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County of San Diego
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11 **Superior Court of California**
12 **in and for the County of San Diego**

13 **The People of the State of California,**

14 *Plaintiff,*

15 v.

16 **Maplebear Inc., dba Instacart and Does**
17 **1-20 inclusive,**

18 *Defendants*

Case No. 37-2019-00048731-CU-MC-CTL

Complaint

*(UNLIMITED MATTER Amount
Demanded Exceeds \$25,000)*

19 The People of the State of California (“People”), acting by and through San Diego
20 City Attorney Mara W. Elliott, allege the following based on information and belief
21 against Defendant Maplebear, Inc., doing business as Instacart and Does one
22 through twenty (collectively “Instacart”):

23 1. The City Attorney of San Diego brings this enforcement action on
24 behalf of the People of the State of California against Instacart – a participant in
25 the rising “gig economy.”

26 2. Defendant Instacart is a same-day grocery delivery company that
27 employs approximately 130,000 employees nationwide as independent contractors.
28 Instacart partners with grocery retailers, such as Sam’s Club, Ralph’s, Vons,

1 Albertson's, Food4Less, Sprouts Farmers Market, and Pavilions. Customers use
2 Instacart's smartphone application software program (the "Instacart App") to select
3 and purchase their groceries. Instacart hires people to work as "Shoppers" to gather
4 the groceries and deliver them to the customer, directing its Shoppers in great
5 detail on exactly how to complete the delivery.

6 3. Instacart maintains an unfair competitive advantage by misclassifying
7 its Shoppers and evading long-established worker protections under California law.
8 Since 2012, Instacart has and continues to unlawfully classify its Shoppers as
9 independent contractors instead of employees. Through this misclassification,
10 Instacart avoids paying its Shoppers a lawful wage and unlawfully defers
11 substantial expenses to its Shoppers, including the cost of equipment, car
12 registration, insurance, gas, maintenance, parking fees, and cell phone data usage.

13 4. Instacart also has an unfair advantage over its law-abiding
14 competitors because, due to the misclassification, it contributes less to California's
15 unemployment insurance, disability insurance and other state and federal taxes.

16 5. Instacart cannot meet its burden of showing its Shoppers are
17 independent contractors under California law, as clarified by the California
18 Supreme Court in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903
19 (2018), because it cannot show (A) its Shoppers are free from the control and
20 direction of Instacart in connection with the performance of the work, both under
21 the contract for the performance of such work and in fact; (B) its Shoppers perform
22 work that is outside the usual course of Instacart's business; *and* (C) its Shoppers
23 are customarily engaged in an independently established trade, occupation, or
24 business of the same nature as the work performed for Instacart. *Id.* at 916-917.

25 6. Because Instacart's Shoppers are employees, they have several
26 entitlements under the California Labor Code, including, but not limited to,
27 minimum wage, overtime pay, meal breaks, paid rest breaks and reimbursement for
28 expenses necessary to perform the job. Instacart has failed to provide its Shoppers

1 with all of the above.

2 7. Defendant's misclassification of its Shoppers as independent
3 contractors and accompanying failure to comply with numerous provisions of the
4 California Labor Code constitutes an unlawful and unfair business practice and,
5 therefore, violates California's Unfair Competition Law ("UCL") Cal. Bus. & Prof.
6 Code § 17200.

7 **Jurisdiction and Venue**

8 8. The Superior Court has original jurisdiction over this action pursuant
9 to Article VI, Section 10 of the California Constitution, which grants the Superior
10 Court original jurisdiction in all causes other than those specifically enumerated
11 therein. The Superior Court has personal jurisdiction over Defendant because:

12 (i) Instacart is headquartered in the State of California, (ii) Defendant is authorized
13 to and conducts business in and across this state, and (iii) Defendant otherwise has
14 sufficient minimum contacts with and purposefully avails itself of the markets of
15 this state, thus rendering the Superior Court's exercise of jurisdiction consistent
16 with traditional notions of fair play and substantial justice.

