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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 JONATHAN HUSTING, MATTHEW
16 CLAYTON, LADIA ARMSTRONG,
17 STEPHANIE WEIDNER, MARGARET
CONNOLLY, MATTHEW PARSONS,
18 SARAH LESTER, NATHAN RAINES,
19 BENJAMIN BOVEN, AMY NOSEK,
JAMES RICHIE, and ANDREW
20 KENDRICK, Individually and On Behalf of
All Others Similarly Situated Employees,

21 Plaintiffs,

22 vs.

23 MAPLEBEAR, INC., dba INSTACART;
24 AND DOES 1 THROUGH 100, inclusive,

25 Defendants.

COLLECTIVE ACTION COMPLAINT [29
U.S.C. §§ 201, *et seq.*] AND CLASS
ACTION COMPLAINT [F.R.C.P. 23] FOR
DAMAGES AND DECLARATORY
JUDGMENT [28 U.S.C. § 2201(a)]

INTRODUCTION

1
2 Plaintiffs, JONATHAN HUSTING (“HUSTING”), MATTHEW CLAYTON (“CLAYTON”),
3 LADIA ARMSTRONG (“ARMSTRONG”), STEPHANIE WEIDNER (“WEIDNER”),
4 MARGARET CONNOLLY (“CONNOLLY”), MATTHEW PARSONS (“PARSONS”), SARAH
5 LESTER (“LESTER”), NATHAN RAINES (“RAINES”), BENJAMIN BOVEN (“BOVEN”),
6 AMY NOSEK (“NOSEK”), JAMES RICHIE (“RICHIE”), and ANDREW KENDRICK
7 (“KENDRICK”), on behalf of themselves and all others similarly situated (collectively,
8 “Plaintiffs”), bring this class and collective action against Defendants MAPLEBEAR, INC.,
9 doing business as INSTACART (“Instacart”), and Does 1 through 100 (collectively
10 “Defendants”), and allege, upon information and belief, except as to their own actions, the
11 investigation of their counsel, and the facts that are a matter of public record, as follows:

12 1. Plaintiffs bring this action to obtain damages and restitution, as well as declaratory,
13 injunctive, and other relief, individually and on behalf of the proposed classes defined below
14 (“Classes”), against Instacart, which Plaintiffs contend misclassified them as independent
15 contractors.

16 2. Made simple, Instacart is a grocery shopping and delivery service company whose
17 workers shop for groceries from various stores, including Safeway, Whole Foods, and Costco,
18 then deliver them to Instacart customers.

19 3. Plaintiffs worked or continue to work as shoppers, drivers and delivery persons for
20 Instacart (collectively, “Shoppers”). Shoppers are dispatched through a mobile phone application
21 to shop, purchase, and deliver groceries to customers at their homes and businesses.

22 4. Instacart does not recognize itself as a grocery delivery service, instead calling itself a
23 “technology company that offers a proprietary communications and logistics platform.” In
24 reality, its “platform” assigns customer orders to workers, such as Plaintiffs, just as any
25 dispatcher would assign work orders. Instacart uses these tech-heavy buzzwords to brand itself
26 as something other than what it really is – a grocery delivery service subject to the same
27 employment laws as any other employer.

28 5. In practice, Instacart controlled the “when,” “where,” and “how” of Plaintiffs’ jobs,
making them presumptive employees entitled to labor law protections such as minimum wage
guarantees, overtime compensation, workers’ compensation insurance coverage, payroll tax

1 contributions, and other employee benefits. By misclassifying Plaintiffs as independent
2 contractors, however, Instacart denied them these rights, shifting all risk to Plaintiffs and saving
3 itself millions in overhead in the process.

4 6. Defendants intentionally misrepresented to Plaintiffs that they were not entitled to wages
5 for non-productive time, reimbursements for expenses incurred in relation to their employment,
6 workers' compensation insurance benefits, and tax benefits enjoyed by employees.

7 7. This action asserts causes of action under federal and state law for failure to pay minimum
8 wage and overtime, denial of reimbursements for business-related expenses, denial of meal
9 breaks and rest periods, failure to pay spread and call-in pay, unfair competition, fraud, tortious
10 interference with prospective economic advantage, and conversion.

11 8. By misclassifying Plaintiffs and others similarly situated as independent contractors and,
12 in turn, failing to pay them minimum wage and overtime for all time worked, Instacart has
13 violated the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.* Plaintiffs assert
14 this claim under the FLSA on behalf of all similarly situated Shoppers in the United States who
15 may choose to opt in to this action pursuant to 29 U.S.C. § 216(b).

16 9. Plaintiffs also assert claims for various state law violations pursuant to Rule 23 of the
17 Federal Rules of Civil Procedure, individually and on behalf of the following respective putative
18 classes of similarly situated Instacart Shoppers who have performed work for Instacart in the
19 following states:

- 20 a. Plaintiffs Husting and Clayton on behalf of a class of all California Instacart
21 Shoppers;
- 22 b. Plaintiff Armstrong on behalf of a class of all New York Instacart Shoppers;
- 23 c. Plaintiff Weidner on behalf of a class of all Pennsylvania Instacart Shoppers;
- 24 d. Plaintiff Connolly on behalf of a class of all Colorado Instacart Shoppers;
- 25 e. Plaintiff Parsons on behalf of a class of all Illinois Instacart Shoppers;
- 26 f. Plaintiff Lester on behalf of a class of all Washington Instacart Shoppers;
- 27 g. Plaintiff Raines on behalf of a class of all Indiana Instacart Shoppers;
- 28 h. Plaintiff Boven on behalf of a class of all Texas Instacart Shoppers;
- i. Plaintiff Nosek on behalf of a class of all Georgia Instacart Shoppers;
- j. Plaintiff Richie on behalf of a class of all Oregon Instacart Shoppers; and

1 k. Plaintiff Kendrick on behalf of a class of all Massachusetts Instacart Shoppers.

