to Plaintiff's and other  
17 non-party Aggrieved Employees' employment with Defendants, as set  
18 forth below.

### 19 MISCLASSIFICATION AS INDEPENDENT CONTRACTORS

#### 20 VIOLATION OF LABOR CODE SECTION 226.8

21 63. At all times relevant herein set forth, California Labor Code section 226.8  
22 makes it illegal to willfully misclassify an employee as an independent contractor, providing:  
23 "[i]t is unlawful for any person or employer to engage in any of the following activities: (1)  
24 Willful misclassification of an individual as an independent contractor. (2) Charging an  
25 individual who has been willfully misclassified as an independent contractor a fee, or making  
26 any deductions from compensation, for any purpose, including for goods, materials, space  
27 rental, services, government licenses, repairs, equipment maintenance, or fines arising from  
28 the individual's employment where any of the acts described in this paragraph would have



1 violated the law if the individual had not been misclassified.”

2 64. California Labor Code section 226.8(b) further provides that “[i]f the Labor and  
3 Workforce Development Agency or a court issues a determination that a person or employer  
4 has engaged in any of the enumerated violations of subdivision (a), the person or employer  
5 shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more  
6 than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or  
7 fines permitted by law.”

8 65. Moreover, California Labor Code section 226.8(c) provides “[i]f the Labor and  
9 Workforce Development Agency or a court issues a determination that a person or employer  
10 has engaged in any of the enumerated violations of subdivision (a) and the person or employer  
11 has engaged in or is engaging in a pattern or practice of these violations, the person or  
12 employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and  
13 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any  
14 other penalties or fines permitted by law.”

15 66. California Labor Code section 226.8(e) also provides “[i]f the Labor and  
16 Workforce Development Agency or a court issues a determination that a person or employer  
17 has violated subdivision (a), the agency or court, in addition to any other remedy that has been  
18 ordered, shall order the person or employer to display prominently on its Internet Web site, in  
19 an area which is accessible to all employees and the general public, or, if the person or  
20 employer does not have an Internet Web site, to display prominently in an area that is  
21 accessible to all employees and the general public at each location where a violation of  
22 subdivision (a) occurred, a notice that sets forth all of the following: (1) That the Labor and  
23 Workforce Development Agency or a court, as applicable, has found that the person or  
24 employer has committed a serious violation of the law by engaging in the willful  
25 misclassification of employees. (2) That the person or employer has changed its business  
26 practices in order to avoid committing further violations of this section. (3) That any  
27 employee who believes that he or she is being misclassified as an independent contractor may  
28 contact the Labor and Workforce Development Agency. The notice shall include the mailing

1 address, e-mail address, and telephone number of the agency. (4) That the notice is being  
2 posted pursuant to a state order.

3 67. California Labor Code section 226.8(f) further provides "[i]n addition to  
4 including the information specified in subdivision (e), a person or employer also shall satisfy  
5 the following requirements in preparing the notice: (1) An officer shall sign the notice. (2) It  
6 shall post the notice for one year commencing with the date of the final decision and order."

7 68. During the relevant time period, Defendants knew that Plaintiff and other non-  
8 party Aggrieved Employees were employees under the law, yet still classified them as  
9 independent contractors. Defendants' conduct as described herein amounts to a pattern a  
10 willful pattern and practice, throughout all of the time period applicable in this complaint, of  
11 unlawful misclassification in violation of California Labor Code section 226.8.

12 69. Plaintiff and other non-party Aggrieved Employees are therefore entitled to  
13 recover civil penalties pursuant to Labor Code sections 226.8 and/or 2699(f)-(g).

14 **COLLECTING OR RECEIVING GRATUITY PAID TO EMPLOYEES BY PATRONS**  
15 **VIOLATION OF LABOR CODE SECTION 351**

16 70. At all times relevant herein, California Labor Code section 351 provides that no  
17 employer shall collect, take, or receive any gratuity that is paid, given to, or left for an  
18 employee by a patron. Further, California Labor Code section 351 states that no employer  
19 shall deduct any amount from wages due to an employee on account of a gratuity, nor shall an  
20 employer require an employee to credit the amount, or any part thereof, of a gratuity against  
21 and as a part of the wages due the employee from the employer. Gratuity is deemed to be the  
22 sole property of the employee or employees to whom they are paid, given, or left for.

23 71. During the relevant period, Defendants required Plaintiff and other non-party  
24 Aggrieved Employees to turn over gratuities paid to them by deducting gratuities from wages  
25 due to Plaintiff and other non-party Aggrieved Employees. Alternatively, Defendants  
26 effectively required Plaintiff and other non-party Aggrieved Employees to credit the amount  
27 of gratuity against and as part of the wages due to them from Defendants.

28 72. Defendants collected these gratuities paid to Plaintiff and other non-party

1 Aggrieved Employees and withheld them from Plaintiff's and other non-party Aggrieved  
 2 Employees' wages by reducing the \$25 per delivery "service fee" paid to aggrieved  
 3 employees to \$5 per delivery, when the gratuity given by a customer was \$25 or more.  
 4 Defendants created such a scheme by re-attributing part of the delivery fee, which were wages  
 5 to be paid to Plaintiff and other non-party Aggrieved Employees, to be covered by the  
 6 gratuities from customers, thus reducing Plaintiff's and other non-party Aggrieved  
 7 Employees' wages on account of gratuities and/or crediting gratuities earned against the  
 8 wages Defendants owed Plaintiff and other non-party Aggrieved Employees.

9 73. For example, if Defendants assigned Plaintiff a catering order and the customer  
 10 provided a \$25 tip, instead of paying Plaintiff \$50 (\$25 service fee and \$25 tip), Plaintiff  
 11 would only receive \$30 under this scheme (a reduced \$5 flat service fee for delivery and \$25  
 12 in tips). However, in this scenario, Plaintiff should have received \$50 for the same delivery  
 13 (full \$25 tip and the full \$25 service charge). Under this payment scheme, if no tip is  
 14 provided, a "Dasher" will receive the total \$25 service fee; and if a \$75 tip is given, then the  
 15 Dasher will only receive \$80 (instead of \$100), which includes the reduced \$5 delivery service  
 16 fee. Defendants have deducted the gratuity from Plaintiff's and other non-party Aggrieved  
 17 Employees' wages and/or required them to credit the amount of the gratuity against the wages  
 18 Defendants owed to Plaintiff and other non-party Aggrieved Employees.

19 74. On information and belief, Defendants implemented this new payment policy  
 20 unilaterally when it realized how much Plaintiff and other non-party Aggrieved Employees  
 21 were making per job previously, depending on gratuities paid.

22 75. Upon information and belief, the gratuities listed in paychecks did not include  
 23 all gratuities paid to Plaintiff and other non-party Aggrieved Employees, because a portion of  
 24 the gratuities were retained by Defendants. As a result, Defendants violated California Labor  
 25 Code section 351.

26 76. Plaintiff and other non-party Aggrieved Employees are therefore entitled to  
 27 recover civil penalties pursuant to Labor Code sections 2699(f) and (g).  
 28

#### FAILURE TO PAY OVERTIME

**VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

77. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

78. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

79. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

80. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

81. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

82. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time

1 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums  
2 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)  
3 hours in a day, and/or in excess of forty (40) hours in a week, because Defendants wrongfully  
4 misclassified Plaintiff and other non-party Aggrieved Employees as independent contractors  
5 and treated them as "exempt" from overtime and, on that basis, did not record and compensate  
6 them for overtime hours worked.

7 83. Defendants' misclassification of Plaintiff and other non-party Aggrieved  
8 Employees as independent contractors and "exempt" status from overtime and other related  
9 wage-and-hour protections, including meal and rest periods, is, and was, wilful, intentional,  
10 unjustified, and unlawful. Plaintiff and other non-party Aggrieved Employees worked forty  
11 (40) hours or more per week and more than ten (10) hours per day, of which Defendants were  
12 fully aware. However, because Defendants misclassified Plaintiff and other non-party  
13 Aggrieved Employees as independent contractors, Defendants did not record their actual hours  
14 worked and did not pay any hourly rate to them. Thus, Defendants willfully failed to pay all  
15 overtime wages for hours worked in excess of eight (8) hours in one day, twelve (12) hours in  
16 one day, or forty (40) hours in one week. Because Plaintiff and other non-party Aggrieved  
17 Employees worked shifts exceeding eight (8) hours per day or forty (40) hours a week or  
18 more, this time qualified for overtime pay, but Defendants failed to pay Plaintiff and other  
19 non-party Aggrieved Employees for this time worked.

20 84. Defendants also failed to provide Plaintiff and other non-party Aggrieved  
21 Employees with meal periods and instead required that they perform work during unpaid meal  
22 periods. Because Plaintiff and other non-party Aggrieved Employees typically worked shifts  
23 of eight (8) hours a day or more or forty (40) hours a week or more, most, if not all unpaid  
24 time worked during meal periods qualified for overtime premium pay. Therefore, Plaintiff  
25 and other non-party Aggrieved Employees were not paid overtime wages for all of the  
26 overtime hours they worked. Defendants' failure to pay Plaintiff and other non-party  
27 Aggrieved Employees the balance of overtime compensation, as required by California law,  
28 violates the provisions of California Labor Code sections 510 and 1198.

85. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. For example, on information and belief, Plaintiff and other non-party Aggrieved Employees were entitled to bonus payments of \$4.50 per delivery for working during certain hours. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and other non-party Aggrieved Employees worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

86. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the balance of overtime compensation and failure to include all applicable remuneration in calculating the regular rate of pay for overtime pay, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 1194 and/or 2699(a), (f)-(g).

#### **FAILURE TO PAY MINIMUM WAGES**

#### **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1, AND 1198**

87. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(G) (defining "Hours Worked").

88. As stated, due to Defendants' uniform and company-wide, willful

1 misclassification of Dashers, Plaintiff and other non-party Aggrieved Employees were not  
2 paid minimum wages for all hours worked. As stated, Plaintiff and other non-party Aggrieved  
3 Employees were misclassified as independent contractors and thus not paid any hourly wage.  
4 Plaintiff and other non-party Aggrieved Employees were not paid even minimum wage for all  
5 of the hours they worked as a result of being paid on a fixed rate basis (a per delivery "service  
6 charge"). Plaintiff and other non-party Aggrieved Employees were not paid the minimum  
7 wage for all hours that they worked, and the wages paid to them were not sufficient to  
8 compensate them for all hours they worked at a minimum wage rate on a cumulative basis, in  
9 violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1.

10 89. Additionally, Defendants have no policies in place for the provision of meal  
11 periods and did not authorize and permit Plaintiff and other non-party Aggrieved Employees  
12 to take uninterrupted, duty-free meal periods. To the extent Defendants deducted time for  
13 meal periods which Plaintiff and other non-party Aggrieved Employees did not receive, they  
14 were not paid for all hours worked.

15 90. During the relevant time period, Defendants also maintained and implemented  
16 a company-wide policy of requiring all newly-hired employees to undergo a mandatory drug  
17 test and/or physical examination as a condition of employment. At all times, upon  
18 information and belief, Defendants were in control of scheduling the date and time for the test  
19 and examination, selecting the provider/facility where the test and examination was to take  
20 place, and determining the scope of the test and examination. Defendants gave other non-  
21 party Aggrieved Employees strict instructions to obtain a drug test and/or physical  
22 examination as a condition of their employment and other non-party Aggrieved Employees  
23 underwent the testing and/or examination for the sole benefit of Defendants. However,  
24 Defendants did not compensate other non-party Aggrieved Employees for the time they spent  
25 traveling to and from the medical facility or for the time they spent undergoing the drug test or  
26 physical examination.

27 91. Thus, Defendants did not pay at least minimum wages for off-the-clock hours  
28 that qualified for overtime premium payment. Also, to the extent that these hours worked did

not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked, in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

92. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to sections 1197.1 and/or 2699(a), (f), and (g).

#### **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

##### **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198**

93. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and non-party Aggrieved Employees' employment by Defendants.

94. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

95. At all relevant times herein set forth, California Labor Code section 226.7 and 512(a) provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

96. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by



1 mutual consent of the employer and the employee only if the first meal period was not waived.

2 97. During the relevant time period, as stated, Defendants willfully required  
3 Plaintiff and other non-party Aggrieved Employees to work during meal periods and failed to  
4 compensate them for work performed during meal periods. Defendants systematically (and  
5 improperly) classified Plaintiff and other non-party Aggrieved Employees as independent  
6 contractors and, on that basis, never informed them they could take meal periods nor took any  
7 measures to relieve them of all of their duties such that Plaintiff and other non-party  
8 Aggrieved Employees could take compliant meal periods. Instead, Defendants scheduled  
9 deliveries and required Plaintiff and other non-party Aggrieved Employees to work  
10 throughout their entire shifts (over five (5) hours and/or over ten (10) hours), which prevented  
11 Plaintiff and other non-party Aggrieved Employees from taking compliant meal periods.

12 98. Due to the systemic misclassification, Plaintiff and other non-party Aggrieved  
13 Employees had to work through some or all of their meal periods, have their meal periods  
14 interrupted to return to work, and/or wait extended periods of time before taking meal periods.  
15 Further, Defendants knew, or should have known, that because it had misclassified Plaintiff  
16 and other non-party Aggrieved Employees as "exempt" and for the reasons stated above, it did  
17 not pay Plaintiff and other non-party Aggrieved Employees meal period premium wages when  
18 meal periods were missed, interrupted, or taken late.

19 99. Moreover, Defendants have engaged in a systematic, company-wide policy of  
20 not paying meal period premiums when compliant meal periods are not provided.  
21 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved  
22 Employees one (1) additional hour of premium pay for missed meal periods, Defendants did  
23 not pay Plaintiff and other non-party Aggrieved Employees at the correct rate of pay for  
24 premium wages because Defendants systematically failed to include all forms of  
25 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of  
26 remuneration, in the regular rate of pay. As a result, to the extent Defendants paid Plaintiff  
27 and other non-party Aggrieved Employees premium pay for missed meal periods, it did so at a  
28 lower rate than required by law.