17 9. Venue is proper under Code of Civil Procedure section 393(a), because
18 thousands of the illegal acts described below occurred in the City and County of San
19 Diego.

20 **Parties**

21 10. The People of the State of California bring this civil enforcement action
22 by and through San Diego City Attorney Mara W. Elliott pursuant to California
23 Business and Professions Code sections 17204 and 17206(a).

24 11. Defendant Instacart is a California corporation with its principal place
25 of business in San Francisco, California.

26 12. The true names or capacities of Defendants sued as Doe Defendants 1
27 through 10 are unknown to the People. The People are informed and believe, and on
28 this basis, allege that each of the Doe Defendants are legally responsible for the

1 conduct alleged herein. The People will amend its complaint to set forth the true
2 names and capacities of the Doe Defendants and the allegations against them as
3 soon as they are ascertained.

4 13. On information and belief, at all relevant times, each Defendant,
5 including Doe Defendants, was the owner, agent, principal employee, employer,
6 master, servant, partner, franchiser, joint-venturer, co-conspirator, aider, and
7 abettor of each of its co-Defendants, and engages (and continues to engage) in the
8 wrongful actions and inaction alleged herein and acted within the scope of its
9 authority in such relationships with the permission and consent of each co-
10 Defendant.

11 Facts

12 14. Instacart is a same-day grocery delivery company that partners with
13 grocery retailers and hires approximately 130,000 Shoppers nationwide to deliver
14 groceries to Instacart's customers.¹ Customers order groceries through Instacart's
15 smartphone application. Instacart then uses its Instacart App to contact Shoppers
16 for job assignment and direction on exactly how to complete delivery.

17 15. Founded in 2012 and headquartered in San Francisco, Instacart has
18 raised approximately \$2 billion in venture capital funding and was valued at nearly
19 \$8 billion in 2018. Instacart has a strong presence in the City and County of San
20 Diego. Instacart first launched its services in the City and County of San Diego in
21 mid-2016 and expanded to offer services to over one million households in the area
22 about a year later.

23 16. Instacart employs "In-Store Shoppers" as part-time employees and
24 "Full-Service Shoppers" as independent contractors. In-Store Shoppers gather
25 groceries, but do not deliver them, while full-service Shoppers do both tasks. For the
26

27 ¹ Instacart, *Introducing New Shopper Perks for a More Holistic Shopper Experience*.
28 <https://medium.com/shopper-news/shopper-perks-52e480f2788a>. (last accessed on August 27,
2019).

1 purpose of this complaint, “Shoppers” refers to the Full-Service Shoppers.

2 17. Since 2012, Instacart has and continues to misclassify its Shoppers as
3 independent contractors instead of employees. Instacart cannot meet its burden of
4 proving its Shoppers are independent contractors.

5 18. Instacart exercises complete control over the work performed. After
6 Instacart hires its Shoppers, they must go to an in-person training as part of the
7 onboarding process. The training includes video content and a practice grocery
8 order. After the initial training session, Instacart provides training through its
9 Instacart App for specific tasks, such as quality check for items, weighing produce,
10 and replacing out-of-stock items.

11 19. Shoppers must perform the work through the Instacart App. Once a
12 shopper accepts a job, Instacart provides Shoppers with the exact store location and
13 a list of items to retrieve. Shoppers must retrieve the items and scan each one into
14 the Instacart App. Through its Instacart App, Instacart instructs its Shoppers on
15 the fastest, most efficient route through the store. Instacart instructs its Shoppers
16 on exactly how to replace items that are out of stock. At checkout, Shoppers must
17 identify themselves as Instacart Shoppers to store employees. Shoppers then use
18 the Instacart App and an Instacart debit card to complete the purchase.

19 20. Instacart requires Shoppers to deliver the groceries within a set time.
20 Shoppers must notify Instacart of their status, through the Instacart App, at every
21 step of the way: (1) arrival to the store, (2) retrieval of all items, (3) starting the
22 drive to the customer’s address, and (4) upon delivery.