2 10. Plaintiffs seek actual and/or compensatory damages, civil penalties, restitution, equitable
3 relief, costs and expenses of litigation, including attorneys' fees, and all additional and further
4 relief that may be available and that the Court may deem appropriate and just under all of the
5 circumstances.

6 JURISDICTION AND VENUE

7 11. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331
8 and section 16(b) of the Fair Labor Standards Act ("the FLSA"), 29 U.S.C. § 216(b).

9 12. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over
10 Plaintiffs' state wage and hour and associated claims because the claims originate from a
11 common nucleus of operative fact.

12 13. CAFA Jurisdiction: This Court also has diversity jurisdiction over this action pursuant to
13 the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d)(2) and 1453(b). This
14 action is a class action as defined by 28 U.S.C. §1332(d)(1)(B). The complaint is brought as a
15 "Class Action" and Plaintiffs bring it "individually and on behalf of the proposed classes." ¶ 1.

16 a. Minimal Diversity: As alleged herein, Instacart is a Delaware corporation with
17 its principal place of business at 50 Beale Street, San Francisco, CA. ¶ 27. Additionally,
18 Plaintiffs are residents of eleven different states and the proposed class consists of thousands of
19 workers nationwide. ¶¶ 8-9, 15-26. Instacart has previously pled that there were 7,696
20 individuals who performed grocery delivery work for Instacart between January 2012 and
21 February 2015 alone. *See* Instacart's Notice of Removal of Class Action to Federal Court, ¶ 8,
22 *Cobarruviaz v. Maplebear, Inc. dba Instacart*, Case No. 3:15-cv-00697-EMC (N.D. Cal. Feb. 13,
23 2015). This number has undoubtedly increased between February 2015 and the present. This
24 satisfies the requirement of 28 U.S.C. § 1332(d)(5) that the proposed class include at least 100
25 persons. Further, because at least one Plaintiff is from a state other than California, and Instacart
26 is a citizen of both Delaware and California, the diversity requirement of 28 U.S.C. §
27 1332(d)(2)(A) is met.

28 b. Amount in Controversy Exceeds \$5 Million: The amount in controversy in the
underlying dispute exceeds \$5 million, thus satisfying 28 U.S.C. § 1332(d)(2). Plaintiffs believe
there to be more than 14,000 members of the proposed class. Plaintiffs allege that they and the

1 proposed class have been regularly denied proper minimum wage and overtime since December
2 1, 2012. Instacart has previously pled that:

- 3 • From July, 2014 through the first week of February, 2015, putative class members
4 worked on-duty for 2,580,054 hours, for which they were compensated.
5 Furthermore, during this time period, there were 2,229 grocery deliverers any given
6 week, working an average of 35 hours a week each.
- 7 • Conservatively assuming that for every five hours worked, putative class members
8 were not compensated for one additional “non-productive” hour, potential damages
9 for non-productive hours worked would total \$4,644,097.20 from July 2014
10 through the first week of February, 2015 *alone*.
- 11 • Similarly, conservatively assuming that putative class members worked 5 hours of
12 overtime per week for the 33 week period from July, 2014 through the first week of
13 February, 2015, putative class members could be entitled to aggregate damages
14 totaling at least \$1,655,032.

15 *See* Instacart’s Notice of Removal of Class Action to Federal Court, ¶¶ 13-15, *Cobarruviaz*, Case
16 No. C-15-cv-00697 (N.D. Cal. Feb. 13, 2015).

17 In addition to the non-productive time and overtime wages, Plaintiffs also seek expense
18 reimbursement; restitution and disgorgement; various penalties; an order enjoining Instacart from
19 continuing to engage in the alleged conduct described in the Complaint; and other further relief as
20 the Court deems just and proper. Given these requests for relief, the amount in controversy far
21 exceeds \$5,000,000 in the aggregate, and this Court has jurisdiction under CAFA.

22 c. No Exceptions Apply: None of the exceptions to CAFA jurisdiction are met
23 here. The “home-state” and “local-controversy” exceptions do not apply because less than two
24 thirds of the proposed class is from California. On information and belief, Plaintiffs allege that
25 approximately half of the proposed class members are from California with the other half being
26 from elsewhere in the United States. The other exceptions are inapplicable here.

27 14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because, *inter alia*,
28 Defendant Instacart is headquartered in and engages and performs business activities in and
throughout San Francisco County. Additionally, many of Defendants’ services involve San
Francisco County residents, and many of the acts complained of herein occurred in this judicial
district.

PARTIES

15. Plaintiff Husting is a resident of Fremont, California. Defendants continuously employed
Husting as a Shopper since October 2014. During the course of his employment by Defendants,

1 Husting incurred expenses related to his work, including vehicle maintenance, fuel, insurance,
2 and other driving related expenses, for which he was not reimbursed. Husting also regularly
3 worked in excess of eight (8) hours per day or forty (4) hours per week but was not compensated
4 at the required overtime wage rates. Husting regularly was not paid at or above the minimum
5 wage for the applicable jurisdiction for the hours he worked.