1           100. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved  
2 Employees compliant meal periods and failed to pay the full meal period premiums due.

3           101. Defendants' conduct violates the applicable IWC Wage Order, and California  
4 Labor Code sections 226.7, 512(a), and 1198. Plaintiff and other non-party Aggrieved  
5 Employees are entitled to recover civil penalties pursuant to sections 2699(a), (f), and (g).

6                           **FAILURE TO PROVIDE REST PERIODS**

7                           **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198**

8           102. At all relevant times herein set forth, the applicable IWC Wage Order and  
9 California Labor Code sections 226.7 and 1198 were applicable to Plaintiff and other non-  
10 party Aggrieved Employees' employment by Defendants.

11           103. At all relevant times, the applicable IWC Wage Order provides that "[e]very  
12 employer shall authorize and permit all employees to take rest periods, which insofar as  
13 practicable shall be in the middle of each work period" and that the "rest period time shall be  
14 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
15 hours or major fraction thereof" unless the total daily work time is less than three and one-half  
16 (3½) hours.

17           104. At all relevant times, California Labor Code section 226.7 provides that no  
18 employer shall require an employee to work during any rest period mandated by an applicable  
19 order of the California IWC. To comply with its obligation to provide rest periods under  
20 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must  
21 "relinquish any control over how employees spend their break time, and relieve their  
22 employees of all duties — including the obligation that an employee remain on call. A rest  
23 period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2  
24 Cal. 5th 257, 269-270 (2016).

25           105. Pursuant to the applicable IWC Wage Order and California Labor Code section  
26 226.7(b), Plaintiff and other non-party Aggrieved Employees were entitled to recover from  
27 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a  
28 required rest period was not provided.

1           106. During the relevant time period, Defendants regularly failed to authorize and  
 2 permit Plaintiff and other non-party Aggrieved Employees to take ten (10) minute rest period  
 3 per each four (4) hour period worked or major fraction thereof. As with meal periods,  
 4 Defendants' company-wide practices, including systemic misclassification, prevented Plaintiff  
 5 and other non-party Aggrieved Employees from being relieved of all duty in order to take  
 6 compliant rest periods. Defendants failed to schedule rest periods and therefore had no policy  
 7 for permitting Plaintiff and other non-party Aggrieved Employees to take rest periods. As a  
 8 result, Plaintiff and other non-party Aggrieved Employees would work shifts in excess of 3.5  
 9 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all ten (10) minute  
 10 rest periods to which they were entitled.

11           107. Defendants have also engaged in a company-wide practice and/or policy to not  
 12 pay rest period premiums owed when compliant rest periods are not provided. Alternatively,  
 13 to the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one  
 14 (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff  
 15 and other non-party Aggrieved Employees at the correct rate of pay for premium wages  
 16 because Defendants failed to include all forms of compensation, such as incentive pay,  
 17 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a  
 18 result, to the extent Defendants paid other non-party Aggrieved Employees premium pay for  
 19 missed rest periods, it did so at a lower rate than required by law.

20           108. Based on the foregoing, Plaintiff and other non-party Aggrieved Employees  
 21 were denied rest periods and Defendants failed to pay the full rest period premiums due.

22           109. Defendants' conduct violates the applicable IWC Wage Order and California  
 23 Labor Code sections 226.7 and 1198. Plaintiff and other non-party Aggrieved Employees are  
 24 therefore entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

25           **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**  
 26           **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

27           110. At all relevant times herein, California Labor Code section 226(a) provides that  
 28 every employer shall furnish each of his or her employees an accurate and complete itemized

1 wage statement in writing, including, but not limited to, the name and address of the legal  
2 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all  
3 applicable rates of pay.

4 111. During the relevant time period, Defendants have, on a company-wide basis,  
5 systematically failed to issue wage statements to Plaintiff and other non-party Aggrieved  
6 Employees that list gross wages earned in violation of section 226(a)(1), total hours worked by  
7 employees in violation of section 226(a)(2); the number of piece-rate units earned and any  
8 applicable piece rate in violation of section 226(a)(3); all deductions in violation of section  
9 226(a)(4); net wages earned in violation of section 226(a)(5); the inclusive dates of the period  
10 for which aggrieved employees were paid in violation of section 226(a)(6); the name of the  
11 employee and only the last four digits of his or her social security number or an employee  
12 identification number other than a social security number in violation of section 226(a)(7); the  
13 name and address of the legal entity that is the employer in violation of section 226(a)(8); and all  
14 applicable hourly rates in effect during the pay period and the corresponding number of hours  
15 worked at each hourly rate in violation of section 226(a)(9). In addition, Defendants failed to  
16 provide Plaintiff and other non-party Aggrieved Employees the option to elect to receive hard  
17 copies of their wage statements at any time and/or failed to provide them with the ability to  
18 easily access the information and convert the electronic wage statements into hard copies at no  
19 expense to them.

20 112. California Labor Code section 1174(d) provides that “[e]very person employing  
21 labor in this state shall ... [k]eep a record showing the names and addresses of all employees  
22 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
23 plants or establishments at which employees are employed, payroll records showing the hours  
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
25 applicable piece rate paid to, employees employed at the respective plants or  
26 establishments...” During the relevant time period, and in violation of Labor Code section  
27 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and  
28 other non-party Aggrieved Employees showing the daily hours they worked and the wages

1 paid thereto as a result of misclassifying them as independent contractors.

2 113. California Labor Code section 1198 provides that the maximum hours of work  
3 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as  
4 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he  
5 employment of any employees for longer hours than those fixed by the order or under  
6 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC  
7 Wage Order, employers are required to keep accurate time records showing when the  
8 employee begins and ends each work period and meal period. During the relevant time  
9 period, Defendants failed, on a company-wide basis, to keep accurate records of meal period  
10 start and stop times for Plaintiff and other non-party Aggrieved Employees as a result of  
11 misclassifying them, in violation of section 1198.

12 114. Because Defendants' violations of 226(a) and 1174(d) were committed against  
13 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved  
14 Employees are entitled to recover civil penalties pursuant to sections 226(e), 226.3, 1174.5,  
15 and/or 2699(a), (f), and (g).

16 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

17 **VIOLATION OF LABOR CODE SECTION 204**

18 115. At all relevant times herein set forth, California Labor Code section 204  
19 requires that all wages earned by any person in any employment between the 1st and the 15th  
20 days, inclusive, of any calendar month, other than those wages due upon termination of an  
21 employee, are due and payable between the 16th and the 26th day of the month during which  
22 the labor was performed. Labor Code section 204 further provides that all wages earned by  
23 any person in any employment between the 16th and the last day, inclusive, of any calendar  
24 month, other than those wages due upon termination of an employee, are due and payable  
25 between the 1st and the 10th day of the following month.

26 116. At all relevant times herein, California Labor Code section 204 also requires  
27 that all wages earned for labor in excess of the normal work period shall be paid no later than  
28 the payday for the next regular payroll period. Alternatively, at all relevant times herein,

1 Labor Code section 204 provides that the requirements of this section are deemed satisfied by  
 2 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not  
 3 more than seven (7) calendar days following the close of the payroll period.

4 117. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
 5 other non-party Aggrieved Employees all wages due to them within any time period specified  
 6 by California Labor Code section 204 including, but not limited to, overtime wages, minimum  
 7 wages, and meal and rest period premium wages.

8 118. Plaintiff and other non-party Aggrieved Employees are therefore entitled to  
 9 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

#### 10 **FAILURE TO PAY WAGES UPON TERMINATION**

#### 11 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

12 119. At all times relevant herein set forth, Labor Code sections 201 and 202 provide  
 13 that if an employer discharges an employee, the wages earned and unpaid at the time of  
 14 discharge are due and payable immediately, and that if an employee voluntarily leaves his or  
 15 her employment, his or her wages shall become due and payable not later than seventy-two  
 16 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of  
 17 his or her intention to quit, in which case the employee is entitled to his or her wages at the  
 18 time of quitting.

19 120. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
 20 other non-party Aggrieved Employees who are no longer employed by Defendants the earned  
 21 and unpaid wages set forth above, including but not limited to, overtime wages, minimum  
 22 wages, and meal and rest period premium wages, either at the time of discharge, or within  
 23 seventy-two (72) hours of their leaving Defendants' employ.

24 121. Defendants' failure to pay Plaintiff and those Aggrieved Employees who are no  
 25 longer employed by Defendants their wages earned and unpaid at the time of discharge, or  
 26 within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code  
 27 sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore  
 28 entitled to recover civil penalties pursuant to Labor Code section 256 and/or 2699(f)-(g).

**UNLAWFUL REQUIREMENT FOR RELEASE OF CLAIMS AS A CONDITION TO  
RECEIVING WAGES**

**VIOLATION OF LABOR CODE SECTION 206.5**

122. California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

123. During the relevant time period, Defendants effectively required Plaintiff and other non-party Aggrieved Employees to release their claims for meal and rest break violations as a condition to receiving their pay checks. For example, on information and belief, Plaintiff was presented with paperwork to sign that required her to attest that she was an independent contractor (not an employee), if she wanted to continue working for Defendants.

124. Defendants' policy and practice of requiring Plaintiff and other non-party Aggrieved Employees to release their claims for meal and rest break violations as a condition to receiving their wages are in violation of California Labor Code section 206.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

**COLLECTING OR RECEIVING WAGES ALREADY PAID**

**VIOLATION OF LABOR CODE SECTION 221 AND 224**

125. At all times relevant herein, California Labor Code section 221 provides that it is unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

126. During the relevant time period, Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and other non-party Aggrieved Employees in violation of

1 California Labor Code section 221. As described above, Defendants had a company-wide  
 2 policy of withholding wages paid to Plaintiff and other non-party Aggrieved Employees in the  
 3 form of gratuities. Defendants unlawfully deducted gratuities from Plaintiff's and other non-  
 4 party Aggrieved Employees' wages by reducing the \$25 service fee paid by Defendants to \$5  
 5 by re-attributing part of that fee to be covered by the gratuities from customers, when the  
 6 gratuity given was \$25 or more. Furthermore, these deductions were not expressly authorized  
 7 in writing by Plaintiff and other non-party Aggrieved Employees. Thus, Defendants' policy  
 8 of deducting earnings and withholding wages from Plaintiff and other non-party Aggrieved  
 9 Employees' paychecks without their written consent constitutes an unlawful deduction of  
 10 wages in violation of California Labor Code sections 221 and 224.

11 127. Defendants' conduct as alleged herein violates California Labor Code sections  
 12 221 and 224. Plaintiff and other non-party Aggrieved Employees are therefore entitled to  
 13 recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

14 **FAILURE TO COMPENSATE FOR PHYSICAL EXAMINATION AND**  
 15 **MANDATORY DRUG TESTING**  
 16 **VIOLATION OF LABOR CODE SECTION 222.5**

17 128. At all times herein set forth, California Labor Code section 222.5 requires  
 18 employers to pay for the costs a current or prospective employee incurs for obtaining any  
 19 medical or physical examination and drug testing taken as a condition of employment.

20 129. During the relevant time period, Defendants required that other non-party  
 21 Aggrieved Employees undergo a physical examination and/or mandatory drug test, but  
 22 required them to do so at their own expense. As stated, upon information and belief,  
 23 Defendants had a company-wide policy requiring that all newly-hired employees, including  
 24 other non-party Aggrieved Employees, travel to a medical clinic on their own time and using  
 25 their own personal vehicles to undergo a mandatory physical examination and/or drug test. At  
 26 all times, upon information and belief, Defendants were in control of scheduling the date and  
 27 time for the examination and testing, selecting the provider/facility where the exam and/or  
 28 testing was to take place, and determining the scope of the exam. Other non-party Aggrieved



1 Employees were instructed by Defendants to travel to a clinic and obtain a physical  
 2 examination and/or drug test. Other non-party Aggrieved Employees followed Defendants'  
 3 instructions, traveled to a facility selected by Defendants, and underwent the physical  
 4 examination and/or drug test. Other non-party Aggrieved Employees spent time traveling to  
 5 and from the clinic and undergoing the mandatory physical examination and/or drug test.

6 130. However, Defendants did not compensate other non-party Aggrieved  
 7 Employees for the time they spent traveling to and from their drug test and/or physical  
 8 examination, or for the time they spent undergoing the testing, or reimburse them for the  
 9 travel expenses they incurred getting to and from the medical clinic.

10 131. Defendants' policy and/or practice of not paying for all costs other non-party  
 11 Aggrieved Employees incurred obtaining mandatory drug tests is in violation of California  
 12 Labor Code section 222.5. Other non-party Aggrieved Employees are therefore entitled to  
 13 recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section  
 14 2699(a), (f)-(g).

### 15 SECRETLY PAYING A LOWER WAGE

#### 16 VIOLATION OF LABOR CODE SECTION 223

17 132. At all relevant times herein set forth, California Labor Code section 223  
 18 provides that it shall be unlawful for an employer to secretly pay a lower wage than that  
 19 designated by statute or by contract while purporting to pay legal wages.

20 133. During the relevant time period, Defendants willfully and systematically  
 21 misclassified Plaintiff and other non-party Aggrieved Employees as independent contractors,  
 22 and, on that basis, denied them the protections provided for by California wage-and-hour law.  
 23 Defendants' intentional misclassification of Plaintiff and other non-party Aggrieved  
 24 Employees resulted in the payment of less than statutorily-required wages to Plaintiff and  
 25 other non-party Aggrieved Employees. In misclassifying Plaintiff and other non-party  
 26 Aggrieved Employees, Defendants acted with the intent to deprive Plaintiff and other non-  
 27 party Aggrieved Employees of statutory wages, including, but not limited to, overtime wages,  
 28 to which they were entitled to under California law. Thus, Defendants paid Plaintiff and other

1 non-party Aggrieved Employees lower wages than those they were entitled to while  
2 purporting that Plaintiff and other non-party Aggrieved Employees were properly classified.

