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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 Kevin Saunders, an individual, in his
17 individual and representative capacity,

18 Plaintiff,

19 v.

20 DoorDash, Inc., and DOES 1 through
21 10, inclusive,

22 Defendants.

CASE NO.: CGC-20-587051

**FIRST AMENDED PRIVATE
ATTORNEY GENERAL COMPLAINT
FOR:**

1. **Willful Misclassification;**
2. **Failure to Pay Overtime Wages;**
3. **Failure to Pay Minimum Wage;**
4. **Failure to Timely Pay Wages;**
5. **Failure to Pay Wages on Termination;**
6. **Failure to Provide an Accurate Itemized Paystub;**
7. **Failure to Reimburse Business Expenses; and**
8. **Violation of Labor Code §432.6.**

DEMAND FOR JURY TRIAL.

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

01/11/2021
Clerk of the Court
BY: EDNALEEN ALEGRE
Deputy Clerk

1 Plaintiff Kevin Saunders (“Plaintiff”) alleges as follows:
2

3 **INTRODUCTION**

4 1. In this Complaint, Plaintiff uses the term “Driver” to refer to individuals
5 employed by Defendant DoorDash, Inc. (“DoorDash” or “Defendant”), whose primary
6 job duties consist of delivering food to customers as part of the food delivery service that
7 is DoorDash’s primary business.

8 2. Plaintiff brings this Complaint as a Private Attorney General on behalf of
9 the State of California with regard to current and former California DoorDash Drivers
10 pursuant to California Labor Code §2699 *et seq.*, based on Defendant’s willful
11 misclassification of its Drivers as independent contractors.
12

13 **THE PARTIES**

14 3. Plaintiff Kevin Saunders (“Saunders” or “Plaintiff”) is a citizen of the
15 United States. Beginning in June 2020, DoorDash has employed Saunders in California
16 as a delivery driver as part of the food delivery service that is DoorDash’s primary
17 business. DoorDash terminated Saunders’ employment on July 6, 2020 and re-hired
18 Saunders on August 6, 2020.

19 4. Defendant DoorDash is a corporation organized under the laws of the State
20 of Delaware with its principal place of business in San Francisco, California.

21 5. Plaintiff is currently unaware of the true names and capacities of the
22 Defendants sued herein as Does 1 through 10 (the “Doe Defendants”) and therefore sues
23 the Doe Defendants by such fictitious names. Plaintiff will amend this Complaint to
24 allege the true names and capacities of the Doe Defendants when they are ascertained.

25 6. Plaintiff is informed and believes, and thereon alleges, that the Doe
26 Defendants are the partners, agents, or principals and co-conspirators of the named
27 Defendants and of each other; that the named Defendants and the Doe Defendants
28 performed the acts and conduct herein alleged directly, aided and abetted the performance

1 thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and
2 conduct, and therefore each of the Doe Defendants is liable to Plaintiff to the extent of the
3 liability of the named Defendants as alleged herein.

4 7. Plaintiff is informed and believes, and on that basis alleges, that at all times
5 herein mentioned, all of the Defendants are and were a single employer.

6 8. Plaintiff is informed and believes, and on that basis alleges, that at all times
7 herein mentioned, each of the Defendants was the agent, servant and/or employee of each
8 of the other Defendants and, in connection with the matters hereinafter alleged, was acting
9 within the scope of such agency and employment, and each Defendant ratified each and
10 every act, omission and thing done by each and every other Defendant herein.

11 12 **JURISDICTION AND VENUE**

13 9. This Court has jurisdiction in this action because one or more Defendants
14 reside in this jurisdiction; and because service was effected on one or more Defendants
15 while voluntarily present in California.

16 10. Venue is proper under California Code of Civil Procedure §395.5, as this is
17 the county where Defendant's principal place of business is situated.

18 19 **LABOR CODE §2699**

20 11. Plaintiff realleges and incorporates herein by this reference the allegations
21 of paragraphs 1 through 10 hereof, inclusive.

22 12. California Labor Code §2699 *et seq.* authorizes Plaintiff to recover civil
23 penalties for each Labor Code violation described herein.

24 13. Plaintiff hereby seeks to recover civil penalties, pursuant to California
25 Labor Code §2699 *et seq.*, for each Labor Code violation described herein with respect to
26 all DoorDash Drivers whom Defendant has employed in California.