6 16. Plaintiff Clayton is, and at all times relevant herein was, a resident of Los Angeles,
7 California. Defendants have continuously employed Clayton as a Shopper since approximately
8 July 2015. During the course of his employment by Defendants, Clayton incurred expenses
9 related to his work, including vehicle maintenance, fuel, insurance, and other driving related
10 expenses, for which he was not reimbursed. Clayton also regularly worked in excess of eight (8)
11 hours per day or forty (4) hours per week but was not compensated at the required overtime wage
12 rates. Clayton was regularly not paid at or above the minimum wage for the applicable
13 jurisdiction for the hours he worked.

14 17. Plaintiff Armstrong is a resident of Brooklyn, New York. Defendants continuously
15 employed Armstrong as a Shopper since October 2015. During the course of her employment by
16 Defendants, Armstrong incurred expenses related to her work, including vehicle maintenance,
17 fuel, insurance, and other driving related expenses, including public transportation fares, for
18 which she was not reimbursed. Armstrong regularly was not paid at or above the minimum wage
19 for the applicable jurisdiction for the hours she worked.

20 18. Plaintiff Weidner is a resident of Philadelphia, Pennsylvania. Defendants continuously
21 employed Weidner as a Shopper from March 2014 to December 2014. During the course of her
22 employment by Defendants, Weidner incurred expenses related to her work, including vehicle
23 maintenance, fuel, insurance, and other driving related expenses, for which she was not
24 reimbursed. Weidner also regularly worked in excess of forty (40) hours per week but was not
25 compensated at the required overtime wage rates. Weidner regularly was not paid at or above the
26 minimum wage for the applicable jurisdiction for the hours she worked.

27 19. Plaintiff Connolly is a resident of Boulder, Colorado. Defendants continuously employed
28 Connolly as a Shopper since August 2014. During the course of her employment by Defendants,
Connolly incurred expenses related to her work, including vehicle maintenance, fuel, insurance,
and other driving related expenses, for which he was not reimbursed. Connolly also regularly

1 worked in excess of forty (40) hours per week but was not compensated at the required overtime
2 wage rates. Connolly regularly was not paid at or above the minimum wage for the applicable
3 jurisdiction for the hours she worked.

4 20. Plaintiff Parsons is a resident of Chicago, Illinois. Defendants continuously employed
5 Parsons as a Shopper since July 2015. During the course of his employment by Defendants,
6 Parsons incurred expenses related to his work, including vehicle maintenance, fuel, insurance,
7 and other driving related expenses, for which he was not reimbursed. Parsons also regularly
8 worked in excess of forty (40) hours per week but was not compensated at the required overtime
9 wage rates. Parsons regularly was not paid at or above the minimum wage for the applicable
jurisdiction for the hours he worked.

10 21. Plaintiff Lester is a resident of Seattle, Washington. Defendants continuously employed
11 Lester as a Shopper since November 2015. During the course of her employment by Defendants,
12 Lester incurred expenses related to her work, including vehicle maintenance, fuel, insurance, and
13 other driving related expenses, for which she was not reimbursed. Lester also regularly worked
14 in excess of forty (40) hours per week but was not compensated at the required overtime wage
15 rates. Lester regularly was not paid at or above the minimum wage for the applicable jurisdiction
for the hours she worked.

16 22. Plaintiff Raines is a resident of Indianapolis, Indiana. Defendants continuously employed
17 Raines as a Shopper since September 2015. During the course of his employment by Defendants,
18 Raines incurred expenses related to his work, including vehicle maintenance, fuel, insurance, and
19 other driving related expenses, for which he was not reimbursed. Raines also regularly worked in
20 excess of (40) hours per week but was not compensated at the required overtime wage rates.
21 Raines regularly was not paid at or above the minimum wage for the applicable jurisdiction for
the hours he worked.

22 23. Plaintiff Boven is a resident of Houston, Texas. Defendants continuously employed
23 Boven as a Shopper since October 2014. During the course of his employment by Defendants,
24 Boven incurred expenses related to his work, including vehicle maintenance, fuel, insurance, and
25 other driving related expenses, for which he was not reimbursed. Boven also regularly worked in
26 excess of (40) hours per week but was not compensated at the required overtime wage rates.
27 Boven regularly was not paid at or above the minimum wage for the applicable jurisdiction for
28

1 the hours he worked.

2 24. Plaintiff Nosek is a resident of Atlanta, Georgia. Defendants continuously employed
3 Nosek as a Shopper since September 2014. During the course of her employment by Defendants,
4 Nosek incurred expenses related to her work, including vehicle maintenance, fuel, insurance, and
5 other driving related expenses, for which she was not reimbursed. Nosek also regularly worked
6 in excess of forty (40) hours per week but was not compensated at the required overtime wage
7 rates. Nosek regularly was not paid at or above the minimum wage for the applicable jurisdiction
8 for the hours she worked.

9 25. Plaintiff Richie is a resident of Portland, Oregon. Defendants continuously employed
10 Richie as a Shopper since September 2015. During the course of his employment by Defendants,
11 Richie incurred expenses related to his work, including vehicle maintenance, fuel, insurance, and
12 other driving related expenses, for which he was not reimbursed. Richie also regularly worked in
13 excess of forty (40) hours per week but was not compensated at the required overtime wage rates.
14 Richie regularly was not paid at or above the minimum wage for the applicable jurisdiction for
15 the hours he worked.