3 134. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees  
4 the correct designated wage, while purporting to pay legal wages, is a violation of California  
5 Labor Code section 223. Plaintiff and other non-party Aggrieved Employees are therefore  
6 entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE PAID SICK LEAVE BENEFITS AND WRITTEN NOTICE**  
8 **OF PAID SICK LEAVE OR PAID TIME OFF AVAILABLE**  
9 **VIOLATION OF LABOR CODE SECTION 246**

10 135. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,  
11 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more  
12 days from the commencement of employment with paid sick days, to be accrued at least one  
13 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),  
14 employers must provide no less than 24 hours or three (3) days of paid sick leave (or  
15 equivalent paid leave or paid time off) in each year of the employee's employment. Further,  
16 section 246(h) provides that an employer must provide an employee with written notice that  
17 sets forth the amount of paid sick leave available, or paid time off that an employer provides  
18 in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate  
19 written statement provided on the designated pay date with the employee's wages. The  
20 penalties described in this article for a violation of this subdivision shall be in lieu of the  
21 penalties for a violation of Section 246.

22 136. During the relevant time period, on information and belief, Defendants  
23 systematically failed to provide Plaintiff and other non-party Aggrieved Employees paid sick  
24 leave of no less than 24 hours or three (3) days because Defendants misclassified Plaintiff and  
25 other non-party Aggrieved Employees. Specifically, Plaintiff and other non-party Aggrieved  
26 Employees worked in excess of 30 days for Defendants in California and were therefore  
27 eligible to receive paid sick leave. However, Defendants failed to provide Plaintiff and other  
28 non-party Aggrieved Employees with any sick leave benefits, in violation of section

1 246(b)(4).

2 137. Additionally, Defendants failed to provide Plaintiff and other non-party  
3 Aggrieved Employees written notice on wage statements and/or other separate written  
4 statements that listed the requisite information set forth in Labor Code section 246(i).

5 138. Defendants' ongoing and systematic failure to provide sick leave benefits and  
6 written notice of paid sick leave available, or paid time off that an employer provided in lieu  
7 of sick leave, is in violation of Labor Code section 246. Plaintiff and other non-party  
8 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code  
9 sections 248.5 and/or 2699(f)-(g).

10 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

11 **VIOLATION OF LABOR CODE SECTIONS 551 AND 552**

12 139. At all relevant times herein, California Labor Code section 551 provides that  
13 every person employed in any occupation of labor is entitled to one day's rest in seven.  
14 Additionally, California Labor Code section 552 prohibits employers from requiring  
15 employees to work more than six consecutive days without a day of rest.

16 140. At all times relevant herein set forth, California Labor Code section 556  
17 exempts an employer from the day-of-rest requirement when the total hours worked by an  
18 employee do not exceed 30 hours in any week or six hours in any one day thereof.

19 141. During the relevant time period, Defendants routinely scheduled Plaintiff and  
20 other non-party Aggrieved Employees to work eight (8) or more hours per day and seven (7)  
21 consecutive days in a workweek. Because Plaintiff and other non-party Aggrieved Employees  
22 worked over 30 hours per week and over six (6) hours per day in a workweek, they were not  
23 exempt from the day-of-rest requirement. To the extent that Plaintiff and other non-party  
24 Aggrieved Employees signed purported waivers of their right to a day's rest in seven, such  
25 waivers are invalid.

26 142. Thus, during the relevant time period, and in violation of Labor Code sections  
27 551 and 552, Defendants willfully caused Plaintiff and other Aggrieved Employees to work  
28 more than six days in seven. Plaintiff and other non-party Aggrieved Employees are therefore

entitled to recover civil penalties pursuant to Labor Code section 2699(f)-(g).

**FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

**VIOLATION OF LABOR CODE SECTION 2802**

143. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

144. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and other non-party Aggrieved Employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but Defendants failed to reimburse them for the costs of their cellular phone plans and/or data plans. For example, Plaintiff was required to use a personal cellular phone to carry out her work, such as receiving orders from Defendants and communicating with Defendants regarding status updates on delivery orders. Plaintiff estimates that 100% of her cellular phone usage was work-related. Although Defendants required Plaintiff to regularly utilize her personal cellular phone to carry out work-related responsibilities, Defendants failed to reimburse her for this cost.

145. Moreover, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to utilize their own personal vehicles to carry out company business, but Defendants failed to reimburse them for all costs of travel, including mileage. For example, as part of her duties, Plaintiff was required to pick up and deliver catering and online orders. Additionally, Plaintiff and other non-party Aggrieved Employees were required

1 to attend orientation and training sessions, and drive around making trial pickups and  
2 deliveries in order to get acclimated to Defendants' system. Although Defendants required  
3 that Plaintiff use her own vehicle and complete these tasks and/or attend these training  
4 sessions as part of her job duties, Defendants never reimbursed her for all of her travel  
5 expenses.

6 146. Defendants engaged in a systematic, company-wide policy to not reimburse its  
7 employees for necessary business expenses. Defendants could have provided Plaintiff and  
8 other non-party Aggrieved Employees with the actual tools for use on the job, including  
9 company phones, and company vehicles to be used for fulfilling work-related tasks, or  
10 reimbursed employees for their cellular phone usage, travel, and mileage, but instead,  
11 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved  
12 Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum  
13 wage.

14 147. Defendants' company-wide policy and/or practice of passing on its operating  
15 costs on to Plaintiff and non-party Aggrieved Employees by requiring that they use their  
16 personal cellular phones and vehicles for business and failing to reimburse all travel expenses,  
17 is in violation of California Labor Code section 2802. Defendants have intentionally and  
18 willfully failed to fully reimburse Plaintiff and other non-party Aggrieved Employees for  
19 necessary business-related expenses and costs.

20 148. Plaintiff and other non-party Aggrieved Employees are therefore entitled to  
21 recover civil penalties pursuant to Labor Code section 2699(f)-(g).

22 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**  
23 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

24 149. California's Wage Theft Prevention Act was enacted to ensure that employers  
25 provide employees with basic information material to their employment relationship at the  
26 time of hiring, and to ensure that employees are given written and timely notice of any  
27 changes to basic information material to their employment. Codified at California Labor  
28 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an

1 employer must provide written notice to employees containing basic and material payroll  
 2 information, including, among other things, the rate(s) of pay and basis thereof, whether paid  
 3 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for  
 4 overtime, the regular payday designated by the employer, and any allowances claims as part  
 5 of the minimum wage, including meal or lodging allowances. Labor Code section  
 6 2810.5(a)(1)(A)-(C).

7 150. During the relevant time period, Defendants failed to provide written notice to  
 8 Plaintiff and other non-party Aggrieved Employees that lists the requisite information set forth  
 9 in Labor Code section 2810.5(a)(1)(A)-(C), on a company-wide basis, because Defendants  
 10 misclassified Plaintiff and other non-party Aggrieved Employees as independent contractors.

11 151. Defendants' failure to provide Plaintiff and other non-party Aggrieved  
 12 Employees with written notice of basic information regarding their employment with  
 13 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party  
 14 Aggrieved Employees are therefore entitled to recover penalties, attorney's fees, costs, and  
 15 interest thereon, pursuant to Labor Code section 2699(f)-(g).

#### 16 REQUEST FOR JURY TRIAL

17 Plaintiff requests a trial by jury.

#### 18 PRAYER FOR RELIEF

19 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and  
 20 judgment against Defendants, jointly and severally, as follows:

21 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars  
 22 (\$25,000).

#### 23 As to the First Cause of Action

24 2. That the Court declare, adjudge and decree that Defendants violated the  
 25 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved  
 26 Employees: 226.8 (by intentionally and knowingly misclassifying Plaintiff and other non-  
 27 party Aggrieved Employees as independent contractors); 351 (by collecting and/or  
 28 withholding gratuities); 510 and 1198 (by failing to pay all overtime compensation); 1182.12,

1 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours  
 2 worked); 226.7, 512 and 1198 (by failing to provide all meal and rest periods); 226(a),  
 3 1174(d) and 1198 (by failing to provide accurate wage statements and maintain accurate  
 4 payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon  
 5 termination); 204 (by failing timely to pay all earned wages during employment); 206.5 (by  
 6 requiring release of claims as a condition to receiving paychecks); 221 and 224 (by collecting  
 7 and/or receiving wages already paid); 222.5 (by failing to pay the costs of mandatory drug  
 8 testing and/or physical examinations); 223 (by secretly paying wages lower than required by  
 9 statute); 246 (by failing to provide sick leave benefits and written notice of paid sick leave or  
 10 paid time off available); 551 and 552 (failing to provide one day's rest in seven); 2802 (by  
 11 failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of  
 12 material terms of employment);

13 3. For civil penalties pursuant to California Labor Code sections 210, 226.3,  
 14 248.5, 256, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor  
 15 Code sections 201, 202, 203, 204, 206.5, 221, 222.5, 223, 224, 226(a), 226.7, 226.8, 246, 351,  
 16 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

17 4. For attorneys' fees and costs pursuant to California Labor Code section  
 18 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California  
 19 Labor Code sections 201, 202, 203, 204, 206.5, 221, 222.5, 223, 224, 226(a), 226.7, 226.8,  
 20 246, 351, 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and  
 21 2810.5;

22 5. For pre-judgment and post-judgment interest as provided by law; and

23 //

24 //

25 //

26 //

27 //

28 //

1           6.     For such other and further relief as the Court may deem equitable and  
2 appropriate.

3  
4 Dated: July 26, 2018

Respectfully submitted,

Capstone Law APC

5  
6  
7 By: 

8 Arnab Banerjee  
9 Brandon K. Brouillette  
10 Ruhandy Glezakos

11 Attorneys for Plaintiff Dana Lowe  
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07/27/2018



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <span style="float: right;">380a</span> Arnab Banerjee (SBN 252618); Brandon Brouillette (SBN 273156) Capstone Law APC 1875 Century Park East, Suite 1000 Los Angeles, CA 90067 TELEPHONE NO.: (310) 556-4811 FAX NO.: (310) 943-0396 ATTORNEY FOR (Name): Plaintiff Dana Lowe		FOR COURT USE ONLY  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">FILED</div> Superior Court of California County of Los Angeles <div style="text-align: center; font-weight: bold; font-size: 1.2em;">JUL 26 2018</div> Sherri R. Carter, Executive Officer/Clerk By <u>Shamya Golden</u> Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street, Los Angeles MAILING ADDRESS: 111 North Hill Street, Los Angeles, CA 90012 CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse			
CASE NAME: <b>DANA LOWE v. DOORDASH, INC.</b>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">BC 715 425</div>	
		JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |   |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 26, 2018  
 Arnab Banerjee

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

382a

SHORT TITLE: DANA LOWE v. DOORDASH, INC.

CASE NUMBER BC 7 1 5 4 2 5

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

**Item I.** Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 15-20 HOURS/✓DAYS

**Item II.** Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.3.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |  |  |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in central (other county, or no bodily injury/property damage).  | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.   | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                       | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                     | 10. Location of Labor Commissioner Office                  |
|  | 11. Mandatory Filing Location (Hub Case)                   |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4.

SHORT TITLE:

DANA LOWE v. DOORDASH, INC.

CASE NUMBER

Non-Personal Injury/Property  
Damage/Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	2., 5., 6, 11 2., 5, 11 5, 6, 11
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels_____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE: DANA LOWE v. DOORDASH, INC.

CASE NUMBER

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above		
<b>Judicial Review</b>	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.		
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.		
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.		
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.		
	<b>Provisionally Complex Litigation</b>				
	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.		
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.		
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.		
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.		
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.		
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.		
<b>Enforcement of Judgment</b>	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.		
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.		
	<b>Miscellaneous Civil Complaints</b>	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.	
		Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.	
		<b>Miscellaneous Civil Petitions</b>	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: <b>DANA LOWE v. DOORDASH, INC.</b>	CASE NUMBER
--	-------------

**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., **Step 3** on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON:</b> Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input checked="" type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS: 1505 E. 111th Street Los Angeles, CA 90059
CITY: Los Angeles	STATE: CA	ZIP CODE: 90059	

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central          District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.3, subd.(a)].

Dated: July 26, 2018

  
 (SIGNATURE OF ATTORNEY FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/15).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

07/27/2018

# EXHIBIT X



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Dec-07-2018 2:38 pm

Case Number: CGC-18-567869

Filing Date: Dec-07-2018 2:37

Filed by: WILLIAM TRUPEK

Image: 06602720

ORDER

CYNTHIA MARCIANO VS. DOORDASH INC.

001C06602720

**Instructions:**

Please place this sheet on top of the document to be scanned.



Prepared by  
the Court.

388a

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

**FILED**  
San Francisco County Superior Court

DEC 7 2018

CLERK OF THE COURT

By: 

Deputy Clerk

CYNTHIA MARCIANO, et al.,

Case No. CGC-18-567869

Plaintiffs,

vs.

**ORDER GRANTING MOTION TO STAY  
ACTION**

DOORDASH, INC.,

Defendant.

---

A welter of litigation has been filed to decide the same central issue: whether people who have worked with DoorDash, Inc. to deliver food from restaurants to consumers are independent contractors or employees. This particular action was filed under “the Labor Code Private Attorneys General Act of 2004” (Labor Code §2698 et seq.: PAGA).

DoorDash moves to stay these court proceedings and to compel arbitration. I GRANT the motion to stay for each of three reasons:

*First*, other plaintiffs (represented by the same counsel) are presently arbitrating the same independent contractor v. employee issue with DoorDash, with hearings set for early 2019. Thus, CCP §1281.4 provides that this action “shall be stayed” pending the arbitrations. (See also *Marcus v. Sup. Ct.* (1977) 75 Cal.App.3d 204, 209.)


*Second*, a PAGA action – *Marko v. DoorDash, Inc.* – that makes the same allegations seeking the same penalties for the same group of DoorDash delivery providers was first-filed in Los Angeles County Superior Court. Thus, this San Francisco PAGA action should be stayed in

favor of the Los Angeles PAGA action. (See, e.g., *Alakozai v. Chase Inv. Servs. Corp.* (C.D.Cal. 3/1/12 2012 WL 748548 at 6 (“allowing the two matters to proceed simultaneously would risk inconsistent judgments and defeat efficiency”).

*Third*, as recognized by Code of Civil Procedure §128, courts have inherent powers to control the proceedings before them. Thus, I could, and would, stay this action *sua sponte* on grounds of efficiency and consistency even if not required to do so by statute.