23 21. Instacart uses a rating system to assess their Shoppers’ performance.
24 Rating factors include job acceptance rate, shopping speed, quality of
25 communication with the customer, quality of items picked, and the ability to find
26 replacement items. Shoppers can view their rating in the Instacart App “How Am I
27 Doing?” section. Instacart reduces work schedule flexibility and terminates
28 Shoppers with low ratings.

1 22. Instacart mandates that Shoppers participate in ongoing training. If
2 Instacart determines a Shopper is deficient in a particular area, then Instacart
3 provides the Shopper with feedback and training videos for improvement.

4 23. Instacart closely monitors Shoppers and collects data points for various
5 purposes. Instacart states, “Every time a shopper completes an order, we learn
6 more about their shopping behavior and collect valuable feedback from them on
7 their shopping experience.”² Instacart uses the data to optimize the shopper
8 experience, enhance customer satisfaction, and exercise quality control over its
9 Shoppers.

10 24. Instacart provides mass updates to its Shoppers regarding various
11 topics, including training, new company policies, and compensation structure.
12 Instacart provides these updates through e-newsletters and messaging in its
13 Instacart App. Instacart also offers Shoppers the opportunity to give feedback and
14 ask questions directly to management through “Town Halls.”

15 25. The work performed by Instacart’s shoppers is within Instacart’s usual
16 course of business. Instacart is in the service of delivering groceries. Instacart
17 offers, “Groceries delivered in as little as 1 hour.”³ Shoppers are an essential part in
18 completing the service. Instacart’s technology facilitates the process, while Shoppers
19 perform the labor of selecting the groceries and delivering them to the customer at
20 Instacart’s precise direction.

21 26. Shoppers are not customarily engaged in an independently established
22 trade, occupation, or business of the same nature as the work performed for
23 Instacart. Gathering and delivering groceries is not a distinct trade. It does not
24 require a license, education, specialized training, or specialized skill. Furthermore,

25 _____
26 ² Amoli, Himani, *How Instacart Onboards Thousands of Shoppers Every Week*,
27 <https://medium.com/instacart-design/how-instacart-onboards-thousands-of-Shoppers-every-week-217b209b55d5>. (last accessed August 27, 2019).

28 ³Instacart, *Groceries Delivered from Local Stores*, <https://www.instacart.com/> (last accessed August 27, 2019).

1 Shoppers do not take steps to establish and promote themselves an independent
2 business, such as “incorporation, licensure, advertisements, routine offerings to
3 provide the services of the independent business to the public or to a number of
4 potential customers[.]” *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th
5 903, 962 (2018).

6 27. Despite failing to meet each prong of *Dynamex*, Instacart unilaterally
7 designates Shoppers as independent contractors to evade requirements under the
8 California Labor Code. Instacart’s misclassification and denial of employee
9 protections violate multiple provisions of the California Labor Code, including, but
10 not limited to, those set forth in Industrial Welfare Commission Wage Order Nos. 7,
11 9, and 17.

12 28. Instacart does not guarantee its Shoppers a minimum wage under
13 state and local laws. Instead, Instacart pays its Shoppers on a per job basis. The
14 total job payout is based on several factors, including miles driven from the store to
15 the delivery address, a “batch incentive” (based on Instacart’s algorithm), and
16 customer tip. Instacart does not pay its workers for time outside of completing the
17 job, including waiting for an order offer. Instacart does not pay Shoppers for miles
18 driven *to* the store.

19 29. Instacart fails to reimburse its Shoppers for expenses necessary to
20 perform the work. Shoppers must use their personal vehicles and cell phones.
21 Instacart does not reimburse its Shoppers for the related expenses, including car
22 registration, insurance, gas, maintenance, parking fees, and cell phone data usage.
23 Instacart also does not reimburse its Shoppers for the purchase of other necessary
24 equipment, including insulated bags and cell phone accessories.