27 14. Pursuant to California Labor Code §2699.3, on July 17, 2020, Plaintiff
28 gave notice to the Labor and Workforce Development Agency and the employer of the

1 specific provisions of the Labor Code alleged to be violated in this Complaint, including
2 the facts and theories to support each alleged violation. Plaintiff gave notice to the
3 LWDA electronically through the agency website and to the employer via certified mail.

4 15. More than 65 days have passed since Plaintiff gave notice by the statutorily
5 prescribed procedure to the Labor and Workforce Development Agency. Neither the
6 employer nor the Labor and Workforce Development Agency have provided any notice of
7 intent to investigate any of the alleged violations.

8 9 **COMMON ALLEGATIONS**

10 16. Plaintiff realleges and incorporates herein by this reference the allegations
11 of Paragraphs 1 through 15 hereof, inclusive.

12 17. DoorDash is a company whose primary business is delivering food directly
13 to its customers. The money that customers pay to DoorDash for delivery services is the
14 company's primary source of income. Customers access DoorDash's services through an
15 application installed on the customers' cell phone or other digital device, or through the
16 website operated by DoorDash.

17 18. DoorDash employs Drivers throughout the state of California. DoorDash
18 takes orders and collects payment from customers. It then instructs a Driver to pick up the
19 food ordered, and then to deliver the food directly to each customer. The work performed
20 by Drivers is within the usual course of DoorDash's business.

21 19. At all times relevant hereto, DoorDash has engaged, suffered or permitted
22 the Drivers to work for DoorDash in California.

23 20. At all times relevant hereto, DoorDash has maintained a uniform policy of
24 classifying all Drivers as independent contractors rather than employees.

25 21. Plaintiff is informed and believes, and thereon alleges, that DoorDash's
26 misclassification of Drivers as independent contractors is willful and done in order to
27 deprive the Drivers of benefits due them, and to gain an economic advantage, with the full
28 knowledge that the law requires the Drivers to be classified as employees.

1 22. Since June 2020, Plaintiff has been employed by DoorDash and has
2 performed food deliveries for DoorDash in California using the DoorDash application.

3 23. In order to perform deliveries for DoorDash, Drivers, including Plaintiff, are
4 required to use their own personal cellular phone or tablet device and personal motor
5 vehicle. Drivers, including Plaintiff, have incurred costs in connection with acquiring,
6 maintaining and using personal cellular phone or tablet devices and personal motor
7 vehicles to perform deliveries for DoorDash.

8 24. DoorDash has not reimbursed any of its Drivers, including Plaintiff, for any
9 costs relating to the use of personal cell phone or personal vehicle for work purposes.

10 25. Drivers have worked shifts for DoorDash exceeding eight hours in a day.
11 At all times relevant hereto, DoorDash has refused to pay its Drivers the overtime
12 premium for the time worked over eight hours in a day.

13 26. On June 28, 2020, Plaintiff worked 3.5 hours, completing two deliveries.
14 Defendant paid him just nine dollars for this time worked; an hourly rate of \$2.57. During
15 this shift, Plaintiff was required to use his personal automobile (including gasoline) and
16 personal cell phone to complete his work. Defendant did not reimburse Plaintiff for these
17 expenses.

18 27. On September 6, 2020, DoorDash assigned Plaintiff a 13-hour shift.
19 Plaintiff actually worked 12.4 hours, completing 12 deliveries and earning \$100.84; just
20 \$8.13 per hour. Defendant did not pay Plaintiff any overtime premium. During this shift,
21 Plaintiff was required to use his personal automobile (including gasoline) and personal
22 cell phone to complete his work. Defendant did not reimburse Plaintiff for these
23 expenses.

24 28. At all times relevant hereto, DoorDash has refused to pay its Drivers,
25 including Plaintiff, any overtime premium.

26 29. At all times relevant hereto, DoorDash has refused to ensure that Drivers
27 receive at least minimum wage for all hours worked. Drivers have routinely received less
28 than minimum wage.

30. At all times relevant hereto, DoorDash refused to reimburse Drivers for business expenses including automobile use, gasoline, and cellular telephone use.

31. Plaintiff is informed and believes, and thereon alleges, that DoorDash's misclassification of Drivers as independent contractors is willful and done in order to deprive the Drivers of benefits due them, and to gain an economic advantage, with the full knowledge that the law requires the Drivers to be classified as employees.

FIRST CAUSE OF ACTION
(Willful Misclassification)

32. Plaintiff realleges and incorporates herein by this reference the allegations of Paragraphs 1 through 31 hereof, inclusive.