Questions of arbitrability are DEFERRED until such time as they need to be decided, if ever.

Dated: December 7, 2018

  
\_\_\_\_\_  
Richard B. Ulmer Jr.  
Judge of the Superior Court

**SUPERIOR COURT OF CALIFORNIA**  
**County of San Francisco**

CYNTHIA MARCIANO, et al.,

Plaintiffs,

v.

DOORDASH, INC.,

Defendants.

Case No. CGC-18-567869

**CERTIFICATE OF MAILING**  
(CCP 1013a (4) )

I, William Trupek, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On December 7, 2018, I served the attached ORDER GRANTING MOTION TO STAY ACTION, by placing a copy thereof in a sealed envelope, addressed as follows:

MICHAEL J. HOLECEK  
GIBSON DUNN  
333 SOUTH GRAND AVE.  
LOS ANGELES, CA 90071

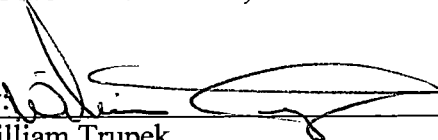
SHANNON LISS-RIORDAN  
LICHTEN & LISS-RIORDAN, P.C.  
729 BOYLSTON ST. STE 2000  
BOSTON, MA 02116

JOSHUA LIPSHUTZ  
GIBSON DUNN  
1050 CONNECTICUT AVE. N.W.  
WASHINGTON D.C. 20036

I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: December 7, 2018

T. MICHAEL YUEN, Clerk

By   
William Trupek,  
Deputy Clerk

# EXHIBIT Y

392a  
**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**  
**Civil Division**

Central District, Stanley Mosk Courthouse, Department 56

**BC712973**  
**DAMONE BROWN VS DOORDASH INC**

December 13, 2018  
8:33 AM

Judge: Honorable Holly J. Fujie  
Judicial Assistant: O.Chavez  
Courtroom Assistant: B.Chavez

CSR: None  
ERM: None  
Deputy Sheriff: None

---

**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

---

**NATURE OF PROCEEDINGS:** Hearing on Petition; Case Management Conference

The matter is held this date.

Counsel for Plaintiff and Defendant both submitted to the Court's tentative ruling. The tentative ruling becomes the Order of the Court, which is signed and filed this date and incorporated herein by reference.

Post-Arbitration Status Conference is scheduled for 06/27/2019 at 08:30 AM in Department 56 at Stanley Mosk Courthouse.

Counsel for the moving is to give notice.

**FILED**  
Superior Court of California  
County of Los Angeles

DEC 13 2018

Sherri R. Gaudin, District Clerk  
by Oscar Chaves Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

DAMONE BROWN,

Plaintiff,

vs.

DOORDASH, INC., and DOES 1-50,

Defendants.

CASE NO.: BC712973

~~[TENTATIVE]~~ ORDER RE:  
MOTION TO COMPEL ARBITRATION

8:30 a.m.  
December 13, 2018  
Dept. 56

On July, 2018, Plaintiff filed the operative Complaint alleging a PAGA claim premised on misclassification.

Defendant DoorDash, Inc. seeks to compel arbitration based on an arbitration provision within Plaintiff's independent contractor agreement. (Tang Decl., Exhibit A.) The arbitration provision waives the right to arbitrate representative claims. (*ibid.*) Defendant argues that the United States Supreme Court's recent decision in *Epic Systems Inc. v. Lewis* (2018) 138 S.Ct. 1612 ("*Epic Systems*") abrogated the California Supreme Court's ruling in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 ("*Iskanian*") that waivers of representative PAGA claims are unenforceable as contrary to public policy.

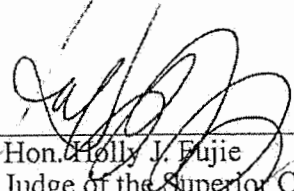
1 The Court rejects that *Epic Systems* had any effect on the ruling in *Iskanian*. *Epic Systems*  
2 simply pertains to the viability of class action waivers and does not pertain to PAGA. Thus,  
3 Plaintiff's representative PAGA claims are to be heard in this Court.

4  
5 The parties agree that the arbitrator must decide whether Plaintiff's Complaint presents any  
6 individualized claims for damages which must be subject to arbitration. Thus, the Motion is  
7 GRANTED IN PART. The Court compels arbitration only to the extent the arbitrator is to decide  
8 whether Plaintiff presents individualized claims for damages subject to arbitration. The action is  
9 stayed pending the arbitration proceedings.

10  
11 Defendant is ordered to give notice of this ruling.

12  
13 Parties who intend to submit on this tentative must send an email to the Court at  
14 SMCDEPT56@lacourt.org as directed by the instructions provided on the court website at  
15 www.lacourt.org. If the department does not receive an email and there are no appearances at the  
16 hearing, the motion will be placed off calendar.

17  
18 Dated this 13<sup>th</sup> day of December 2018

19  
20  
21   
22 Hon. Holly J. Fujie  
23 Judge of the Superior Court  
24  
25

# EXHIBIT Z



SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 03/07/2019

TIME: 02:00:00 PM

DEPT: CX102

JUDICIAL OFFICER PRESIDING: Peter Wilson

CLERK: Virginia Harting

REPORTER/ERM: Carolyn Marie Gregor-2351 CSR# 2351

BAILIFF/COURT ATTENDANT: Nestor Peraza

CASE NO: **30-2018-00992677-CU-OE-CXC** CASE INIT.DATE: 05/11/2018

CASE TITLE: **Suhail Farran vs. Doordash Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

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EVENT ID/DOCUMENT ID: 72975996

**EVENT TYPE:** Petition to Compel Arbitration

MOVING PARTY: Doordash Inc.

CAUSAL DOCUMENT/DATE FILED: Motion to Compel Arbitration, 07/02/2018

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**APPEARANCES**

Daniel Hyun, from Aegis Law Firm, PC, present for Plaintiff(s).

Joshua Lipshutz and Michael J. Holecek, from Gibson, Dunn & Crutcher LLP, present for Defendant(s).

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Tentative Ruling posted on the Internet.

The Court hears oral argument and confirms the tentative ruling as follows:

The motion of Defendant Doordash, Inc. to Compel Arbitration and Stay the Proceedings is GRANTED.

The parties' arbitration agreement is governed by the FAA as it involves interstate commerce. (See *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 277.) "The United States Supreme Court has broadly interpreted the phrase 'involving commerce' ... as the functional equivalent of 'affecting' commerce. [Citations.] The [FAA's] reach is expansive and coincides with that of the commerce clause." (*Scott v. Yoho* (2016) 248 Cal.App.4th 392, 400.) "Congress' Commerce Clause power 'may be exercised in individual cases without showing any specific effect upon interstate commerce' if in the aggregate the economic activity in question would represent 'a general practice ... subject to federal control.' [Citations.] Only that general practice need bear on interstate commerce in a substantial way." (*Citizens Bank v. Alafabco, Inc.* (2003) 539 U.S. 52, 56–57.)

Here, the evidence shows that Defendant operates in 40 states and Canada. Its mobile application is internet based and its transactions involve technological infrastructure located in various states. Defendant advertises to customers on the internet. It also communicates with customers, "Dashers," restaurants, and other businesses in other states by telephone, mail, and email. (Aughney Decl., ¶¶ 4-6.) Defendant has sufficient nexus with interstate commerce to require the Agreement to be enforced under the FAA. (See e.g., *Scott v. Yoho* (2016) 248 Cal.App.4th 392, 401-02.)

The FAA's transportation-worker exemption contained in 9 U.S.C. § 1 does not apply to Plaintiff. The

397a

inquiry whether an arbitration agreement involves interstate commerce is separate from the inquiry as to whether the Section 1 exemption applies. (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 105-106, 114-19.) The meaning of “in commerce” as used in Section 1 is narrower than Section 2. (*Ibid.*)

“[S]ection 1 of the FAA exempts only the employment contracts of workers actually engaged in the movement of goods in interstate commerce.” (*Cole v. Burns Intern. Sec. Services* (D.C. Cir. 1997) 105 F.3d 1465, 1471; see e.g. *Levin v. Caviar, Inc.* (N.D. Cal. 2015) 146 F.Supp.3d 1146, 1152-55 [denying Section 1 exemption where food delivery driver did not make deliveries across state lines].) Section 1 applies to “workers who are actually engaged in the movement of interstate or foreign commerce or in work so closely related thereto as to be in practical effect part of it.” (*Tenney Eng’g v. United Elec., Radio & Mach. Workers* (3d Cir. 1953) 207 F.2d 450, 452.) While *New Prime Inc. v. Oliveira* (2019) 139 S.Ct. 532 clarified that the Section 1 exemption can apply to independent contractors, it did not otherwise alter the definition of transportation workers.

Plaintiff has not provided any evidence that his work had any effect on the movement of goods in interstate commerce. To the contrary, he states he was a “local delivery driver” that “used his personal vehicle to deliver food from local California restaurants to local California citizens” and “did not engage in any activity involving interstate commerce.” (Plaintiff’s Supp. Opp., p. 4:15-19.) Thus, the Section 1 exemption does not apply to him.

As to the arbitrability of his claims, Plaintiff does not contest that his first through seventh causes of action are arbitrable. Nor does he challenge the class action waivers relating to these claims. The Court notes that these waivers are permitted under the FAA. (See *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 333-34; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 359.) Thus, these claims are arbitrable.

As to the eighth cause of action, Plaintiff’s argument that his waiver of the UCL claim is unenforceable is for the Court to determine. (Tang Decl., Ex. A, § XI, ¶ 3 “[A]ny claim that all or part of this Class Action waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.”.) “Agreements to arbitrate claims for public injunctive relief under the ... the UCL ... are not enforceable in California.” (*McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 956.) However, Plaintiff’s cause of action does not seek public injunctive relief. The UCL claim seeks redress for wage and hours violations. This is a private dispute between Plaintiff and Defendant that provides, at best, an incidental benefit to the public. (See *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 955-56.) Thus, Plaintiff’s UCL claim is arbitrable.

Defendant has requested a stay pending determination of this petition and a stay pending completion of the arbitration. Thus, this action has been stayed since July 2018, when Defendant filed this petition. (Code Civ. Proc., § 1284.4; *Twentieth Century Fox Film Corp. v. Superior Court* (2000) 79 Cal.App.4th 188, 192.) The Court’s authority during the stay is limited. (See *Titan/Value Equities Group, Inc. v. Superior Court* (1994) 29 Cal.App.4th 482, 487.)

Further, the Court finds lifting the stay to allow Plaintiff leave to amend to add a PAGA claim would cause prejudice to Defendant. (*Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175.) Defendant would lose the benefit of the parties’ agreement to arbitrate disputes, such as whether Plaintiff is an independent contractor. (See *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339 [stating the “liberal federal policy favoring arbitration” and that arbitration agreement must be enforced “according to their terms”].)

Further, allowing Plaintiff leave to amend would have little practical benefit for Plaintiff. As Defendant notes in its reply, at least five PAGA actions predate Plaintiff's proposed PAGA claim. (Lipshutz Decl., Exs. C-G.) Thus, even if Plaintiff added a PAGA claim it would be stayed pending the outcome of the other actions. (See *Alakozai v. Chase Inv. Services Corp.* (C.D. Cal., Mar. 1, 2012) 2012 WL 748584, at \*5, aff'd (9th Cir. 2014) 557 Fed.Appx. 658.)

Thus, the Court orders Plaintiff's claims against Defendants to arbitration and continues the stay of this action pending arbitration.

Plaintiff's requests for judicial notice are denied as irrelevant. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748 fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

The Court sets an Arbitration Review Hearing for September 6, 2019 at 9:00 AM.

Moving party to give notice.

# EXHIBIT AA

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 26

**BC715425**

**DANA LOWE VS DOORDASH INC**

April 18, 2019

8:30 AM

Judge: Honorable Elaine Lu  
Judicial Assistant: S. Bousfield  
Courtroom Assistant: B. Ly

CSR: Adriana Patron, CSR #13834  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Ariel S. Harman-Holmes

For Defendant(s): Stephanie Victoria Balitzer; Michael J Holecek

Other Appearance Notes: Ryan Wu, appear for plaintiff

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**NATURE OF PROCEEDINGS:** Case Management Conference & OSC RE PROOF OF SERVICE; Hearing on Motion to Compel Arbitration TO COMPEL ARB & STAY PROCEEDINGS

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, Adriana Patron, CSR #13834, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matters are called for hearing.

The Court has read and considered the moving papers, opposition, and reply. All counsel are in receipt of the Court's Tentative Order re: Defendants' Motion to Compel Arbitration. The Court hears argument from counsel. After consideration of oral argument and documents filed, the Court adopts its tentative as the order of the Court as modified. The Court will issue a new order.

Defendant Doordash, Inc.,'s Petition to Compel Arbitration and Stay Proceedings is denied as to Petition to Compel Arbitration. Hearing on Motion for Stay of Proceedings is scheduled for 08/29/19 at 08:30 AM in Department 26 at Stanley Mosk Courthouse. Plaintiff's supplemental opposition shall be filed on or before 8/1/19. Defendant's supplemental reply shall be filed on or before 8/15/19.

As all parties have appeared, the Order to Show Cause re: Failure to File Proof of Service is discharged this date.

Pursuant to oral stipulation, Case Management Conference is scheduled for 08/29/19 at 08:30 AM in Department 26 at Stanley Mosk Courthouse.

The case is stayed until August 29, 2019. The Court hereby stays the case in its entirety.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 26

**BC715425**

**DANA LOWE VS DOORDASH INC**

April 18, 2019

8:30 AM

Judge: Honorable Elaine Lu  
Judicial Assistant: S. Bousfield  
Courtroom Assistant: B. Ly

CSR: Adriana Patron, CSR #13834  
ERM: None  
Deputy Sheriff: None

---

Notice is waived.