25 30. Instacart does not offer meal breaks, paid rest breaks, or overtime pay
26 despite employing a series of tactics to encourage its Shoppers to work long hours.
27 For instance, Instacart offers a more flexible work schedule based on meeting a
28 minimum number of hours. When Shoppers work longer hours, Instacart merely

1 offers Shoppers the opportunity to take a 20-minute, unpaid break.

2 31. Instacart emphasizes, “Shoppers are an integral part of [its]
3 community,”⁴ but nonetheless denies its Shoppers the benefits and protections of
4 employees. Instead of a minimum wage, overtime pay, and health insurance,
5 Instacart offers its Shoppers free shirts and beanies for completing over 2,500
6 deliveries and discounted insurance at the Shopper’s own expense.⁵ Through the
7 misclassification, Instacart unlawfully burdens its Shoppers with a substantial
8 amount of its expenses and fails to pay its Shoppers a lawful wage. This is
9 fundamentally an unfair business practice. Instacart’s unfair and unlawful
10 treatment of its employees also gives Instacart an unfair advantage over its law-
11 abiding competitors.

12 32. Defendant’s ongoing misclassification of its Shoppers and failure to
13 comply with the Labor Code constitutes unlawful and unfair business practices
14 under the UCL. The People seek injunctive relief ordering Defendant to cease the
15 misclassification, comply with the Labor Code, pay restitution to Shoppers, and
16 appropriate civil penalties.

17
18 **Cause of Action**
19 **Violation of Unfair Competition Law**

20 (Cal. Bus. & Prof. Code § 17200, *et seq.*)

21 33. All preceding factual statements and allegations are incorporated by
22 reference.

23 34. The UCL, Business and Professions Code section 17200 prohibits “any
24

25 ⁴ Instacart, *Listening to Shoppers*, <https://news.instacart.com/listening-to-Shoppers-fd12677d693c> (last accessed August 27, 2019).

26 ⁵ Instacart, *Recognizing Our Best Shoppers*, [https://medium.com/@instacart/recognizing-our-
27 best-Shoppers-3b859848bbc9](https://medium.com/@instacart/recognizing-our-best-Shoppers-3b859848bbc9) (last accessed August 27, 2019); see also Instacart, *Partnering
28 with Stride to Bring Shoppers Affordable Insurance*, [https://medium.com/shopper-
news/partnering-with-stride-to-bring-Shoppers-affordable-insurance-36d8a6270270](https://medium.com/shopper-news/partnering-with-stride-to-bring-Shoppers-affordable-insurance-36d8a6270270), (last
accessed August 27, 2019).

1 unlawful, unfair or fraudulent business act or practice.”

2 35. Defendant has misclassified hundreds of thousands of Shoppers since
3 its inception in 2012 and continues to do so for every one of its approximately
4 130,000 Shoppers nationwide. Each one of those occurrences in California
5 constitutes a separate violation of the UCL. Additionally, each time Defendant
6 failed to comply with the California Labor Code constitutes a separate and distinct
7 violation of the UCL for each such illegal act or practice.

8 36. “Any person who engages, has engaged, or proposes to engage in unfair
9 competition shall be liable for a civil penalty not to exceed two thousand five
10 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered
11 in a civil action brought in the name of the people of the State of California ... by
12 any city attorney of a city having a population in excess of 750,000 ... in any court of
13 competent jurisdiction.” Bus. & Prof. Code § 17206(a).

14 37. The Business and Professions Code section 17206.1(a) also provides:
15 “In addition to any liability for a civil penalty pursuant to Section 17206, a person
16 who violates this chapter, and the act or acts of unfair competition are perpetrated
17 against one or more senior citizens or disabled persons, may be liable for a civil
18 penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,
19 which may be assessed and recovered in a civil action as prescribed in Section
20 17206.”