16 26. Plaintiff Kendrick is a resident of Boston, Massachusetts. Defendants continuously
17 employed Kendrick as a Shopper since September 2015. During the course of his employment by
18 Defendants, Kendrick incurred expenses related to his work, including vehicle maintenance, fuel,
19 insurance, and other driving related expenses, for which he was not reimbursed. Kendrick also
20 regularly worked in excess of forty (40) hours per week but was not compensated at the required
21 overtime wage rates. Kendrick regularly was not paid at or above the minimum wage for the
22 applicable jurisdiction for the hours he worked.

23 27. Defendant Instacart is a Delaware corporation with its principal place of business located
24 at 50 Beale St. Suite #600 in San Francisco, California. Instacart maintains substantial ongoing
25 business operations throughout the United States, including San Francisco County, and is in the
26 business of providing online grocery shopping and delivery service.

27 28. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
28 Plaintiffs who sue such Defendants by use of such fictitious names. Plaintiffs will amend this
complaint to add the true names when they are ascertained. Plaintiffs are informed and believe
and thereon allege that each of the fictitiously named Defendants is legally responsible for the

1 occurrences herein alleged, and that Plaintiffs’ damages as herein alleged were proximately
2 caused by their conduct.

3 **FACTUAL ALLEGATIONS**

4 **Instacart’s Business Model Deprived Plaintiffs the Benefits and Protections of Employment**

5 29. Instacart provides grocery delivery services to customers in cities throughout the country
6 via an on-demand dispatch system.

7 30. Instacart offers customers the ability to purchase groceries from specified stores on a
8 mobile phone application or over the Internet and have them delivered by “personal shoppers”
9 within one or two hours.

10 31. Instacart’s website advertised that “Instacart is a grocery delivery service that delivers in a
11 little as an hour!”

12 32. Instacart operates by hiring and employing an extensive workforce of individuals who
13 perform the functions of shopping for and purchasing the groceries ordered by the customers
14 and/or delivering said groceries to the customers. The shoppers’ and drivers’ services are fully
15 integrated into Instacart’s business, and without them, Instacart’s business would not exist.

16 33. However, at all relevant times, Defendants treated Plaintiffs like independent contractors
17 to the detriment of Plaintiffs in various manners, including but not limited to, requiring Plaintiffs
18 to use their own vehicles to make deliveries, pay for driving-related expenses, refusing to provide
19 liability insurance for the operation of Plaintiffs’ motor vehicles, refusing to provide workers’
20 compensation insurance, and requiring Plaintiffs to pay increased tax rates mandatory for
21 independent contractors.

22 34. Additionally, Defendants required Plaintiffs to use their own smart phones and data from
23 their personal cell phone service plans in order to receive and carry out work orders.

24 35. Further, despite requiring that Plaintiffs use its mobile phone application to perform their
25 job, Instacart charges—or at least retains the right to charge—Plaintiffs twenty-five cents (\$0.25)
26 per order (or “batch”) they delivered as consideration for their use of the “proprietary ‘Instacart
27 Shopper’ app.”

28 36. Instacart voluntarily and knowingly misclassified Plaintiffs and other Instacart shoppers
as independent contractors for the purpose of avoiding the significant responsibilities associated
with the employer/employee relationship, including, *inter alia*, the payment of wages for non-

1 productive time, expense reimbursements, provision of workers' compensation insurance,
2 payment of state and federal taxes, and other benefits.

3 37. At all relevant times, Defendants issued Plaintiffs Form 1099s, indicating Plaintiffs were
4 independent contractors and were not Defendants' employees.

5 38. At all times during their employment with Defendants, Plaintiffs were misclassified as
6 independent contractors by Defendants, were in fact employees of Defendants, and suffered
7 actual economic harm as a consequence of this misclassification.

8 **Instacart Extensively Controlled All Aspects of Plaintiffs' Jobs**

9 39. Despite Defendants' explicit and implicit classification of Plaintiffs as independent
10 contractors, Plaintiffs were in fact employees of Defendants. Plaintiffs were required to follow a
11 litany of detailed requirements imposed on them by Instacart and they were graded and subject to
12 termination based on their failure to adhere to these requirements.

13 40. At all relevant times, Defendants exerted control over Plaintiffs in a manner consistent
14 with an employer-employee relationship, including but not limited to, generating the work orders
15 for Plaintiffs; controlling their wages; enforcing behavioral codes of conduct; controlling the
16 means, manner, and method by which they perform their work; and controlling the conditions of
17 employment. Instacart directed Plaintiffs precisely when and where they were to collect and
18 deliver groceries to Instacart customers, how they were to interact with Instacart customers, and
19 had the right to terminate them from Instacart's employment at Instacart's discretion.

20 41. Defendants even referred to Plaintiffs and its other Shoppers as "employees" and
21 members of the Instacart "team" and "fleet."

22 42. When working for Instacart, Plaintiffs were expected to hold themselves out as Instacart
23 employees and to wear clothing and use equipment emblazoned with the Instacart logo, such as
24 Instacart t-shirts, shopping bags, and lanyards.

25 43. Instacart trained and directed Plaintiffs on how to evaluate and select produce and how to
26 bag items.

27 44. Instacart also directed Plaintiffs as to the order in which to shop for various items within
28 the grocery store. For example, if an order included items from the deli, Instacart directed
Plaintiffs to first go to the deli to take a number, then, while waiting for the number to be called,
go collect other items then return to the deli.

