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8 **United States District Court**
9 **for the Northern District of California**
10 **San Francisco Division**

11 Edmond Mesachi,

12 Plaintiff,

13 v.

14 Postmates Inc.,

15 Defendant.

Case No. 20-cv-7028

Complaint; Demand for Jury Trial

16 **Introduction**

- 17 1. Postmates Inc. is a delivery company.
- 18 2. Merchants do deals with Postmates to make their goods available for
19 delivery to consumers.
- 20 3. Consumers use Postmates’s smartphone application and website to order
21 those goods and pay Postmates to deliver them.
- 22 4. Postmates pays delivery drivers to do the deliveries.
- 23 5. The company calls its individual delivery drivers “Postmates” and all the
24 Postmates together are the company’s “Fleet.”
- 25 6. Because Postmates controls the delivery drivers’ work; because the delivery
26 drivers’ work is within the usual course of the company’s business; and because the
27
28

COMPLAINT - 1

1 delivery drivers are not independent businesses, the delivery drivers are Postmates's
2 employees under state and federal law.

3 7. They are therefore entitled to minimum wage and other benefits.

4 8. But Postmates misclassifies its delivery drivers, treating them as
5 independent contractors rather than employees.

6 9. It does not pay minimum wage, overtime, and it does not provide the other
7 benefits that employers are required to provide their employees.

8 10. It is not alone.

9 11. Postmates is a member of the small tribe of venture-capital fed, smartphone-
10 enabled companies known as the gig economy.

11 12. Starting in the late 2000s, these companies began taking advantage of GPS
12 technology in smartphones to sell on-demand transportation and delivery.

13 13. Each gig economy company, Postmates included, provides consumers with a
14 software application for their smartphones.

15 14. Those applications, called apps, allow the consumers to tap their phones to
16 buy the company's service.

17 15. Tap on Uber or Lyft's app, and you'll summon a ride.

18 16. Tap on Postmates's, DoorDash's, or Instacart's app, and you can have a
19 cheeseburger, bottle of wine, or pack of batteries delivered to your door in minutes.

20 17. Each of these companies has a fleet of drivers who provide the companies'
21 rides or deliveries.

22 18. Like Postmates, each of these companies steadfastly refuses to obey federal,
23 state, and local law, instead choosing to misclassify drivers as independent contractors.

24 19. The companies misclassify to avoid paying fair wages, to pass the expense of
25 owning and operating a fleet of cars to their drivers, to skirt taxes, and to skimp on
26 employment benefits.

27 20. Until April 2018, in California, these companies had the benefit of vague law.
28 Back then, both federal law and California law used vague, multi-factor tests to determine
whether a worker was an employee or independent contractor.

COMPLAINT - 2

1 21. Then, on April 30, 2018, the California Supreme Court handed down
2 *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018).

3 22. The decision replaced California’s vague, existing test with a crisp new one—
4 the ABC Test.

5 23. Under the ABC Test, a worker is an employee of the hiring entity unless the
6 employer can prove three things:

7 (A) that the worker is free from the control and direction of the hirer in connection
8 with the performance of the work, both under the contract for the performance of
9 such work and in fact;

10 (B) that the worker performs work that is outside the usual course of the hiring
11 entity's business; and

12 (C) that the worker is customarily engaged in an independently established trade,
13 occupation, or business of the same nature as the work performed for the hiring
14 entity.

15 *Dynamex*, 4 Cal.5th at 916-17.

16 24. The gig economy companies cannot satisfy any part of this test, but part B is
17 the most obvious hurdle.

18 25. The companies sell rides or deliveries; the workers provide the rides and do
19 the deliveries. They therefore work in the usual course of each business.

20 26. The legal and popular press, latching onto part B, predicted that companies
21 like Postmates would reclassify. Those predictions were wrong.

22 27. And when Postmates and its cohort refused to heed *Dynamex*, California’s
23 legislature took notice.

24 28. The legislature passed and the governor then signed AB 5, which, effective
25 January 1, 2020, codified the ABC Test in the California Labor and Unemployment
26 Insurance Codes.

27 29. In lawsuits aimed at overturning AB 5, gig economy companies argue that the
28 law was aimed at them.

30. Despite that, they all, Postmates included, ignore it.

1 31. So, relying on AB 5, government actors began to file suits challenging
2 misclassification in the gig economy.

