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David W. Slayton,
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By Y. Tarasyuk, Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 JORGE CASTILLO, an aggrieved employee
14 and on behalf of other aggrieved employees;

15 Plaintiff,

16 vs.

17 FORKABLE DELIVERY, CO., a California
18 corporation; and DOES 1 through 50,

19 Defendants.

Case No.: **23STCV26664**

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
et seq.)**

20 Plaintiff JORGE CASTILLO ("Plaintiff"), on behalf of himself as an aggrieved employee,
21 the State of California, and other aggrieved employees, hereby brings this Representative Action
22 Complaint ("Complaint") against Defendants FORKABLE DELIVERY, CO., a California
23 corporation, and DOES 1 to 50 inclusive (collectively "Defendants"), and on information and belief
24 alleges as follows:

25 **JURISDICTION AND VENUE**

26 1. Plaintiff brings this Complaint for recovery of civil penalties under the California
27 Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* ("PAGA") for Defendants'
28 violations of the Labor Code and applicable Industrial Welfare Commission ("IWC") Wage Orders
4-2001 and 7-2001 (the "Wage Orders"), including Labor Code §§ 201, 202, 203, 204, 210, 212,
226(a), 226.2, 226.3, 226.7, 226.8, 245-248.5, 256, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198,

1 2775, and 2802. This Court has jurisdiction over Defendants' violations of the Labor Code because
2 the amount in controversy exceeds \$25,000.

3 2. Venue is proper in this judicial district because Defendants maintain offices, have
4 agents, and/or transact business in the State of California, including Los Angeles County, and some
5 of the acts and omissions complained of herein occurred in Los Angeles County. Furthermore,
6 Plaintiff was employed by Defendants within Los Angeles County.

7 **PARTIES**

8 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
9 eighteen (18) and is a California resident. Within the statute of limitations periods applicable to
10 each cause of action pled herein, Plaintiff was employed by Defendants in Los Angeles County and
11 was misclassified by Defendants as an independent contractor app-based delivery driver. Plaintiff
12 was, and is, a victim of Defendants' policies, practices, and/or customs complained of herein and
13 has been deprived of the rights guaranteed by Labor Code §§ 201, 202, 203, 204, 210, 212, 226(a),
14 226.2, 226.3, 226.7, 226.8, 245-248.5, 256, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2775,
15 and 2802, and the Wage Orders.

16 4. Plaintiff is informed and believes, and based thereon alleges, that during the
17 applicable statute of limitations for each cause of action pled herein and continuing to the present,
18 Defendants engaged in and continue to engage in business, and employed Plaintiff and other,
19 similarly-situated misclassified employees within Los Angeles County, and the State of California
20 and, therefore, were (and are) doing business in Los Angeles County and the State of California.

21 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
22 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
23 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
24 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
25 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
26 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
27 and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful
28 employment practices, wrongs, injuries, and damages complained of herein.

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

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

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

15 9. At all times herein mentioned, the acts and omissions of various Defendants, and
16 each of them, concurred and contributed to the various acts and omissions of each and all of the
17 other Defendants in proximately causing the injuries and damages as herein alleged.

18 **FACTUAL ALLEGATIONS**

19 10. Defendants own and operate an app-based food delivery company in the State of
20 California. Defendants employed Plaintiff as a delivery driver in Los Angeles from approximately
21 June 2022 to approximately June 2023 and misclassified him as an independent contractor. Plaintiff
22 seeks civil penalties on behalf of himself and other aggrieved delivery drivers (collectively,
23 “Aggrieved Employees”) for Defendants’ violations of the Labor Code and Wage Orders.