1 45. Plaintiffs were also to follow Instacart protocol if an item was unavailable. Instacart
2 directed Plaintiffs to try to match the quantity ordered and prioritize health features. For example,
3 if the requested but unavailable item was gluten-free, Plaintiffs were directed to purchase a
4 gluten-free substitute.

5 46. Instacart also controlled how Plaintiffs were to interact with customers. Instacart provided
6 instructions on what Plaintiffs was to say when leaving voicemails for customers, what to say
7 when on the phone with a customer to add a substitute item for an unavailable item, and what to
8 say when delivering the groceries to the customer.

9 47. Additionally, Plaintiffs were required to accept (or “acknowledge”) every job (also called
10 a “batch”) that Instacart sent to her smartphone within a set time. If Plaintiffs failed, for whatever
11 reason, to acknowledge even a single shift and Plaintiffs would receive no compensation for the
12 rest of the pre-determined shift regardless of whether they were one minute or six hours into their
13 shift. After acknowledging an order, Plaintiffs were required to start picking the groceries within
14 a certain timeframe. If shoppers repeatedly did not meet Instacart’s expectations as to the time
15 within which to commence picking, Instacart would schedule them for fewer shifts or not at all.

16 **Instacart’s Onboarding and Training of Plaintiffs**

17 48. As a prerequisite to being hired as Instacart Shoppers, Plaintiffs had to undergo training
18 by Instacart regarding how to perform their duties, including how to use the Instacart mobile
19 application, how to replace out of stock items, how to select various types of fruit, and how to
20 interact with customers. Instacart required further training regarding delivering alcohol as part of
21 a work order. Plaintiffs had to take multiple tests regarding applicable rules and regulations.

22 49. Plaintiffs were asked to attend an interview and orientation at an Instacart office. At these
23 interviews and orientations, an Instacart employee gave Plaintiffs an orientation presentation
24 about the job and trained them on how to operate the Instacart mobile application on their
25 smartphones. Instacart hired Plaintiffs upon completion of the interview and orientation.

26 50. Plaintiffs also underwent on-the-job training sessions during which they shadowed other
27 Instacart Shoppers. Plaintiffs were further directed to watch Instacart videos or presentations,
28 hosted on the mobile application, for additional instruction on how to perform their job duties in
accordance with Instacart’s standards and objectives.

51. Instacart also required that Plaintiffs submit proof of personal automobile insurance, have

1 a smartphone and driver's license, and pass Instacart's background check. Instacart did not
2 require Plaintiffs have commercial car insurance.

3 **Independent Contractor Agreement**

4 52. Also as a condition of employment, Plaintiffs were required to sign an agreement between
5 him/herself and Instacart titled the "Independent Contractor Agreement." This document, which
6 Plaintiffs were required to sign to be eligible for employment, was drafted by Instacart, was not
7 subject negotiation, and was presented to Plaintiffs at the end of the application process as a
8 condition of employment.

9 53. Among other things, it stated that Plaintiffs were to be treated as independent contractors
10 and not employees of Instacart. On that basis, Instacart denied Plaintiffs and thousands of other
11 Instacart Shoppers basic employment rights, benefits, and protections.

12 54. The Independent Contractor Agreement also represented to Plaintiffs that they would "be
13 solely responsible for the performance of the Services and shall determine the method, details,
14 and means of performing the Services." *See* Ex. 1, Independent Contractor Agreement, § 5.1.¹ In
15 reality, Plaintiffs had no control over the method, details, and means of their work. Plaintiffs
16 relied on this misrepresentation to their detriment. Had they known that Instacart would have
17 total control, they would not have accepted the job offer.

18 55. At the time Instacart presented the Independent Contractor Agreement to Plaintiffs,
19 Instacart knew that this representation was false and that Plaintiffs would not control their work.

20 56. At the time, Instacart had management and operations teams in place that would
21 supervise, manage, and control Plaintiffs' work. Further, at all relevant times the Instacart
22 Application precluded Plaintiffs from having any control over their work.

23 57. The Independent Contractor Agreement also contains an arbitration provision. This
24 provision states that any controversy, dispute, or claim arising out of or relating to the services
25 performed by Plaintiffs for Instacart must be brought exclusively in binding arbitration. Further,
26 the arbitration provision contains an express waiver of the right to a jury trial and does not
27 provide for class arbitration. It is Plaintiffs' position that this arbitration provision is
28 unenforceable under *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016). This

¹ Plaintiffs allege, upon information and belief, that the Independent Contractor Agreement attached hereto as Exhibit 1 is a true and accurate copy of each of the agreements they signed and that Instacart possesses and is able to produce a copy of each agreement signed by Plaintiffs.

1 contention is the subject of Plaintiffs' First Cause of Action for Declaratory Judgment.

2 **Instacart Dictated All the Particulars of Plaintiffs' Work**

3 58. At all relevant times, Plaintiffs were assigned their work by Defendants via a mobile
4 phone application ("Instacart App") on a daily basis. The only way to perform any work for
5 Instacart was through the Instacart App, which could only be used as determined by Instacart.

6 59. As a result, Plaintiffs did not know where they were to be assigned to work, the type of
7 deliveries they were to be performing, or the length of time any given assignment was expected
8 to require until they received Defendant's work order text message. Plaintiffs were not permitted
9 to collect the materials from locations of their choosing or deliver them at a time or a price
10 negotiated by Plaintiffs.