3 32. On February 18, 2020, a judge granted the San Diego City Attorney's motion
4 to preliminary enjoin misclassification by Instacart, which offers a service materially
5 identical to Postmates's.

6 33. The judge wrote that "it is more likely than not that the People will establish
7 at trial that the [delivery drivers] perform a core function of defendant's business; that they
8 are not free from defendant's control; and that they are not engaged in an independently
9 established trade, occupation or business." *People v. Mablebear Inc.*, Case No. 37-2019-
10 48731-CU-MC-CTL, Slip. Op at 3-4 (Feb. 18, 2020), available at
11 <https://www.sandiego.gov/sites/default/files/nr200225a1.pdf>.

12 34. Instacart had complained that enjoining it was unfair surprise, but the judge
13 was unsympathetic: "It bears repeating that the Unanimous Supreme Court's decision [in
14 *Dynamex*] is now nearly 2 years old. While change is hard, defendant cannot legitimately
15 claim surprise" *Id.* at 4.

16 35. A few weeks later, speaking this time of Lyft's drivers, this Court wrote
17 "[t]hat [the ABC] test is obviously met here: Lyft drivers provide services that are squarely
18 within the usual course of the company's business" *Rogers v. Lyft, Inc.*, No. 20-cv-01938-
19 VC, at *4 (N.D. Cal. Apr. 7, 2020). The Court continued: "Lyft's argument to the contrary is
20 frivolous." *Id.* But arbitration prevented him from providing the private plaintiffs in that
21 case their requested relief.

22 36. Meanwhile, the city attorneys of Los Angeles and San Francisco, joined by the
23 California Attorney General, filed misclassification claims against Uber and Lyft.

24 37. On August 10, 2020, the judge in that case granted the cities and state's
25 motion for a preliminary injunction. Order on People's Mot. for Prelim. Inj., *People v. Uber*
26 *Technologies et al.*, Case No. CGC-20-584402, Slip. Op. at 1 (San Francisco Super. Ct., Aug.
27 10, 2020), available at [https://oag.ca.gov/system/files/attachments/press-](https://oag.ca.gov/system/files/attachments/press-docs/Order_on_Peoples_Motion.pdf)
28 [docs/Order_on_Peoples_Motion.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Order_on_Peoples_Motion.pdf).

 38. The opinion does not mince words.

1 39. The judge wrote that Uber and Lyft “cannot possibly satisfy the ‘B’ prong of
2 [the ABC] test It’s this simple: Defendants’ drivers do not perform work that is
3 ‘outside the usual course of their businesses.” *Id.* at 5. Uber and Lyft’s contrary arguments
4 “fl[ew] in the face of economic reality and common sense.” *Id.*

5 40. The “new” legal standard is now two-and-half-years-old. But despite that and
6 the successful private and public efforts to enforce it, the gig economy, including Postmates,
7 persists in ignoring it.

8 41. They all continue to misclassify their workers.

9 42. And, instead of putting more money toward fair wages and benefits,
10 Postmates, along with Uber, Lyft, and DoorDash, have poured more than \$100 million into
11 Proposition 22, a ballot initiative that would legalize their misclassification by eviscerating
12 AB 5.

13 43. Prop. 22 is on the ballot for November 2020.

14 44. That brings us to the present, and to Edmond Mesachi.

15 45. Mesachi has been a Postmate since 2016.

16 46. He provides the deliveries that are Postmates’s core product.

17 47. Consistent with its unlawful practice, Postmate misclassifies and underpays
18 Mesachi and offers him none of the legally required benefits.

19 48. Mesachi therefore brings this suit to claim what he is owed.

20 **Parties**

21 49. Plaintiff Edmond Mesachi is an individual living in the Los Angeles area.

22 50. Defendant Postmates Inc. is a Delaware corporation with its principal place
23 of business in San Francisco, California.

24 **Jurisdiction & Venue**

25 51. The court has federal-question jurisdiction over this case based on Mesachi’s
26 federal Fair Labor Standards Act claim and supplemental jurisdiction over Mesachi’s
27 remaining claims because they arise from the same basic facts as the federal claim.

28 52. Venue is appropriate under 28 U.S.C. § 1391(b)(1) because Postmates is the
only defendant and it resides in this judicial district.

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