# EXHIBIT BB

SHANNON LISS-RIORDAN (SBN 310719)  
(sliss@llrlaw.com)

LICHTEN & LISS-RIORDAN, P.C.  
729 Boylston Street, Suite 2000  
Boston, MA 02116

Telephone: (617) 994-5800

Facsimile: (617) 994-5801

*Attorney for Plaintiff Jared Roussel, in his  
capacity as Private Attorney General Representative*

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**03/12/2019**

Clerk of the Court

BY: DAVID YUEN

Deputy Clerk

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

JARED ROUSSEL,

Plaintiff,

v.

DOORDASH, INC.,

Defendant.

Case No. CGC-19-572934

**FIRST AMENDED COMPLAINT**

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (CAL. LAB. CODE § 2802)
2. MINIMUM WAGE (CAL. LABOR CODE §§ 1194, 1197)
3. OVERTIME (CAL. LAB. CODE §§ 1194, 1198, 510, & 554)
4. WILLFUL MISCLASSIFICATION (CAL. LABOR CODE § 226.8)
5. PAY STATEMENTS (CAL. LABOR CODE § 226(a))
6. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200-17208)
7. PRIVATE ATTORNEY GENERAL ACT (PAGA) CLAIM FOR CIVIL PENALTIES (CAL. LAB. CODE § 2698 *ET SEQ.*)



1 **I. INTRODUCTION**

2 1. This case is brought by Jared Roussel, on behalf of the state of California and  
3 other similarly situated aggrieved individuals who have worked for DoorDash Inc. (“DoorDash”)  
4 as delivery drivers in California. DoorDash provides on-demand takeout food delivery to  
5 customers at their homes and businesses through its mobile phone application and website.  
6 DoorDash is based in San Francisco, California, but it does business across the United States and  
7 extensively throughout California.  
8

9 2. As described further below, DoorDash has willfully misclassified its delivery  
10 drivers including Plaintiff Roussel in violation of Cal. Labor Code § 226.8. Additionally,  
11 because of delivery drivers’ misclassification as independent contractors, DoorDash has  
12 unlawfully required Mr. Roussel to pay business expenses (including expenses to own or lease a  
13 vehicle and maintain and fuel it, as well as phone/data expenses) in violation of Cal. Lab. Code §  
14 2802 and has also failed to pay required minimum wage for all hours worked in violation of Cal.  
15 Lab. Code §§ 1194, 1197 and has failed to pay the appropriate overtime premium for all  
16 overtime hours worked beyond forty per week or eight per day in violation of Cal. Lab. Code §§  
17 1194, 1198, 510, and 554. Likewise, DoorDash has failed to provide proper itemized wage  
18 statements in violation of Cal. Lab. Code § 226(a) because it does not explain the piece-rate basis  
19 on which drivers are paid and does not break out the amount of drivers’ wages and tips, among  
20 other reasons. Plaintiffs brings his claims pursuant to the Private Attorney General Act  
21 (“PAGA”), Cal. Lab. Code§ 2699, *et seq.*, on behalf of the state of California and all other  
22 similarly situated aggrieved employees who have been misclassified by DoorDash in California  
23 since December 3, 2017.

24 **II. PARTIES**

25 3. Plaintiff Jared Roussel is an adult resident of San Francisco, California, where he  
26 has worked as a delivery driver for DoorDash since May 2018.  
27

1           4. Defendant DoorDash, Inc. (“DoorDash”) is headquartered in San Francisco,  
2 California.

3 **III. JURISDICTION**

4           5. This Court has jurisdiction over Plaintiff’s claims pursuant to California Code of  
5 Civil Procedure § 410.10.

6           6. Venue is proper in this Court because DoorDash has its principal place of  
7 business in San Francisco County and Plaintiff resides in San Francisco County.

8 **IV. STATEMENT OF FACTS**

9           7. DoorDash is a food delivery service, based in San Francisco, which engages  
10 delivery drivers across the state of California to deliver food and other merchandise to its  
11 customers at their homes and businesses.

12           8. DoorDash offers customers the ability to request a driver on a mobile phone  
13 application or online through its website, who will go to the restaurant and pick up their food,  
14 then deliver it to the customer at their home or business.

15           9. DoorDash holds itself out to the public as a food delivery service. Its tagline is  
16 “Delivering Good”, and its website advertises, “[w]ith your favorite restaurants at your fingertips,  
17 DoorDash satisfies your cravings and connects you with possibilities — more time and energy  
18 for yourself and those you love.”

19           10. Plaintiff Jared Roussel has driven for DoorDash over the last year.

20           11. DoorDash classifies its delivery drivers like Mr. Roussel as “independent  
21 contractors,” but under California law, they should be classified as employees.

22           12. Plaintiff Roussel and other DoorDash delivery drivers perform services within  
23 DoorDash’s usual course of business as a takeout food delivery service. The delivery drivers’  
24 services are fully integrated into DoorDash’ business. Without delivery drivers to perform  
25 deliveries, DoorDash would not exist.  
26

1           13. DoorDash delivery drivers like Plaintiff Roussel are not typically engaged in their  
2 own food delivery business. When delivering items for DoorDash customers, they wear the “hat”  
3 of DoorDash.

4           14. In addition, DoorDash maintains the right of control over the delivery drivers’  
5 performance of their jobs and exercises detailed control over them.

6           15. For example, drivers must follow DoorDash’s instructions regarding where  
7 to report for their shifts and where to go to pick up or await deliveries. Drivers can be  
8 penalized or terminated for missing scheduled shifts or cancelling their shifts too close  
9 to the start time. DoorDash has collected various metrics regarding its drivers’ performance,  
10 including (1) drivers’ customer rating (out of five stars, with five being the highest},  
11 which is used to gauge customers’ satisfaction with a delivery; (2) drivers’ acceptance  
12 rating, which gauges how many deliveries drivers were assigned and accepted over the  
13 last 100 deliveries; and (3) drivers’ completion rating, which gauges the number of  
14 deliveries drivers completed that they accepted. If drivers’ ratings fall below DoorDash's  
15 minimum thresholds they may be terminated.

16           16. DoorDash communicates directly with customers and follows up with delivery  
17 drivers if the customer complains that something was not delivered or that the delivery otherwise  
18 failed to meet their expectations. Based on any customer feedback, DoorDash may suspend or  
19 terminate delivery drivers.

20           17. DoorDash unilaterally sets the pay scheme and rate of pay for delivery drivers’  
21 services and changes the rate of pay in its sole discretion.

22           18. DoorDash does not reimburse delivery drivers for any expenses they may incur  
23 while working for DoorDash, including, but not limited to the cost of maintaining their vehicles,  
24 gas, insurance, and phone and data expenses for running the DoorDash Application. Delivery  
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1 drivers incur these costs as a necessary expenditure to work for DoorDash, which California law  
2 requires employers to reimburse.

3 19. DoorDash pays its drivers a guaranteed delivery fee for each delivery plus tips  
4 they receive from customers. DoorDash has failed to ensure that its delivery drivers receive the  
5 applicable state minimum wage for all hours worked, and delivery drivers frequently do not  
6 receive minimum wage for all hours worked, particularly given that customers' tips cannot count  
7 toward DoorDash's minimum wage obligations. Furthermore, DoorDash does not provide  
8 transparent itemized wage statements to drivers with information regarding how their pay is  
9 calculated or what portion of pay is attributable to tips as opposed to wages from DoorDash.  
10

11 20. On April 30, 2018, the California Supreme Court issued its decision in Dynamex  
12 Operations W. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20,  
13 2018), which makes clear that DoorDash delivery drivers should be classified as employees  
14 rather than as independent contractors under California law for purposes of wage-and-hour  
15 statutes like the ones at issue here. Under the "ABC" test adopted in Dynamex, in order to  
16 justify classifying the delivery drivers as independent contractors, DoorDash would have to  
17 prove that its delivery drivers perform services outside its usual course of business, which it  
18 cannot do. Notwithstanding this decision, DoorDash has willfully continued to misclassify its  
19 delivery drivers as independent contractors.

20 **V. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

21 21. Plaintiff alleges that DoorDash violated the Labor Code by willfully  
22 misclassifying its delivery drivers in violation of Cal. Labor Code § 226.8. Plaintiff also alleges  
23 that DoorDash has violated PAGA by failing to reimburse delivery driver employees for all  
24 reasonably necessary expenditures incurred by drivers in discharging their duties, including fuel,  
25 insurance, and maintenance costs in violation of Cal. Lab. Code § 2802. Plaintiff also alleges  
26 that DoorDash has violated Cal. Lab. Code §§ 1197 and 1194 by failing to ensure that its  
27

1 delivery drivers receive the applicable state minimum wage for all hours worked and by  
2 impermissibly counting customers' tips toward their minimum wage obligations. DoorDash has  
3 violated Cal. Lab. Code §§ 1194, 1198, 510, and 554 by failing to pay the appropriate overtime  
4 premium for all overtime hours worked beyond forty per week or eight hours per day. Finally,  
5 DoorDash has also violated Cal. Lab. Code § 226(a) by failing to provide itemized wage  
6 statements.

7  
8 22. On December 3, 2018, Plaintiff Roussel gave written notice of DoorDash's  
9 violations to the California Labor Code as alleged in this complaint to the Labor and Workforce  
10 Development Agency ("LWDA") via online filing and to Defendant DoorDash's general counsel  
11 via certified mail.

12 23. It has been 65 days since the LWDA was notified of the Labor Code violations  
13 asserted in this Complaint, and the LWDA has not provided any notice that it will or will not  
14 investigate the alleged violations. See Cal. Lab. Code § 2699.3(a)(2)(A).

15  
16 **COUNT I**  
17 **Expense Reimbursement**  
18 **Violation of Cal. Lab. Code § 2802**

19 21. Plaintiff realleges and incorporates by reference the allegations in the preceding  
20 paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in misclassifying  
21 Plaintiff Roussel as an independent contractor and failing to reimburse him for expenses that he  
22 paid that should have been borne by his employer, constitutes a violation of California Labor  
23 Code Section 2802.  
24  
25  
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**COUNT II**  
**Willful Misclassification**  
**Violation of Cal. Lab. Code § 226.8**

22. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in continuing to classify Mr. Roussel as an independent contractor notwithstanding the California Supreme Court's decision in Dynamex Operations W. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20, 2018), which makes clear that delivery drivers are its employees under California law, violates Cal. Lab. Code §226.8 and constitutes willful misclassification.

**COUNT III**  
**Minimum Wage**  
**Violation of Cal. Lab. Code §§ 1197 and 1194**

23. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in failing to pay Plaintiff Roussel minimum wage for all hours worked as required by California law, violates Cal. Lab. Code §§ 1197 and 1194.

**COUNT IV**  
**Overtime**  
**Violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554**

23. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in failing to pay Plaintiff Roussel minimum wage for all hours worked as required by California law, violates Cal. Lab. Code §§ 1197 and 1194.

**COUNT V****Pay Statements****Violation of Cal. Lab. Code § 226(a)**

24. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Door Dash's conduct, as set forth above, in failing to provide itemized wage statements, as required by California state law, violates Cal. Lab. Code § 226(a).

**COUNT VI****Unfair Business Practices****Violation of Cal. Bus. & Prof. Code §17200, *et seq.***

25. 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, 1198, 510, 554, 226(a) and 226.8. As a result of Defendant's unlawful conduct, Plaintiff suffered injury in fact and lost money and property, including, but not limited to business expenses he was required to pay and wages that he was due. Pursuant to California Business and Professions Code § 17203, Plaintiff seeks declaratory and injunctive relief for Defendant's unlawful conduct and to recover restitution. The nature of this relief is in the public interest, since Defendant's violation of the Labor Code in misclassifying drivers like Plaintiff, and failing to provide the protections of the Labor Code, harms the public interest (and not just drivers like Plaintiff), in that it burdens the government and taxpayers, as well as complying competitors, and also negatively harms the labor market as a whole, particularly in the delivery industry. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff is entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

**COUNT VII****Penalties Pursuant to Labor Code Private Attorneys General Act of 2004****Violation of Cal. Lab. Code §§ 2698, *et seq.*, 558**

26. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Plaintiff is an aggrieved employee as defined by Cal. Lab. Code § 2699(c) as he was employed by DoorDash during the applicable statutory period and suffered injury as a result of DoorDash's Labor Code violations. Accordingly, Plaintiff seeks to recover on behalf of the State of California, as well as himself and all other current and former aggrieved employees of DoorDash who have worked in California, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

27. DoorDash delivery drivers are entitled to penalties for DoorDash's violations of Cal. Lab. Code § 2802, § 226(a), § 226.8, §§ 1194, 1197, and §§ 1194, 1198, 510, and 554, as set forth by Cal. Lab. Code § 2699(f) and § 558. Plaintiff seeks civil penalties pursuant to PAGA for: (1) failure to reimburse delivery driver employees for all necessary expenditures incurred in performing their duties, including but not limited to owning or leasing and maintaining their vehicles, fuel, phones, and data, in violation of Cal. Lab. Code § 2802; (2) the willful misclassification of delivery workers as independent contractors in violation of Cal. Lab. Code § 226.8; (3) failure to assure that all delivery drivers received minimum wage for all hours worked in violation of Cal. Lab. Code §§ 1194, 1197; (4) failure to assure that all delivery drivers received the appropriate overtime premium for all overtime hours worked beyond forty per week or eight hours per day in violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554; and (5) failure to provide proper itemized wage statements in violation of Cal. Lab. Code § 226(a).

28. Cal. Lab. Code § 2699(f) provides for civil penalties for violation of all Labor Code provisions for which no civil penalty is specifically provided. There is no specified civil penalty for violations of Cal. Lab. Code § 2802. With respect to minimum wage violations



29. Plaintiff complied with the notice requirement of Cal. Lab. Code §2699.3 and served a written notice to the California Labor & Workforce Development Agency (“LWDA”) through its website’s online filing portal, and on Defendant DoorDash via Certified Mail, return receipt requested, on December 3, 2018. It has been 65 days or more since the LWDA was notified of the Labor Code violations asserted in this Complaint, and the LWDA has not provided any notice that it will or will not investigate the alleged violations.