11 60. Instacart imposed strict job-performance rules that controlled every aspect of Plaintiffs'
12 means and mode for accomplishing the order fulfillment and delivery. For example, Instacart
13 directed its Shoppers to call the customer if an order item is unavailable. It also imposed protocol
14 on what item to purchase as a substitute if the customer is unreachable. Instacart directed its
15 shoppers to try to match the quantity ordered and prioritize health features like if the requested
16 but unavailable item was gluten-free, the shopper should purchase a gluten-free substitute.

17 61. Instacart monitored and managed Plaintiffs' job performance down to the minute.
18 Plaintiffs were required to notify Instacart, by way of the Instacart App, when they were starting
19 to shop for an order, when the purchase was complete, when they were starting the delivery
20 process, and when delivery was complete.

21 62. Instacart used a letter or number grading system to evaluate Plaintiffs and all other
22 Shoppers. The grades or scores were comprised of at least three components: reliability,
23 accuracy, and speed. Plaintiffs were expected to have a "picking speed" within a set time range
24 of "minutes per item." Instacart also told Plaintiffs that they were expected to have a certain
25 minimum accuracy score and minimum reliability score.

26 63. Instacart monitored and tracked the location and speed of Plaintiffs while they were
27 completing orders and communicated directly with Plaintiffs via text message or phone call if
28 they deviated from the enumerated protocols or timing requirements to inquire why they were
running late, even if only by a minute or two. Instacart also sent text messages requesting that
Plaintiffs provide minute-by-minute updates on the delivery status of their assigned orders.

1 64. If Plaintiffs did not comply with Instacart’s work requirements, they were subject to
2 reduced effective pay, discipline, and “deactivation” - a tech industry euphemism for being fired.
3 If Plaintiffs’ shopper grades/scores were outside Instacart’s expectations, Instacart would assign
4 them fewer or smaller batches and fewer or shorter shifts.

5 65. Instacart also directed its Shoppers to assist in the maintenance of Instacart’s online
6 interface by compiling and updating the grocery inventory for its partner grocery stores while
7 they are shopping in the stores.

8 66. Instacart communicated its expectations, protocols, and rules to Plaintiffs and other
9 shoppers via regular e-newsletters, communications through the Shopper App, training manuals,
10 videos, emails, and phone calls. Instacart managers also sent text messages to Plaintiffs about
11 their performance of deliveries, messages about their shifts, directions on how to shop, and other
12 managerial issues.

13 67. Plaintiffs had multiple “City Managers” from Instacart. These City Managers
14 communicated with Plaintiffs by phone call, text message, and email about specific orders, as
15 well as to inquire whether Plaintiffs were able to work extended shifts.

16 68. At times, Instacart managers were stationed in the grocery stores to help Plaintiffs and
17 other Shoppers with any ongoing issues, answer questions, and improve its
18 shopping/checkout/delivery process.

19 **Instacart’s “Shopper Happiness Team” Was the Mouthpiece of Much of Instacart’s**
20 **Control Over Plaintiffs**

21 69. At all relevant times, Instacart provided a shopper support team within its Operations
22 division to provide instruction to Plaintiffs both during their shifts as to questions about carrying
23 out their job functions and off-shift about all other questions.

24 70. The Instacart Shopper Support Team and Shopper Happiness Team (collectively
25 “Shopper Support”) fielded questions, complaints, job issues, and requests from Plaintiffs and
26 other Shoppers. The Shopper Support team provided answers to the questions, instructions, or
27 took other follow-up action.

28 71. During these calls, Shopper Support team members took notes and saved them in a
database containing “Shopper Profiles” for each shopper. Shopper Support team members also
accessed the Shopper Profiles to locate various pieces of information in order to answer questions
and address job issues the shoppers reported to Shopper Support.

1 72. Each Shopper Profile contains extensive information about that Shopper, including their
2 “star ratings,” links to every order with which that Shopper was involved, all payments made to
3 that Shopper (with line item descriptors), customer feedback, and communication logs. The
4 communication log section of the Shopper Profile includes notes from the Shopper Support
5 members based on the calls or emails with that Shopper and an archive of instant messages
6 between Shopper Support and the Shopper.

7 73. The Instacart database also contained a page called the “City Page.” There is a different
8 City Page for each city in which Instacart operates and contains information as to whether an
9 hourly guarantee is in effect for that particular city and if so, the hourly rate, as well as any item
10 commissions or bonuses in effect for that city during a shift. Instacart used the information from
11 the applicable City Page to address complaints from Plaintiffs and other shoppers about the
12 amount of their paychecks.

13 74. The Instacart database also had a feature called “Batch Replay.” This was a function that
14 illustrated the path taken by Plaintiffs and other Shoppers with respect to a batch of orders. The
15 Shopper Happiness Team would run Batch Replays in response to various shopper issues. For
16 example, Shoppers called to report if they were running behind the Instacart time requirements.
17 Some of these Shoppers reported that they were delayed due to traffic. The Shopper Support team
18 used Batch Replay to identify the Shopper’s location and to verify whether there was, in fact,
19 traffic in the area. Through the Batch Replay function, Instacart was able to track each delivery
20 from store to customer and the distance travelled.