24 11. Defendants characterize Aggrieved Employees as independent contractors who
25 merely utilize Defendants’ logistics software to independently provide delivery services to facilitate
26 transactions between private vehicle drivers and food service patrons. However, Aggrieved
27 Employees cannot be independent contractors of Defendants because Defendants actively directed
28 and required Aggrieved Employees to provided services for the benefit of Defendants in violation

1 of the requirements for independent contractors set forth in California Business & Professions Code
2 §§ 7451, *et seq.*

3 12. Defendants engaged in control over Aggrieved Employees' wages, hours, and
4 working conditions begins in violation of Business & Professions Code § 7451. During the relevant
5 time period, Defendants required Aggrieved Employees to provide Defendants with their work
6 schedules and Defendants assigned deliveries to Aggrieved Employees as a means to control the
7 manner in which Aggrieved Employees provided services on behalf of Defendants. Effectively,
8 these deliveries assigned by Defendants forced Aggrieved Employees to accept their assigned
9 deliveries or risk having their earning potential substantially limited.

10 13. For example, Defendants assigned deliveries to Plaintiff the day before the deliveries
11 were scheduled and he was required to accept those deliveries even if he did not want to accept
12 them. Defendants also unilaterally canceled deliveries assigned to Plaintiff even though he was
13 already enroute to pick up the deliveries. Thus, Defendants' policies and practices failed to meet the
14 requirements of Business & Professions Code § 7451 as they require Aggrieved Employees to
15 accept specific requests as a condition of maintaining access to Defendants' platform.

16 14. Furthermore, upon information and belief, Defendants failed to provide the requisite
17 compensation and benefit required by Business & Professions Code §§ 7453-7455, including failing
18 to provide Aggrieved Employees with the minimum earnings guaranteed by Business & Professions
19 Code § 7453(a); failing to give access to health insurance benefits to Aggrieved Employees per
20 Business & Professions Code § 7454; and refusing to pay out insurance for on-the-job injuries in
21 violation of Business & Professions Code § 7454.

22 15. Thus, the determination of whether Aggrieved Employees are employees or
23 independent contractors is controlled by the ABC test under Labor Code § 2775 and *Dynamex*
24 *Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 90. Under the ABC test, a worker is
25 considered an employee and not an independent contractor unless the hiring entity satisfies all three
26 of the following conditions: (1) the worker is free from the control and direction of the hiring entity
27 in connection with the performance of the work, both under the contract for the performance of the
28 work and in fact; (2) the worker performs work that is outside the usual course of the hiring entity's

1 business; (3) the worker is customarily engaged in an independently established trade, occupation,
2 or business of the same nature as that involved in the work performed.

3 16. Here, Defendants fail all three conditions under the ABC test. First, Defendants
4 exercised control and directed Aggrieved Employees with respect to the performance of their job
5 duties. Second, Defendants operated a food delivery business and Aggrieved Employees, as
6 delivery drivers, performed work that is Defendants' business. Third, Plaintiff worked for
7 Defendant part-time and was not engaged in an independently established occupation of food
8 delivery driver.

9 17. Aggrieved Employees are required to use their personal devices, such as
10 smartphones, to perform their job duties, including but not limited to, receiving delivery
11 assignments from Defendants, communicating with Defendants regarding their job assignments,
12 and communicating with Defendants regarding their compensation. Aggrieved Employees are also
13 required to utilize their personal vehicles and maintain motor vehicle insurance in the performance
14 of their job functions. Defendants failed to indemnify and reimburse Aggrieved Employees for
15 these necessary business expenses in violation of Labor Code § 2802.

16 18. Defendants compensated Aggrieved Employees on a piece rate basis based on a set
17 rate per route, such as \$60 per route, and failed to separately compensate them for any non-
18 productive time and rest and recovery periods in violation of Labor Code § 226.2.

19 19. Defendants failed to provide any wage statements to Aggrieved Employees in
20 violation of Labor Code § 226.

21 20. Defendants violated Labor Code § 212 by paying Aggrieved Employees' wages via
22 ACH transfers only.

23 21. Defendants failed to compensate Aggrieved Employees at the minimum wage for all
24 hours worked and/or overtime premiums for overtime hours worked in violation of Labor Code §§
25 510, 1194, 1197, and 1198 and the applicable sections of the Wage Orders.

26 22. Defendants failed to provide Aggrieved Employees with any of the benefits of
27 employment, including but not limited to, meal and rest periods in violation of Labor Code §§ 226.7
28 and 512 and the applicable sections of the Wage Orders, paid sick leave in violation of Labor Code

1 § 246, and reporting time premium wages in violation of Labor Code § 1198 and applicable sections
2 of the Wage Orders.