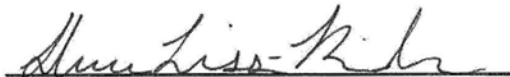
WHEREFORE, Plaintiff requests that this Court enter the following relief:

- a. Declare and find that the Defendant has violated the UCL and Cal. Lab. Code §§ 2802, 1194, 1197, 226(a), and 226.8;
- b. Enter Judgment in Plaintiffs' favor on their PAGA claim pursuant to Cal. Lab. Code § 2699(c);
- c. Award penalties in an amount according to proof;
- d. Award compensatory damages, including all expenses and wages owed, in an amount according to proof;
- e. Award pre- and post-judgment interest;
- f. Award reasonable attorneys' fees, costs, and expenses;
- g. Public injunctive relief in the form of an order requiring Defendant to comply with the California Labor Code; and
- h. Any other relief to which Plaintiff may be entitled.

Respectfully submitted,

JARED ROUSSEL,

By his attorney,



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Dated: March 12, 2019

# EXHIBIT CC

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*Counsel for Plaintiff, Noah Goldman-Hull, and Proposed Class and Collective Action Members*

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

NOAH GOLDMAN-HULL, on behalf of  
 himself and all others similarly situated,

Plaintiff,

vs.

DOORDASH, INC.,

Defendant.

**Case No: 3:19-cv-01513**

**PLAINTIFF'S ORIGINAL COMPLAINT  
 FOR VIOLATIONS OF FLSA AND  
 CALIFORNIA LAWS**

**FLSA COLLECTIVE ACTION**

**RULE 23 CLASS ACTION**

**PAGA REPRESENTATIVE ACTION**

**DEMAND FOR JURY TRIAL**

Plaintiff Noah Goldman-Hull ("Goldman-Hull" or "Plaintiff"), on behalf of himself and all others similarly situated, files this Original Complaint against Defendant DoorDash, Inc. and shows in support as follows:

**I. INTRODUCTION AND NATURE OF ACTION**

1. Defendant, DoorDash, Inc. (referred to hereinafter as "Defendant" and/or "DOORDASH"), provides takeout food delivery via a phone application and website throughout the country. To do so, it employs delivery drivers (a/k/a "Dashers"). Defendant misclassifies

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1 Plaintiff and its other Dashers as “independent contractors” rather than “employees” and fails to  
2 pay them for all hours worked.

3 2. This is an action brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201-  
4 219, and the Portal-to-Portal Act, 29 U.S.C. §§ 251-262 (collectively, the “FLSA”) seeking  
5 damages for Defendant’s failure to pay the federally-mandated minimum wage. Plaintiff brings  
6 this action on behalf of similarly situated Dashers misclassified by Defendant as independent  
7 contractors located nationwide as a collective action under 29 U.S.C. § 216(b).

8 3. This action is also brought under the California Labor Code § 226.8 for the willful  
9 misclassification of its Dashers, California Labor Code § 2802 for unlawfully requiring its  
10 misclassified Dashers to pay business expenses, California Labor Code §§ 1194 and 1197 for  
11 failing to pay the required minimum wage for all hours worked, and California Labor Code §  
12 226(a) for failing to provide itemized wage statements. Plaintiff brings the California State Law  
13 claims as a class action under FED. R. CIV. P. 23.

14 4. Finally, this action is brought under the California Private Attorneys General Act,  
15 (“PAGA”) for Defendant’s various aforementioned violations of California State Law seeking  
16 statutory penalties assessed in connection with PAGA. Plaintiff brings the claims under PAGA  
17 as a representative action pursuant to that statute.

## 18 II. THE PARTIES

### 19 A. Plaintiff Goldman-Hull

20 5. Plaintiff Noah Goldman-Hull is an individual residing in San Mateo County,  
21 California. He has standing to file this lawsuit.

22 6. Goldman-Hull is a current employee of Defendant who works as a Dasher from  
23 approximately December 1, 2018 to the present.

24 7. Goldman-Hull’s written consent to participate in this action is attached to this  
25 Complaint as Exhibit 1.

26 8. Plaintiff has provided written notice by certified mail and electronic submission to  
27 the California Labor & Workforce Development Agency (“LWDA”) and to Defendant through  
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its registered agent of the legal claims and theories of this case. In the event the LWDA does not investigate Defendant's actions, Plaintiff seeks to represent similarly situated technicians pursuant to PAGA.

**B. Putative Collective Action Members**

9. The putative Collective Action Members are all current and former Dashers misclassified by Defendant as independent contractors who work or worked for Defendant nationwide at any time within the three years prior to the filing of the Original Complaint through the date of final disposition of this action.

10. Plaintiff seeks to represent the Collective Action Members seeking damages for claims of unpaid minimum wages pursuant to the FLSA, and is similarly situated to the Collective Action Members pursuant to 29 U.S.C. § 216(b).

**C. Putative California Class Action Members**

11. The putative California Class Action Members are all current and former Dashers misclassified by Defendant as independent contractors who work or worked for Defendant in California at any time within the four years prior to the date of filing of this Complaint through the date of the final disposition of this action.

12. Plaintiff seeks to represent the California Class Action Members, seeking damages for the California State Law Claims, described further below. Plaintiff is a proper class representative pursuant to FED. R. CIV. P. 23(a)(4).

**D. Defendant DoorDash, Inc.**

13. Defendant DoorDash, Inc. is headquartered in San Francisco, California. Doordash, Inc. is a Delaware corporation that is licensed to do business (and is doing business) in the State of California. Doordash, Inc. may be served through its registered agent, Registered Agent Solutions, Inc., 2138 Silas Deane Hwy. Suite 101, Rocky Hill, CT 06067.

14. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

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1           15.     At all times relevant to this lawsuit, Defendant employed, and continues to  
2 employ, two or more employees.

3           16.     At all times relevant to this lawsuit, Defendant employed two or more employees  
4 who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials  
5 that have been moved in or produced for commerce by any person.

6           17.     On information and belief, at all times relevant to this lawsuit, Defendant has had  
7 gross operating revenues or business volume in excess of \$500,000.

### 8                               **III.     JURISDICTION AND VENUE**

9           18.     This Court has federal question jurisdiction over all claims pursuant to 28 U.S.C.  
10 § 1331 and the FLSA at 29 U.S.C. § 216(b).

11           19.     This Court also has supplemental jurisdiction over Plaintiff's California State Law  
12 claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus of  
13 operative fact.

14           20.     This Court is empowered to issue a declaratory judgment with respect to all  
15 claims pursuant to 28 U.S.C. §§ 2201 & 2202.

16           21.     The United States District Court for the Northern District of California has  
17 personal jurisdiction over Defendant because Defendant does business in California and in this  
18 District, and because many of the acts complained of and giving rise to the claims alleged  
19 occurred in California and in this District.

20           22.     Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a  
21 substantial part of the events giving rise to all claims occurred in this District.

22           23.     **Intradistrict Assignment:** This lawsuit should be assigned to the San Francisco  
23 Division of this Court because a substantial part of the events or omissions which give rise to this  
24 lawsuit occurred in San Mateo County.

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**IV. FACTUAL BACKGROUND  
(APPLICABLE TO ALL CLAIMS FOR RELIEF)**

24. DoorDash is a food delivery service which provides home and office food delivery to its customers.

25. Plaintiff was hired to work as a delivery driver/Dasher for Defendant.

26. DoorDash does not pay Plaintiff or its other Dashers an hourly wage or a salary; rather, Plaintiff receives the “delivery fee” that is paid by DoorDash’s customers, as well as any gratuity that the customer pays to the Dasher. DoorDash, not Plaintiff or the other Dashers, determines the “delivery fee.”

27. While DoorDash classifies Plaintiff as an “independent contractor,” Plaintiff is truly an “employee” pursuant to the FLSA’s economic realities test, and pursuant to the “ABC” test under California state law, as set forth in *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal.5th 903 (2018).

28. For instance, Plaintiff does not determine the amount he will charge DoorDash for his services; rather, DoorDash decides how much of a “delivery fee” its customers will pay and simply passes that charge on to the Plaintiff as his sole compensation.

29. DoorDash provides Plaintiff and its other Dashers with the customers for whom the delivery services are to be performed.

30. DoorDash requires Plaintiff and its other Dashers to comply with certain rules, regulations, policies and procedures in order to work for them. A Dasher who fails to comply with said policies is subject to reprimand and/or termination.

31. Plaintiff and the other Dashers all perform delivery services within DoorDash’s usual course of business as a food delivery service. Without delivery drivers/Dashers, DoorDash would not exist.

32. DoorDash unilaterally sets the pay scheme and rate of pay for Plaintiff and its other Dashers. This rate of pay is not negotiated by and among DoorDash and its Dashers.

33. DoorDash has a single pay practice and/or policy that applies to Plaintiff and all of its other Dashers.



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1           34. Pursuant to DoorDash's policy, it does not reimburse Plaintiff or any of its  
2 Dashers for the cost of owning/leasing a vehicle, nor the cost to fuel or maintain it.

3           35. Moreover, DoorDash: (i) had the power to discipline and/or terminate Plaintiff  
4 and the Class Members, (ii) regularly supervised and controlled work conditions of employment  
5 for Plaintiff and Class Members, (iii) determined the rate and method of payment of wages, (iv)  
6 paid Plaintiff and Class Member wages and made deductions to his wages, and (v) maintained  
7 employment records of Plaintiff and Class Members.

8           36. Plaintiff was not a member of management. Neither he nor any other Class  
9 Member had authority to (nor did they): manage an enterprise, hire or fire other employees, set  
10 the pay rates of other employees, create policies or procedures to govern Defendant's employees,  
11 handle employee grievances, determine the type of equipment or materials that Defendant could  
12 use in their operations, plan and/or set Defendant's budget, enter into contracts on behalf of  
13 Defendant, or otherwise have operational control over Defendant's business operations and  
14 practices. Moreover, Plaintiff and the Dasher Class Members did not perform office or non-  
15 manual work directly related to the management or general business operations of Defendant or  
16 their customers, nor did they exercise discretion and independent judgment with respect to  
17 matters of significance in the conduct of Defendant's businesses.

18           37. Plaintiff and the Dasher Class Members were at all times "non-exempt"  
19 employees and eligible to receive the minimum wage pay pursuant to the FLSA and California  
20 state law.

21           38. Moreover, DoorDash fails to reimburse Plaintiff and its other Dashers for the  
22 normal and customary business expenses incurred on DoorDash's behalf in connection with the  
23 delivery services they provide. These expenses include, but are not limited to, (i) Plaintiff's use  
24 of a personal vehicle (i.e. gasoline and maintenance), (ii) the cost of liability insurance, (iii)  
25 damage claims, (iv) parking and toll road charges incurred while picking up/dropping off  
26 deliveries; (v) the cost of a cell phone, and all other tools/equipment in order to do the work  
27 required. By failing to reimburse Plaintiff for these expenses, Plaintiff has often earned less than  
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1 the statutory minimum and overtime wage required by the FLSA and under California state law  
2 during many workweeks.

3 39. Finally, DoorDash does not provide proper itemized wage statements that explain  
4 the piece rate basis on which Dashers are paid and does not break out the amount of drivers'  
5 wages and tip, among other reasons.

6 **V. FLSA CLAIMS FOR MINIMUM WAGE**

7 40. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in  
8 this section.

9 **A. FLSA Coverage**

10 41. All conditions precedent to this suit, if any, have been fulfilled.

11 42. At all times relevant to this lawsuit, Defendant was an eligible and covered  
12 employer under the FLSA pursuant to 29 U.S.C. § 203(d).

13 43. At all times relevant to this lawsuit, Defendant has been an enterprise engaged in  
14 commerce under the FLSA pursuant to 29 U.S.C. § 203(s)(1)(A).

15 44. At all times relevant to this lawsuit, Defendant has employed, and continues to  
16 employ, employees including Plaintiff and the putative Collective Action Members who engaged  
17 in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

18 45. At all relevant times, Defendant has had gross operating revenues or business  
19 volume in excess of \$500,000.

20 **B. FLSA Allegations**

21 46. At all relevant times, Plaintiff and the Putative Collective Action Members were  
22 employees of Defendant pursuant to the FLSA.

23 47. The FLSA generally requires that employers pay their employees the minimum  
24 wage for all hours worked. 29 U.S.C. § 206(a)(1).

25 48. Defendant misclassifies Plaintiff and its other delivery drivers as "independent  
26 contractors" rather than "employees" and fails to pay them for all hours worked. In addition,  
27 Defendant has required Plaintiff and its other Dashers to pay business expenses (including  
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1 expenses incurred to own/lease a vehicle, maintain it, and fuel it) causing Plaintiff to be paid less  
2 than the statutory minimum wage required by Sections 206 of the FLSA. As a result, Defendant  
3 violates the minimum wage provisions of the FLSA.

4 **C. Collective Action Allegations**

5 49. Plaintiff brings this suit as a collective action pursuant to 29 U.S.C. § 216(b) on  
6 behalf of himself and all other persons employed by Defendant as a delivery service driver (*i.e.*  
7 Dasher) within three (3) years from the filing of this suit who, like Plaintiff, (i) have been  
8 misclassified as an “independent contractor;” and (ii) who have not been compensated at least  
9 the full statutory minimum wage for all hours worked up to 40 each week. Those who file a  
10 written consent will be a party to this action pursuant to 29 U.S.C. § 216(b) (the “FLSA Class”).

11 50. Plaintiff has actual knowledge that putative Collective Action Members have been  
12 misclassified and denied their minimum wage. Plaintiff worked with other Dashers employed by  
13 Defendant. As such, he has personal knowledge of the pay violations. Furthermore, other  
14 Dashers have shared with him that they experienced similar pay violations as those described in  
15 this complaint. In fact, other Dashers who worked for Defendant have opted into this lawsuit as  
16 opt-in Plaintiffs.

17 51. Other Dashers similarly situated to Plaintiff work or have worked for Defendant  
18 and did not receive their minimum wage.

19 52. Other Dashers similarly situated to Plaintiff work or have worked for Defendant  
20 and were misclassified as independent contractors.

21 53. The putative Collective Action Members are similarly situated to Plaintiff in all  
22 relevant respects, having performed the same work duties as Plaintiff and being similarly situated  
23 with regard to Defendant’s pay practices – specifically, misclassifying Dashers as independent  
24 contractors and denying them their minimum wage pay.