21 38. Defendant is a “person” as defined by the Business and Professions
22 Code section 17201, which includes “natural persons, corporations, firms,
23 partnerships, joint stock companies, associations and other organizations of
24 persons.” Defendant’s ongoing misclassification of its Shoppers as independent
25 contractors is unlawful under the California Labor Code and, therefore, constitutes
26 an unlawful business practice under the UCL. Instacart’s failure to provide its
27 Shoppers with protections under the Labor Code is unlawful conduct and thus an
28 unlawful business practice under the UCL. A non-exhaustive list of the Labor Code

1 violations includes those within the Industrial Welfare Commission Wage Order
2 Nos. 7, 9, and 17, such as failing to pay a minimum wage and overtime pay, failing
3 to provide meal and paid rest breaks, and failing to reimburse for expenses
4 necessary to perform the job.

5 39. Defendant's ongoing misclassification of its Shoppers as independent
6 contractors also constitutes an unfair business practice under the UCL. By
7 classifying its Shoppers as independent contractors, Defendant contributes less to
8 California's unemployment insurance, disability insurance and other state and
9 federal taxes. In California specifically, such misclassification contributes to a loss
10 of payroll tax revenue to the State of approximately \$7 billion per year.⁶ Unlawfully
11 shifting its expenses to its Shoppers also constitutes an unfair business practice (i.e.
12 by failing to reimburse Shoppers for gas, car insurance, car registration fees, car
13 depreciation, car maintenance, car depreciation, cell phone data use, the cost of
14 equipment, and parking fees). By unlawfully evading the above costs, Defendant
15 has an unfair advantage over its law-abiding competitors.

16 40. The People, therefore, seek an appropriate civil penalty under the
17 Business and Professions Code section 17206(a), up to \$2,500 for each violation of
18 the UCL, consistent with the purpose of the UCL and Business and Professions
19 Code section 17206(b), to hold Defendant accountable for their unfair and unlawful
20 business acts or practices and to deter further violations of the UCL. The People
21 also seek an additional appropriate civil penalty under Business and Professions
22 Code section 17206.1(a)(1), up to \$2,500 for each violation of the UCL perpetrated
23 against a senior citizen or disabled person.⁷

24 41. Pursuant to California Business and Professions Code section 17203,

25 _____
26 ⁶ Department of Industrial Relations, *Worker Misclassification*,
https://www.dir.ca.gov/dlse/worker_misclassification.html (last accessed August 27, 2019).

27 ⁷ Whether the People can obtain civil penalties for violations that occurred throughout California
28 or solely in the City of San Diego is an issue currently before the California Supreme Court. *See*
Abbott Laboratories v. Superior Court, 24 Cal. App. 5th 1, 10, 233 Cal.Rptr.3d 730 (2018),
petition for review granted, 237 Cal.Rptr.3d 178, 424 P.3d 268 (2018).

1 Plaintiff is entitled to an injunctive order requiring Defendant to cease classifying
2 its Shoppers as independent contractors, comply with the Labor Code, and pay
3 restitution to its Shoppers.

4 **Prayer for Relief**

5 In light of the above, the People request the following remedies:

- 6 1. Pursuant to Business and Professions Code section 17206, Defendant be
7 assessed a civil penalty in an amount, up to \$2,500 for each violation of the UCL, as
8 proven at trial;
- 9 2. Pursuant to Business and Professions Code section 17206.1, Defendant
10 be assessed an additional civil penalty in an amount, up to \$2,500 for each violation of
11 the UCL perpetrated against a senior citizen or disabled person, as proven at trial;
- 12 3. Pursuant to Business and Professions Code section 17203, an order
13 requiring Defendant to properly classify its Shoppers as employees and comply with
14 the Labor Code;
- 15 4. Pursuant to Business and Professions Code section 17203, restitution
16 to the misclassified employees, according to proof, for unpaid wages, overtime, and
17 rest breaks, missed meals, and reimbursement for expenses necessary to perform
18 the work;
- 19 5. The People recover such costs of this action, including costs of
20 investigation; and
- 21 6. The People be granted such other and further relief as this Court may
22 deem to be just and proper.

23
24 Dated: September 13, 2019

MARA W. ELLIOTT, City Attorney

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28 _____
Kevin King
Deputy City Attorney