3 23. Defendants failed to pay all wages due to Aggrieved Employees upon separation of
4 their employment with Defendants in violation of Labor Code §§ 201 and 202.

5 24. Defendants failed to keep accurate and complete payroll records showing the actual
6 hours worked daily and the wages earned by Aggrieved Employee, including earned and unpaid
7 minimum, overtime, and premium wages as discussed above, and failed to compensate all wages
8 due no less than twice per month in violation of Labor Code §§ 204 and 1174.

9 13. On or about August 18, 2023, Plaintiff notified Defendants via certified mail, and
10 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
11 Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties
12 under Labor Code § 2698, *et seq.* with respect to the violations of the Labor Code identified in the
13 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying
14 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,
15 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has
16 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act
17 with respect to these violations.

18 **FIRST CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(Against All Defendants)**

21 14. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
22 fully set forth herein.

23 15. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698, *et*
24 *seq.*, acting on behalf of himself and other Aggrieved Employees, brings this representative action
25 against Defendants to recover the civil penalties due to Plaintiff and other Aggrieved Employees,
26 and the State of California according to proof pursuant to Labor Code § 558 and § 2699(a) and (f)
27 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
28 employee and \$200 for each subsequent violation or willful or intentional violation pursuant to

1 Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
2 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
3 Labor Code § 558 per employee per pay period; (3) \$100 for each initial violation and \$250 for
4 each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250
5 for each initial violation and \$1,000 for each subsequent violation pursuant to Labor Code § 226.3
6 per employee per pay period; (5) pursuant to Labor Code section 256, a civil penalty in an amount
7 not exceeding 30 days per former employee as waiting time under the terms of Labor Code § 203;
8 and/or (6) \$100 for each initial violation and \$200 for each subsequent violation per employee per
9 pay period for those violations of the Labor Code for which no civil penalty is specifically provided,
10 based on the following Labor Code violations:

- 11 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
12 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 13 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
14 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 c. Failing to provide all legally required meal periods, and failure to pay meal period
16 premium wages, to Aggrieved Employees at the regular rate of compensation in
17 violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 18 d. Failing to authorize and permit all legally required rest periods, and failure to pay
19 rest period premium wages, to Aggrieved Employees at the regular rate of
20 compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 21 e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage
22 statements in violation of Labor Code § 226;
- 23 f. Failing to timely pay all final wages and compensation earned by Aggrieved
24 Employees at the time of separation in violation of Labor Code §§ 201 and 202;
- 25 g. Failure to reimburse Aggrieved Employees for all necessary business expenses in
26 violation of Labor Code § 2802;
- 27 h. Failing to pay Aggrieved Employees all earned wages at least twice during each
28 calendar month in violation of Labor Code § 204;

- 1 i. Failing to provide paid sick leave in violation of Labor Code § 246;
2 j. Failing to pay reporting time pay premiums in violation of Labor Code § 1198; and
3 k. Failing to maintain accurate records on behalf of Aggrieved Employees in violation
4 of Labor Code §§ 1174 and 1198.

5 16. Plaintiff has incurred attorneys' fees and costs, which Plaintiff is entitled to receive
6 under California Labor Code § 2699(g).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
9 this suit is brought against Defendants, as follows:

10 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
11 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
12 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
13 pay each employee and \$200 for each subsequent violation or willful or intentional violation
14 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
15 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
16 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
17 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay
18 period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
19 to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code section 256, a civil
20 penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of
21 Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each subsequent
22 violation per employee per pay period for those violations of the Labor Code for which no civil
23 penalty is specifically provided;

24 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
25 2699(g) and Code of Civil Procedure § 1021.5; and

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1 3. For such other and further relief, the Court may deem just and proper.

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3 DATED: October 31, 2023

JUSTICE FOR WORKERS, P.C.

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By: 

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Young K. Park

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William C. Sung

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Attorneys for Plaintiff JORGE CASTILLO

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