21 75. The Shopper Support team communicated with Plaintiffs and other Shoppers about issues
22 regarding the number, size, and contents of the orders assigned to them. The Shopper Support
23 team also communicated with Plaintiffs and other Shoppers about the frequency and duration of
24 the shifts they were assigned. Shopper Support received calls from Shoppers with complaints that
25 they were not being assigned enough orders or that the orders were very small. Shopper Support
26 also received complaints from Shoppers that they were not being scheduled for the number of
27 hours they wanted. In response to these complaints, the Shopper Support team was trained to
28 explain that the Shoppers’ ratings, which included their speed rating, customer rating, and
reliability rating, had a direct effect on the orders and the shifts they were assigned.

76. Members of Shopper Support were provided a Shopper Support Manual, which was

1 accessed online through the Instacart Google Documents database. This manual contained,
2 among other things, stock answers to common questions the Instacart shoppers might ask, and
3 technical support troubleshooting steps. The manual also contained specific timing requirements
4 Plaintiffs and other shoppers had to meet when completing various stages of an order. Part of the
5 job of Shopper Support team members was to address the shopper issues that could result in these
6 time requirements not being met.

7 77. Members of Shopper Support answered a variety of questions from Plaintiffs and other
8 shoppers, including questions about the Instacart App, issues with the debits cards with which
9 Plaintiffs and other Shoppers purchased groceries (“Pex cards”), where to park their cars, and
10 how to complete a return, among others.

11 78. Instacart’s Shopper Support team also answered questions from Shoppers about what they
12 were supposed to do in given situations, for example, when a customer was not home at the time
13 the shopper attempted to deliver the groceries or if the Shopper got into an accident while
14 fulfilling an order.

15 79. Instacart’s Shopper Support team was trained to instruct Shoppers that, in the event a
16 customer was not home at the time the shopper attempted to deliver the groceries, the Shopper
17 was to wait at the delivery location for a set number of minutes, call back to Shopper Support,
18 then click a certain button on the Instacart App. If the customer was still not home, the Shopper
19 Support team member was trained to instruct the Shopper to take the groceries back to a certain
20 location, after which the Shopper was to call Shopper Support back to notify that they had
21 completed the protocol and Shopper Support would “cancel” the order.

22 **Instacart Acknowledged That It Misclassified Its Shoppers**

23 80. At some time during the relevant period, Instacart began bifurcating the job duties of its
24 Shoppers into two separate roles: in-store shoppers who remained at a given grocery store for the
25 entirety of their shifts and performed the selection and purchasing of the dictated items; and
26 delivery drivers who picked up the already-purchased orders from designated areas within the
27 grocery stores and then delivered the batches to the customer. Full-service roles (i.e., shopping
28 and delivering) remained and are still available.

81. In an acknowledgement that its model misclassifies workers, in or around June 2015,
Instacart began to correctly classify in-store shoppers in various areas of the country by offering

1 part-time employment status. Full-service and delivery-only workers remained classified as
2 independent contractors despite the fact that their job duties overlapped substantially with the
3 “employee” in-store shoppers and the fact that the level of control exerted by Instacart was the
4 same.

5 82. Instacart stated that the change was to ensure more control over the in-store shoppers;
6 however, nothing about the day-to-day work performance or control by Instacart over these
7 workers changed. This shows that Instacart knew and/or recklessly disregarded that it was
8 misclassifying its Shoppers from the outset.

9 83. At a later point in the relevant period, Instacart began phasing out delivery-only positions
10 and assigning full-service shoppers to take over delivery-only batches in addition to their usual
11 responsibilities.

12 **Instacart Controlled Shoppers’ Wages and Tips**

13 84. Instacart exerted sole control over Plaintiffs’ wages. At all relevant times, Plaintiffs were
14 paid in a manner completely dependent on the nature of the deliveries they made, including the
15 quantity of items Plaintiffs were required to collect and deliver under each individual work order.

16 85. On multiple occasions throughout the relevant period, Instacart unilaterally modified the
17 compensation structure applicable to Plaintiffs and the other Shoppers without any negotiation or
18 consent on the part of the Shoppers.

19 86. At all relevant times, Instacart paid Plaintiffs via direct deposit. A wage statement was
20 provided on the Instacart App. However, at all relevant times, the Instacart App never provided
21 the Plaintiffs’ hours worked or the hourly rate paid. Nor did the App provide Plaintiffs
22 information as to their piece rate compensation (i.e., per-batch commission) or the number of
23 piece rate units earned. Plaintiffs had no means of verifying they were being paid correctly.

24 87. At all relevant times, Instacart customers were able to tip their Shopper via the Instacart
25 App or in cash.

26 88. After a customer selected the desired grocery items for delivery and entered their name,
27 address, and payment information into the app, they were directed to a payment screen which
28 displayed an itemized invoice. The payment screen included a line item for “tip” through which
the customer could input an optional tip amount.

89. Prior to the initial bifurcation of job duties between in-store shoppers and full-service

1 shoppers, Instacart distributed 100% of any tips submitted by customers through the App to the
2 full-service shoppers and delivery-only shoppers who delivered to that customer. Sometime after
3 the bifurcation, Instacart imposed a mandatory tip-pooling system under which tips were split
4 equally between the in-store shopper and the delivery driver.

5 90. Subsequently, Instacart once again changed the tipping structure to entitle full-service
6 shoppers and delivery persons to one hundred percent of any tips.

7 91. In or around September 2016, Instacart changed the payment screen on the App such that,
8 instead of a line item for “tip,” it instead only included a line item for “service.” This “service”
9 “service” amount could be changed by the customer or waived altogether.

10 92. Despite its name, the “service” amount was a tip under the FLSA as it was entirely
11 optional, and customers had full discretion over whether or not to pay it at all.