33. A worker is properly considered an independent contractor to whom the Wage Order does not apply only if the hiring entity establishes: (A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity's business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

34. The work performed by the Drivers at issue in this case is within the usual course of DoorDash's business, such that an employer-employee relationship is created between DoorDash and the Drivers.

35. Labor Code §226.8 prohibits any person or employer from willfully misclassifying an individual who is an employee subject to the applicable Wage Order.

36. Since at least 2016 until the present, DoorDash has maintained a uniform policy whereby DoorDash has misclassified all Drivers as independent contractors for purposes of the Wage Order.

37. Through its misclassification of every Driver as an independent contractor for purposes of the Wage Order, DoorDash has engaged in a pattern and practice of willful misclassification for its own financial benefit.

38. Pursuant to Labor Code §226.8, Plaintiff is entitled to recover civil penalties for DoorDash's misclassification of employees with regard to their employment status under the Wage Order of not less than ten thousand dollars (\$10,000) and up to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

39. Plaintiff is entitled to recover attorney fees and costs in bringing this action.

40. DoorDash is subject to an order requiring it to provide public notice of its violation of Section 226.8, as required under sub-sections (e) and (f) thereof, in the event this Court determines that a violation has been committed.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime Premiums)

41. Plaintiff realleges and incorporates herein by this reference the allegations of paragraphs 1 through 40 hereof, inclusive.

42. At all times relevant hereto, Paragraph 3 of the applicable Wage Order and California Labor Code §510 have required that DoorDash pay each of its Drivers one and a half his or her regular rate of pay for any work in excess of 8 hours in one workday, in excess of 40 hours in one workweek, and for the first 8 hours of work on the seventh day of a workweek.

43. Drivers work shifts for DoorDash in excess of 8 and even 12 hours per day.

44. DoorDash has a uniform policy of intentionally failing to pay the overtime premiums due to its Drivers for overtime work.

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1 **FIFTH CAUSE OF ACTION**

2 **(Failure to Pay Wages on Termination)**

3 54. Plaintiff realleges and incorporates herein by this reference the allegations
4 of paragraphs 1 through 53 hereof, inclusive.

5 55. Labor Code §§201 and 202 require that DoorDash pay each Driver all of
6 the wages earned by that employee at the time of termination for an involuntary
7 termination and within 72 hours of termination for a voluntary termination.

8 56. At all times relevant hereto, DoorDash has terminated Drivers who were
9 entitled to overtime wages earned under the applicable Wage Order at the time that the
10 Drivers' employment with DoorDash ended.

11 57. At all times relevant hereto, Drivers who were entitled to overtime wages
12 earned under the applicable Wage Order have voluntarily quit their jobs.

13 58. DoorDash maintains a policy and practice of willfully refusing to pay any
14 Driver the overtime wages to which he or she is entitled under the Wage Order at any time
15 after that Driver's termination or resignation.

16
17 **SIXTH CAUSE OF ACTION**

18 **(Failure to Provide an Accurate Itemized Paystub)**

19 59. Plaintiff realleges and incorporates herein by this reference the allegations
20 of Paragraphs 1 through 58 hereof, inclusive.

21 60. At all times relevant hereto, Paragraph 7 of the applicable Wage Order has
22 required that every employer shall semimonthly, or at the time of each payment of wages,
23 furnish each employee an itemized statement in writing showing: (1) all deductions;
24 (2) the inclusive dates of the period for which the employee is paid; (3) the name of the
25 employee or the employee's social security number; and (4) the name of the employer.

26 61. California Labor Code §226(a) requires that each pay period DoorDash
27 must provide each Driver with an itemized statement as required by the Wage Order.
28

1 62. At all times relevant hereto, DoorDash violated the Wage Order and Labor
2 Code §226(a) by failing to provide Drivers with any itemized statement at all.

3 63. DoorDash maintains a policy and practice of willfully refusing to provide its
4 Drivers with itemized wage statements as required by Labor Code §226(a). Particularly
5 after the ruling in *Dynamex v. Superior Court* and the passage of California Assembly
6 Bill 5, Defendant was fully aware that the law requires it to classify its Drivers as
7 employees, and not independent contractors; and was fully aware that the law requires it
8 to afford all of the applicable protections of the Wage Order and Labor Code to its Drivers
9 – including provision of accurate itemized wage statements. DoorDash, however,
10 willfully continued to unlawfully misclassify its Drivers, including Plaintiff, as
11 independent contractors, and willfully continued to deprive Drivers of the rights due them,
12 including the right to receipt of accurate itemized wage statements.