25 54. The putative Collective Action Members are similar to Plaintiff in terms of job  
26 duties, pay structure, and the denial of all due and owing wages.



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63. Defendant was aware that the California Labor Code, and other laws of the State of California applied to its business operations at all relevant times. Indeed, this is not the first time Defendant has been sued by Dashers for the same alleged violations herein.

64. Defendant is aware that its failure to pay the minimum wage to its Dashers and that their misclassification of independent contractor is unlawful pursuant to California State Law.

**B. Class Action Allegations**

65. Plaintiff brings his claims for relief under California State Law, listed above, for violations of California's wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

66. Numerosity (FED. R. CIV. P. 23(a)(1)) – the California Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendant in the State of California.

67. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the California Class, including, but not limited to, the following:

a. Whether the work performed by Class Members within DoorDash's usual course of business;

b. Whether Dashers are engaged in their own business, or on behalf of Defendant;

c. Whether uniform policies and procedures apply to all Dashers regarding how they perform their work for Defendant; and

d. Whether Dashers have been forced to incur business expenses on behalf of Defendant.

68. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiff's claims are typical of those of the putative California Class. Plaintiff, like other California Class members, was subjected to Defendant's policy and practice of refusing to pay minimum wages owed to its Dashers in violation of California law. Plaintiff's job duties and claims are typical of those of the putative

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1 California Class. Furthermore, Plaintiff, like all Class members, was misclassified as an  
2 independent contractor.

3 69. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiff will fairly and adequately  
4 represent and protect the interests of the putative California Class.

5 70. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiff has retained counsel  
6 competent and experienced in complex class actions, the FLSA, and state labor and employment  
7 litigation. Plaintiff’s counsel has litigated numerous class actions on behalf of nonexempt  
8 employees asserting claims under the FLSA and state law. Plaintiff’s counsel intends to commit  
9 the necessary resources to prosecute this action vigorously for the benefit of all of the putative  
10 California Class.

11 71. Class certification of the California State Law claims is appropriate pursuant to  
12 FED. R. CIV. P. 23(b)(2) because Defendant has acted or refused to act on grounds generally  
13 applicable to the putative California Class, making appropriate declaratory and injunctive relief  
14 with respect to the Plaintiff and the putative California Class as a whole. Plaintiff is entitled to  
15 injunctive relief to end Defendant’s common and uniform practice of failing to pay minimum  
16 wages due to Plaintiff and the putative California Class.

17 72. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of  
18 the California State Law claims is also appropriate under FED. R. CIV. P. 23(b)(3) because  
19 questions of law and fact common to the putative California Class predominate over any  
20 questions affecting only individual members of the putative California Class, and because a class  
21 action is superior to other available methods for the fair and efficient adjudication of this  
22 litigation. Defendant’s common and uniform policies and practices unlawfully failed to  
23 completely compensate the putative California Class. The damages suffered by individual  
24 members of the putative California Class are small compared to the expense and burden of  
25 individual prosecution of this litigation. In addition, class certification is superior because it will  
26 obviate the need for unduly duplicative litigation which might result in inconsistent judgments  
27 about Defendant’s practices.

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73. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiff intends to send notice to all members of the putative California Class to the extent provided by Rule 23.

74. Plaintiff proposes that the class be defined as:

**All current and former Dashers who worked for Defendant in the State of California from any time starting four years prior to the date of the filing of the initial Complaint until the date the case resolves.**

75. Plaintiff also brings this action as an aggrieved employee on behalf of himself and other current former employees pursuant to the California Private Attorneys General Act (“PAGA”) of 2004, Cal. Labor Code §§ 2698-2699.5.

## VII. CAUSES OF ACTION

### 1. First Claim for Relief – Violation of the FLSA, Failure to Pay the Minimum Wage to Plaintiff and Putative Collective Action Members.

76. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

77. The foregoing conduct, as alleged, violated the FLSA.

78. Plaintiff and the putative Collective Action are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* 29 U.S.C. § 203(e)(1).

79. Defendant was, at all times relevant to this claim for relief, the employer of Plaintiff and the putative Collective Action. *See* 29 U.S.C. § 203(d).

80. Defendant is and was required to pay its employees, Plaintiff and the putative Collective Action, the minimum wage for all hours worked. 29 U.S.C. § 206.

81. Defendant failed to pay Plaintiff and the putative Collective Action their minimum wages for all hours worked in a given workweek.

82. Defendant’s conduct was willful and done to avoid paying wages. 29 U.S.C. § 255(a). Therefore, Plaintiff and the putative Collective Action are entitled to a three (3) year statute of limitations. *Id.*

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1 83. Plaintiff seeks all damages to which he and the putative Collective Action are  
2 entitled under the FLSA, including their back wages, liquidated damages, attorneys' fees and  
3 costs, post-judgment interest, and specifically plead recovery for the three (3) year period  
4 preceding the filing of this lawsuit through its resolution.

5 **2. Second Claim for Relief – Failure to Reimburse Employees for Required**  
6 **Expenses in Violation of Cal. Labor Code § 2802.**

7 84. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in  
8 this section, unless inconsistent.

9 85. Pursuant to California Labor Code section 2802, Defendant is required to  
10 indemnify Plaintiff and the California Class Members for the expenses and losses incurred  
11 during the performance of their job duties. The purpose of this statute is to prevent employers  
12 from passing their operating expenses on to their employees.

13 86. In violation of Labor Code Section 2802, Defendant required Plaintiff and Class  
14 Members to pay the following operational expenses: (i) Plaintiff's use of a personal vehicle (*i.e.*  
15 gasoline and maintenance), (ii) the cost of liability insurance, (iii) damage claims, (iv) parking  
16 and toll road charges incurred while picking up/dropping off deliveries; (v) the cost of a cell  
17 phone, and all other tools/equipment in order to do the work required.

18 87. Plaintiff seeks to recover, on behalf of himself and other Class Members, these  
19 expenses unlawfully deducted by Defendant from Class Members' pay, plus interest thereon,  
20 reasonable attorneys' fees, and costs, in an amount to be proven at trial.

21 **3. Third Claim for Relief – Willful Misclassification in Violation of Cal. Lab.**  
22 **Code § 226.8.**

23 88. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in  
24 this section, unless inconsistent.

25 89. Defendant continues to willfully misclassify Dashers as independent contractors,  
26 as set forth above. Plaintiff seeks damages for himself and the California Class members  
27 pursuant to Cal. Lab. Code § 226.8.  
28



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**4. Fourth Claim for Relief - Minimum Wage Violations, Cal. Wage Order No. MW-2017; Cal. Labor Code §§ 1182.11, 1182.12, & 1194.**

90. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

91. The California Labor Code requires that all employees be paid minimum wages by their employers.

92. Defendant's policy and practices as described herein resulted in violations of the California minimum wage provisions.

93. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and the putative California Class have sustained damages, including loss of earnings for hours worked under forty in a workweek, or under eight hours per day during the period relevant to this lawsuit in an amount to be established at trial, prejudgment interest, liquidated damages in an amount equal to the back wages and costs and attorneys' fees, pursuant to statute and other applicable law.

**5. Fifth Claim for Relief - Failure to Provide Accurate, Itemized Wage Statements Cal. Lab. Code § 226.**

94. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

95. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions made from wages earned by Plaintiff and other Class Members, and to accurately report total hours worked, tips and wages earned, by such employees. Defendant has knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement that should have been provided to Plaintiff and other Class Members.

96. By failing to keep adequate records, as required by Labor Code section 226, Defendant has injured Plaintiff and other Class Members, and made it confusing and difficult to calculate the unpaid wages earned and expenditures not indemnified by Defendant (including wages, interest, and penalties thereon) due to Plaintiff and other Class Members.

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1           97. Plaintiff seeks to recover, on behalf of himself and other Class Members, the  
2 statutory penalties provided by Labor Code section 226(e) for the wage statement violations  
3 committed by Defendant.

4           **6. Sixth Claim for Relief – Unfair Business Practices under Cal. Bus. & Prof.**  
5           **Code §§ 17200, *et seq.***

6           98. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in  
7 this section, unless inconsistent.

8           99. Plaintiff and the putative California Class are nonexempt employees entitled to be  
9 paid their minimum wages for all hours worked, as defined above. *See* Section 4 above.

10          100. Defendant was, at all times relevant to this claim for relief, the employer of  
11 Plaintiff and the putative California Class pursuant to California law and all other relevant law.  
12 *See* Cal. Labor Code §350(a).

13          101. The foregoing conduct, as alleged, violates the California Unfair Competition  
14 Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210. The UCL prohibits unfair competition  
15 by prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

16          102. Beginning at some point prior to four years ago, Defendant committed and  
17 continues to commit, acts of unfair competition, as defined by the UCL, by, among other things,  
18 engaging in the acts and practices described herein. Defendant’s conduct as herein alleged has  
19 injured Plaintiff and the putative California Class by wrongfully denying them earned wages, and  
20 therefore was substantially injurious to Plaintiff and the putative California Class.

21          103. Defendants engaged in unfair competition in violation of the UCL by violating,  
22 *inter alia*, each of the following laws. Each of these violations constitutes an independent and  
23 separate violation of the UCL:

- 24           a. Failure to pay the minimum wage pursuant to the Fair Labor Standards Act; and  
25           b. Failure to pay the California state minimum wage.

26          104. Defendant’s course of conduct, acts, and practices in violation of the California  
27 laws mentioned in the above paragraph constitute a separate and independent violation of the  
28

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1 UCL. Defendant's conduct described herein violates the policy or spirit of such laws or  
2 otherwise significantly threatens or harms competition.

3 105. The unlawful and unfair business practices and acts of Defendant, described  
4 above, have injured Plaintiff and the putative California Class in that they were wrongfully  
5 denied payment of earned wages.

6 106. Plaintiff, on behalf of himself and the putative California Class, seeks restitution  
7 in the amount of the respective unpaid wages earned and due for work performed at the  
8 applicable minimum wage rate. Plaintiff also seeks losses incurred as a result of Defendant's  
9 requirement that he and the California Class Members incur business expenses on behalf of  
10 DoorDash.

11 107. Plaintiff seeks recovery of attorneys' fees and costs of this action to be paid by  
12 Defendants, as provided by the UCL and California Labor Code §§ 218, 218.5, & 1194.

13 **7. Seventh Claim for Relief – California PAGA Claims Cal. Wage Order No.**  
14 **16-2001; Cal. Labor Code §§ 2698-2699.5**

15 108. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in  
16 this section, unless inconsistent.

17 109. Plaintiff and the putative California Class are nonexempt employees entitled to be  
18 paid their minimum wages for all overtime hours worked, as defined above.

19 110. Defendant was, at all times relevant to this claim for relief, the employer of  
20 Plaintiff and the putative California Class pursuant to California law and all other relevant law.

21 111. Under the California Private Attorneys General Act ("PAGA") of 2004, Cal.  
22 Labor Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself and other  
23 current or former employees as well as the general public, may bring a representative action as a  
24 private attorney general to recover penalties for an employer's violations of the California Labor  
25 Code and IWC Wage Orders. These civil penalties are in addition to any other relief available  
26 under the California Labor Code, and must be allocated 75% to California's Labor and  
27 Workforce Development Agency and 25% to the aggrieved employee. Cal. Labor Code § 2699.  
28

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1 112. Plaintiff and the putative California Class are nonexempt employees entitled to be  
2 paid their minimum wage compensation for all regular hours worked, as defined above.

3 113. Pursuant to Cal. Labor Code § 1198, Defendant's failure to pay proper  
4 compensation to Plaintiff and the putative California Class is unlawful and constitutes violations  
5 of the California Labor Code, each actionable under PAGA.

6 114. Plaintiff alleges, on behalf of himself and the putative California Class, as well as  
7 the general public, that Defendant has violated the following provisions of the California Labor  
8 Code and the following provisions of California Wage Order 16 that are actionable through the  
9 Cal. Labor Code and PAGA, as previously alleged herein: Cal. Wage Order No. 16-2001, Cal.  
10 Labor Code §§ 510 & 1194. Each of these violations entitles Plaintiff, as a private attorney  
11 general, to recover the applicable statutory civil penalties on his own behalf, on behalf of all  
12 aggrieved employees, and on behalf of the general public.

13 115. Cal. Labor Code § 2699(a), which is part of PAGA, provides in pertinent part:

14 Notwithstanding any other provision of law, any provision of this code that  
15 provides for a civil penalty to be assessed and collected by the Labor and  
16 Workforce Development Agency or any of its departments, divisions,  
17 commissions, boards, agencies, or employees, for a violation of this code, may, as  
an alternative, be recovered through a civil action brought by an aggrieved  
employee on behalf of himself or herself and other current or former employees  
pursuant to the procedures specified in Section 2699.3.

18 116. Cal. Labor Code § 2699(f), which is part of PAGA, provides in pertinent part:

19 117. Plaintiff is entitled to civil penalties to be paid by Defendant and allocated as  
20 PAGA requires, pursuant to Cal. Labor Code § 2699(a), for Defendant's violations of the  
21 California Labor Code and the relevant IWC Wage Order for which violations a civil penalty is  
22 already specifically provided by law. Further, Plaintiff is entitled to civil penalties to be paid by  
23 Defendant and allocated as PAGA requires, pursuant to § 2699(f) for Defendant's violations of  
24 the California Labor Code and the relevant IWC Wage Order for which violations a civil penalty  
25 is not already specifically provided.

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1 118. Plaintiff will provide written notice of his PAGA claims to relevant entities  
2 subsequent to filing this Complaint, and will file a notice with the Court when exhaustion is  
3 completed.

4 119. Under PAGA, Plaintiff and the State of California are entitled to recover the  
5 maximum civil penalties permitted by law for the violations of the California Labor Code and  
6 Wage Order No. 16 that are alleged in this Complaint.

#### 7 **VIII. JURY DEMAND**

8 120. Plaintiff hereby demands a jury trial on all causes of action and claims for relief  
9 with respect to which he and the putative Collective and California Class Action Members have  
10 a right to jury trial.