13 14 **SEVENTH CAUSE OF ACTION**

15 **(Failure to Provide Equipment or Reimburse Business Expenses)**

16 64. Plaintiff realleges and incorporates herein by this reference the allegations
17 of paragraphs 1 through 63 hereof, inclusive.

18 65. At all times relevant hereto, Paragraphs 8 and 9 of the applicable Wage
19 Order have required that an employer provide its employees with any tools or equipment
20 that are required by the employer or are necessary to the performance of the job.

21 66. Each and every time that Plaintiff has worked as a Driver for Defendant,
22 Plaintiff was required to use his personal automobile (including gasoline) and cell phone
23 to complete his work. Defendant did not reimburse Plaintiff for any of these expenses.

24 67. DoorDash requires every Driver to use a cellular telephone or tablet device
25 with a wireless data connection in order to send and receive information regarding the
26 pickup, transportation and delivery of food to DoorDash's customers.

27 68. DoorDash requires every Driver to use a motor vehicle in order to deliver
28 food to its customers.

1 69. DoorDash knew or had reason to know of the business expenses incurred by
2 Drivers because the company's own policies explicitly required each Driver to provide his
3 or her own means of transportation and a cellular telephone or tablet device on which to
4 use Defendant's platform.

5 70. During all times relevant hereto, DoorDash maintained a uniform policy of
6 refusing to provide cellular telephones, tablet devices, or motor vehicles to Drivers,
7 despite the fact that this equipment is both required by Drivers and necessary to the
8 performance of the job.

9 71. During all times relevant hereto, DoorDash maintained a uniform policy of
10 refusing to reimburse Drivers for the cost of cellular telephones, tablet devices, wireless
11 data connections or motor vehicles, despite the fact that this equipment is both required by
12 DoorDash and necessary to the performance of the job.

13
14 **EIGHTH CAUSE OF ACTION**

15 **(Violation of Labor Code Section 432.6)**

16 72. Plaintiff realleges and incorporates herein by this reference the allegations
17 of paragraphs 1 through 71 hereof, inclusive.

18 73. Labor Code §432.6 prohibits an employer from requiring, as a condition of
19 employment, continued employment or receipt of any employment-related benefit, any
20 applicant for employment or any employee to waive any right, forum or procedure for a
21 violation of any provision of the California Labor Code.

22 74. Section 432.6 prohibits an employer from requiring, as a condition of
23 employment, any employee or applicant for employment to enter into a mandatory
24 arbitration clause with respect to any claims such employee or applicant might have for
25 the employer's violations of the California Labor Code.

1 75. Section 432.6 prohibits an employer from threatening, retaliating against,
2 discriminating against, or terminating any employee or applicant for employment because
3 of such employee's or applicant's refusal to consent to the waiver of any right, forum or
4 procedure for violation of the California Labor Code.

5 76. Upon hiring Drivers to work for DoorDash, DoorDash requires Drivers to
6 enter into a written agreement with DoorDash regarding the purported terms and
7 conditions of employment.

8 77. This agreement states that DoorDash will permit Drivers to opt out of its
9 arbitration agreement by giving notice to DoorDash within 30 days.

10 78. On July 4, 2020, Plaintiff sent notice to Defendant via e-mail of his intent to
11 opt out of the company's arbitration program. The e-mail contained the following text: "I
12 would like to opt out of the DoorDash arbitration agreement." Plaintiff followed up with
13 a notice sent via mail on July 16, 2020.

14 79. On July 6, 2020, Defendant responded to Plaintiff's opt-out by terminating
15 his employment. The e-mail informing Plaintiff of his termination stated: "Your
16 DoorDash account has been deactivated." This "deactivation" was a termination of
17 employment and constituted retaliation against Plaintiff because of his refusal to waive his
18 right to bring claims in court under the Labor Code.

19 80. On information and belief, during the period of time covered by this action,
20 Defendant has maintained a uniform policy and practice of terminating the employment of
21 Drivers who provided notice of his or her intention to opt out of DoorDash's arbitration
22 program. This policy and practice directly violates California Labor Code Section 432.6.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendant DoorDash, Inc. and
26 Does 1 through 10, inclusive, and each of them, as follows:
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28

1 **ON THE FIRST CAUSE OF ACTION:**

- 2 1. For the civil penalties described in Labor Code §226.8 for all violations set
3 forth by this cause of action;
4 2. For the relief provided for by Labor Code §226.8(e) and (f); and
5 3. For attorney fees and costs, pursuant to California Labor Code §2699(g).
6

7 **ON THE SECOND CAUSE OF ACTION:**

- 8 1. For the civil penalties described in Labor Code §558 (exclusive of amounts in
9 recovery of underpaid wages) for all violations set forth by this cause of action,
10 pursuant to Labor Code §2699(a); and
11 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
12 §2699(g)(1) and California Code of Civil Procedure §1021.5.
13

14 **ON THE THIRD CAUSE OF ACTION:**

- 15 1. For the civil penalties described in Labor Code §§2699(f) and 1197.1 for all
16 violations set forth by this cause of action; and
17 2. For attorney fees and costs reasonably incurred, in accordance with California
18 Labor Code §2699(g)(1) and California Code of Civil Procedure §1021.5.
19

20 **ON THE FOURTH CAUSE OF ACTION:**

- 21 1. For the civil penalties described in Labor Code §210 for all violations set forth
22 by this cause of action; and
23 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
24 §2699(g)(1) and California Code of Civil Procedure §1021.5.
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1 **ON THE FIFTH CAUSE OF ACTION:**

- 2 1. For the civil penalties described in Labor Code §2699(f) for all violations set
3 forth by this cause of action; and
4 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
5 §2699(g)(1) and California Code of Civil Procedure §1021.5.
6

7 **ON THE SIXTH CAUSE OF ACTION:**

- 8 1. For the civil penalties described in Labor Code §226.3 for all violations set
9 forth by this cause of action or, alternatively, if such civil penalties are not
10 available, for civil penalties pursuant to Labor Code §2699(f); and
11 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
12 §2699(g)(1) and California Code of Civil Procedure §1021.5.
13

14 **ON THE SEVENTH CAUSE OF ACTION:**

- 15 1. For the civil penalties described in Labor Code §2699(f) for all violations set
16 forth by this cause of action; and
17 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
18 §2699(g)(1) and California Code of Civil Procedure §1021.5.
19

20 **ON THE EIGHTH CAUSE OF ACTION:**

- 21 1. For the civil penalties described in Labor Code §2699(f) for all violations set
22 forth by this cause of action; and
23 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
24 §§432.6(d), 2699(g)(1) and California Code of Civil Procedure §1021.5.
25

26 **ON ALL CAUSES OF ACTION:**

- 27 1. For costs of suit, to the extent not otherwise prayed for above;
28 2. For attorney fees to the extent not otherwise prayed for above;

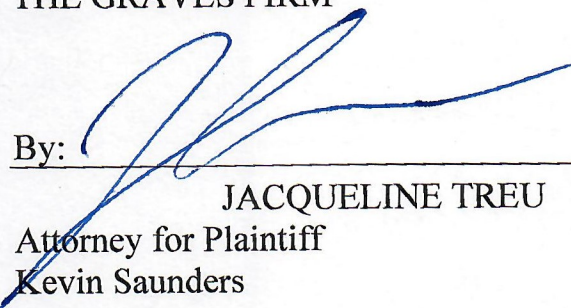
- 1 3. For interest on amounts recoverable; and
2 4. For such other and further relief as this Court deems just and proper.
3

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff hereby demands a jury trial.
6

7 DATED: January 11, 2021

THE GRAVES FIRM

8
9 By: 

10 JACQUELINE TREU

11 Attorney for Plaintiff
12 Kevin Saunders
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
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 122 N. Baldwin Avenue, Main Floor, Sierra Madre, California 91024.

On January 11, 2021, I served the following document(s) described as:

FIRST AMENDED PRIVATE ATTORNEY GENERAL COMPLAINT

on the interested parties by transmitting a true and correct copy thereof addressed as follows:

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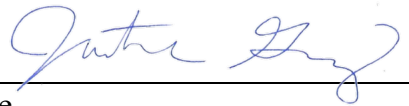
☒ **VIA E-MAIL:**

I personally sent such document(s) via email to the known email address of the person(s) on whom it is to be served pursuant to the parties' electronic service agreement in this matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 11, 2021, at Sierra Madre, California.

Justine Gray

Type or Print Name



Signature