#### 11 **IX. DAMAGES AND PRAYER**

12 121. Plaintiff asks that the Court issue summons for Defendant to appear and answer,  
13 and that Plaintiff and the Collective and California Class Action Members be awarded a  
14 judgment against Defendant or order(s) from the Court for the following:

- 15
- 16 a. An order conditionally certifying this case as an FLSA collective action  
17 and requiring notice to be issued to all putative Collective Action  
Members;
  - 18 b. An order certifying that the California State Law Claims may be  
19 maintained as a class action pursuant to Federal Rule of Civil Procedure  
20 23;
  - 21 c. Designation of Goldman-Hull as a Representative of the California Class  
22 Action Members;
  - 23 d. Designation of attorneys Robert R. Debes, Jr. and Ricardo J. Prieto, of  
24 Shellist Lazarz Slobin, LLP, and Melinda Arbuckle, of Baron & Budd,  
P.C., as Class Counsel for the California Class Action Members;
  - 25 e. A declaratory judgment that the practices complained of herein are  
26 unlawful under the FLSA and California State law;
  - 27 f. An injunction against Defendant and its officers, agents, successors,  
28 employees, representatives, and any and all persons acting in concert with  
Defendant, as provided by law, from engaging in each of the unlawful  
practices, policies, and patterns set forth herein;

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- g. An award of damages including all unpaid minimum wages for all hours worked up to forty in a workweek, and all liquidated damages, and restitution to be paid by Defendant;
- h. Appropriate statutory penalties;
- i. Costs of action incurred herein, including expert fees;
- j. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;
- k. Pre-judgment and post-judgment interest, as provided by law;
- l. Such other injunctive and equitable relief as the Court may deem just and proper.

DATED: March 22, 2019

Respectfully submitted,

By: s/Melinda Arbuckle  
Melinda Arbuckle

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*Counsel for Plaintiff, Noah Goldman-Hull, and  
Proposed Class and Collective Action Members*

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# **EXHIBIT 1**

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**CONSENT TO BECOME A PARTY PLAINTIFF**

Name: Noah Goldman-Hull

1. I consent and agree to pursue my claims of unpaid overtime and/or minimum wage through the lawsuit filed against my employer.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act. I hereby consent, agree and opt-in to become a plaintiff herein and be bound by any judgment by the Court or any settlement of this action.
3. I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if the court approves. If someone else serves as the class representative, then I designate the class representatives as my agents to make decisions on my behalf concerning the litigation, including negotiating a settlement of my claims, and understand that I will be bound by such decisions, the method and manner of conducting the litigation, the entering of an agreement with the plaintiffs' counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.
4. In the event the case is certified and then decertified, I authorize Plaintiffs' counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

(Signature)  (Date Signed) 12/12/2018





# EXHIBIT DD

E-FILED  
 3/24/2017 3:48:12 PM  
 Clerk of Court  
 Superior Court of CA,  
 County of Santa Clara  
 2014-1-CV-274709  
 Reviewed By:R. Walker

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SANTA CLARA

Coordination Proceeding  
 Special Title (Rule 3.550)

JUDICIAL COUNCIL  
 COORDINATION PROCEEDING  
 NO. 4850<sup>1</sup>

**DIRECTV WAGE AND HOUR CASES**

**ORDER AFTER HEARING ON  
 MARCH 17, 2017**

**(1) Motion by Plaintiff Daniel Duran  
 to Enforce Arbitration Agreement or,  
 alternatively, Set Aside the Court's  
 Order Granting Defendant DirecTV,  
 LLC's Motion to Compel Arbitration;  
 (2) Motion by Defendant DirecTV,  
 LLC for a Mandatory Stay of  
 Proceedings**

The above-entitled matter came on regularly for hearing on Friday, March 17, 2017 at 9:00 a.m. in Department 19 (Complex Civil Litigation), the Honorable Peter H. Kirwan presiding. The Court reviewed and considered the written submission of all parties and issued a tentative ruling on March 15, 2017. No party contested the tentative ruling; therefore, the

<sup>1</sup> Included Actions: (1) Britschgi v. DirecTV, LLC; Superior Court of California, County of Alameda, Case No. RG15774968; (2) Bennett v. DirecTV, LLC; Superior Court of California, County of Alameda, Case No. RG15774823; (3) Duran v. DirecTV, LLC; Superior Court of California, County of Santa Clara, Case No. 1-14-CV-274709; (4) Christian Garcia v. DirecTV, LLC, Superior Court of California, County of Los Angeles, Case No. BC626175).

1 Court orders that the tentative ruling be adopted and incorporated herein as the Order of the  
2 Court, as follows:

3  
4 This coordinated putative class action arises out of various alleged Labor Code  
5 violations.

6  
7 On September 23, 2015, the Court issued an order granting defendant DirecTV's  
8 ("Defendant") motion to compel arbitration of individual claims and dismiss all class claims  
9 against plaintiff Daniel Duran. On July 11, 2016, the Court issued an order granting Defendant's  
10 motion to compel arbitration of plaintiff Carl Britschgi's individual claims and dismiss class  
11 claims. Britschgi moved for reconsideration of that order based on the California Supreme  
12 Court's opinion in *Sandquist v. Lebo Automotive, Inc.* (2016) 2016 WL 4045008, which was  
13 issued on July 28, 2016. Duran joined in the motion.

14  
15 Britschgi argued that the *Sandquist* decision directly conflicted with this Court's July 11  
16 order and required that the Court reconsider and modify the order to hold that the arbitrator  
17 should decide in this case whether class arbitration is permissible. This Court ultimately agreed  
18 and granted Britschgi's motion.

19  
20 With regard to Duran's joinder, however, the Court found that Duran was not a party to  
21 the motion to compel arbitration pertaining to Britschgi, so any ruling on Britschgi's motion for  
22 reconsideration would have no impact on Duran. The Court stated further that the order for  
23 which Duran would actually want reconsideration was filed on September 23, 2015, but that  
24 Duran had filed an appeal to that order, so proceedings related to the order appealed from were  
25 stayed and the Court could not modify the order at that time. (See Code Civ. Proc. § 916, subd.  
26 (a).) Duran then filed his own motion for reconsideration of the September 23, 2015 order,  
27 stating that he dismissed his appeal. The Court granted Duran's motion.

1 There are now two motions before the Court – (1) Duran’s motion to enforce arbitration  
2 agreement or, in the alternative, set aside the Court’s order granting Defendant’s motion to  
3 compel arbitration; and (2) Defendant’s motion for a mandatory stay of proceedings.

4  
5 **I. Motion to Enforce Arbitration Agreement**

6  
7 **a. Request for Judicial Notice**

8 Duran requests that the Court take judicial notice of the following documents:

- 9  
10 (1) Defendant’s Memorandum of Points and Authorities filed in support of its Motion to  
11 Compel Arbitration, filed on May 1, 2015; and  
12  
13 (2) Declaration of Scott P. Jang in Support of Defendant’s Motion to Compel Arbitration,  
14 filed on May 1, 2015.

15 The Court can take judicial notice of these documents as court records pursuant to  
16 Evidence Code section 452, subdivision (d). Accordingly, the request for judicial notice is  
17 GRANTED.

18  
19 **b. Discussion**

20 The parties’ arbitration agreement states, in relevant part: “The arbitration will be  
21 conducted either by the American Arbitration Association (‘AAA’), the Judicial Arbitration &  
22 Mediation Services (‘JAMS’) or as otherwise mutually agreed upon by the parties (‘Tribunal’).”  
23 (Plaintiff Daniel Duran’s Request for Judicial Notice in Support of his Motion to Enforce  
24 Arbitration Agreement or, in the Alternative, Set Aside the Court’s Order Granting Defendant  
25 DirecTV, LLC’s Motion to Compel Arbitration, Exhibit B, Exhibit A (the “Arbitration  
26 Agreement”).  
27  
28

1 On October 14, 2016, Defendant submitted a demand for arbitration to JAMS. Duran has  
2 objected, arguing that the Arbitration Agreement provides that arbitration can also be done  
3 through the AAA or as “mutually agreed upon by the parties.” Duran asserts Defendant should  
4 be ordered to comply with the Arbitration Agreement and allow arbitration to proceed before the  
5 AAA. In the alternative, Duran contends that the Court should order the Arbitration Agreement  
6 rescinded and set aside the order compelling arbitration because Defendant has breached the  
7 Arbitration Agreement.

8  
9 Defendant argues that, because arbitration has already begun and this case is stayed,  
10 Duran’s objection to the JAMS tribunal must be resolved by the arbitrator. Defendant argues  
11 further that, even if the Court were to consider Duran’s motion, the parties agreed that JAMS is  
12 an appropriate forum. Defendant contends it is complying with the Arbitration Agreement and  
13 Duran should be ordered to participate in the arbitration before JAMS.

14  
15 Duran seeks to “enforce” the Arbitration Agreement, contending that Defendant has  
16 breached it. Duran argues that Defendant should be ordered to comply with the Arbitration  
17 Agreement, but it is not apparent in what way Defendant is not complying. The specific relief  
18 sought by Duran is to have the arbitration ordered to proceed before the AAA instead of JAMS,  
19 but there is no provision in the Arbitration Agreement that authorizes that relief or gives  
20 precedence to the AAA over JAMS. Both tribunals are equally valid under the Arbitration  
21 Agreement and the Arbitration Agreement is otherwise silent regarding the selection of the  
22 arbitral forum.

23  
24 Duran argues in the alternative that he should be allowed to rescind the Arbitration  
25 Agreement because Defendant has breached it by refusing to comply with the provision that  
26 allows the arbitration to proceed before the AAA. As discussed above, however, that provision  
27 also allows the arbitration to proceed before JAMS. There is nothing in the record demonstrating  
28 that Defendant is not complying with the Arbitration Agreement.



1 In sum, Duran has provided no basis for the Court to grant the relief sought.  
2 Accordingly, Duran's motion to enforce the Arbitration Agreement is DENIED.  
3

## 4 II. Motion for Stay of Proceedings

5

6 As stated by Defendant, there are four coordinated cases pending against Defendant:  
7 *Duran, Britschgi, Bennett, and Garcia*. *Britschgi and Duran* (excluding PAGA claims) have  
8 been compelled to arbitration by this Court. Defendant argues that, pursuant to Code of Civil  
9 Procedure section 1281.4, this Court must stay the entirety of the instant coordinated action  
10 pending the outcome of the *Britschgi and Duran* arbitration proceedings. Section 1281.4 states,  
11 in relevant part:

12  
13 If a court of competent jurisdiction, whether in this State or not, has ordered  
14 arbitration of a controversy which is an issue involved in an action or proceeding  
15 pending before a court of this State, the court in which such action or proceeding  
16 is pending shall, upon motion of a party to such action or proceeding, stay the  
action or proceeding until an arbitration is had in accordance with the order to  
arbitrate or until such earlier time as the court specifies.

17 (Code Civ. Proc., § 1281.4.)  
18

19 Defendant contends that the non-PAGA claims that have been compelled to arbitration  
20 overlap with the claims at issue in the PAGA claims still pending before this Court. Defendant  
21 states that all of the actions involve the same central issue: an Installation Technician who  
22 alleges Defendant's alleged piece-rate system did not compensate the technician in accordance  
23 with California law.  
24

25 The motion is opposed by plaintiffs Garcia and Bennett. They assert that their claims are  
26 only based on PAGA. Garcia argues that his Complaint is not about piece-rate compensation  
27 and that there is a difference between employee claims for damages and government claims for  
28 civil penalties. Bennett argues that there is no basis for a stay because the PAGA litigation in his

1 case involves only the entitlement to civil penalties and would not interfere with or impede the  
2 arbitrator's authority.

3  
4 As explained in one case:

5  
6 When a trial court has ordered arbitration of a controversy which is an issue  
7 involved in an action or proceeding pending before the court, it shall, upon  
8 motion of a party stay the action or proceeding until the arbitration is had in  
9 accordance with the order to arbitrate. It is irrelevant under the statute whether the  
10 movant is a party to the arbitration agreement. Any party to a judicial proceeding  
11 is entitled to a stay of those proceedings whenever (1) the arbitration of a  
12 controversy has been ordered, and (2) that controversy is also an issue involved in  
the pending judicial action. The purpose of the statutory stay is to protect the  
jurisdiction of the arbitrator by preserving the status quo until arbitration is  
resolved. In the absence of a stay, the continuation of the proceedings in the trial  
court disrupts the arbitration proceedings and can render them ineffective.

13  
14 (*Heritage Provider Network, Inc. v. Superior Court* (2008) 158 Cal.App.4th 1146, 1152,  
15 quotations marks, ellipses, and citations omitted.)

16  
17 The Court notes that Garcia and Bennett are correct that the remedies sought in the  
18 arbitrations are different than those sought by the PAGA claims (i.e. damages vs. penalties).  
19 This does not mean, however, that there are no overlapping issues. As argued by Defendant,  
20 *Garcia* and *Bennett* are two out of four coordinated cases and cases are coordinated when they  
21 share a common question of fact or law. (Code Civ. Proc., § 404.1.) It is not apparent how it  
22 can now be asserted that there are no overlapping issues between the cases. In fact, Bennett  
23 stipulated that coordination was appropriate, effectively conceding there is at least some  
24 common question of fact or law.

25  
26 With regard to section 1281.4, "[a] controversy can be a single question of law or fact,  
27 and a stay *shall* be issued upon proper motion if the court has ordered arbitration of a  
28 controversy that is also an issue involved in an action or proceeding pending before it."

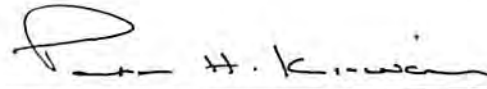
(*Heritage Provider Network, Inc. v. Superior Court* (2008) 158 Cal.App.4th at pp. 1152-1153,



1 emphasis in original.) Garcia and Bennett cite to no authority demonstrating that there is a  
2 PAGA exception to section 1281.4. Accordingly, Defendant's motion for a stay is GRANTED.

3  
4 IT IS SO ORDERED.

5  
6 Dated: 3 | 27 | 17



Hon. Peter H. Kirwan  
Judge of the Superior Court