12 93. The customer was given an option to “edit” or change the “service” amount, whereupon
13 they were taken to a separate screen with two options – “service” and “additional tip.” From the
14 this screen, customers could choose whether or not to leave a “service” amount and then whether
15 or not to leave an “additional tip.” For a period of time after the introduction of the “service”
16 amount, customers could choose to leave a custom “service” amount. Subsequently, Instacart
17 again changed the system such that customers could either leave a 10% “service” amount or to
18 select “waive (\$0)” and waive it entirely. The “additional tip” was, by default, set to “None
19 (Adjust later).”

20 94. On this screen, Instacart stated: “Instacart uses the service amount provide competitive
21 pay to all the shoppers working with Instacart,” and that “[u]nlike a tip, which goes directly to the
22 shopper delivering your order, a service amount allows us to pay all the shoppers involved in
23 your delivery (such as those that also shop in the store).”

24 95. On this screen, Instacart further stated: “Additional tipping is optional. The amount you
25 select goes directly and solely to the shopper delivering your order.”

26 96. Tipping shoppers is customary in the personal shopping industry and is always optional.

27 97. Under the FLSA, service charges are compulsory charges that cannot be waived or
28 changed and become part of the employer’s gross receipts.

98. Prior to the change in the tipping structure in or around September 2016, 50 to 60 percent

1 of Plaintiffs' income came from tips. Since the change, Plaintiffs have suffered a drastic decrease
2 in tips received.

3 99. The tips Instacart received from customers under the guise of a "service" amount were
4 collected by Instacart and distributed amongst all Instacart Shoppers, including in-store shoppers
5 who do not customarily and regularly receive tips and regardless of whether they worked on the
6 particular order for which the service amount was given by the customer. These monies were
7 also distributed to Shoppers in the form of wages, not tips. In Plaintiffs' wage statements, the
8 itemized payments are categorized as either some type of "commission" or as "tips." There is no
9 category for "service" amounts. Additionally, on its website, Instacart states that:

- 10 a. "Instacart uses the service amount to provide high guaranteed commissions to
11 shoppers on the platform. This payment is not a tip and won't go directly to the
12 shopper delivering your order";
- 13 b. The "service" amount is used to "guarantee high commission for all shoppers to help
14 smooth out variations in pay. Shoppers will no longer have to count on unpredictable
15 tips for the majority of their compensation"; and
- 16 c. "[C]ustomers will have the option to pay a variable service amount. The customer can
17 choose the amount, exactly the same way they did before for tips. The difference is
18 that 100% of the variable service amount is used to pay all shoppers more consistently
19 for each and every delivery, not just the last shopper to touch the order."

20 100. Instacart CEO Apoorva Mehta also stated the following with respect to the conversion of
21 the "tip" option to a "service" amount: "We're going to pay a fair and competitive wage in every
22 single market. If you're getting more than that, it's going to go down. And if you're getting less
23 than that, it's going to go up." (Source: [https://www.buzzfeed.com/carolineodonovan/instacarts-
24 tipping-transparency-issues-could-lead-to-thanksg?utm_term=.dfDjpm2De#.utvV92Q6N](https://www.buzzfeed.com/carolineodonovan/instacarts-tipping-transparency-issues-could-lead-to-thanksg?utm_term=.dfDjpm2De#.utvV92Q6N)). Mehta
25 stated that the goal is to have Shoppers earning an average "market clearing wage." (Source:
26 [https://www.buzzfeed.com/carolineodonovan/instacart-ceo-some-workers-must-earn-less-for-the-
27 company-to?utm_term=.iu2z0Yldp#.biQG6MZEo](https://www.buzzfeed.com/carolineodonovan/instacart-ceo-some-workers-must-earn-less-for-the-company-to?utm_term=.iu2z0Yldp#.biQG6MZEo).)

28 **Instacart Controlled When and How Long Plaintiffs Worked**

101. Plaintiffs were required to provide windows of availability to Instacart on a weekly basis.

1 Plaintiffs could list availability for shifts of up to ten (10) hours in duration. Instacart then
2 assigned Plaintiffs a schedule of shifts for the upcoming week. There was no guarantee that
3 Plaintiffs would be scheduled for the hours they submitted as being available. Indeed, whether
4 Plaintiffs were scheduled was solely up to Instacart. Instacart scheduled Plaintiffs and other
5 Shoppers based on their Shopper Scores, prioritizing those with better scores.

6 102. If Plaintiffs did not report to an assigned shift, reported late to a shift, or cancelled a shift
7 within 24 hours, Plaintiffs were reprimanded by Instacart managers and Instacart lowered the
8 “reliability score” component of their Shopper Grade. A low reliability score resulted in being
9 assigned less or shorter shifts and/or being deactivated.

10 **Instacart Denied Shoppers Minimum Wage and Overtime**

11 103. At all relevant times, Plaintiffs were paid in a manner completely dependent on the nature
12 of the deliveries they made, including the quantity of items Plaintiffs were required to collect and
13 deliver under each individual work order.

14 104. Plaintiffs were required to make themselves available to perform work within a
15 predetermined range of time each day but were not compensated in a manner that guaranteed they
16 were compensated at or above the applicable minimum wage during those hours. During non-
17 productive time, or time during which Plaintiffs were required to make themselves available for
18 work but were not given an assignment, Plaintiffs were not compensated in any manner
19 whatsoever. On various occasions during the relevant period, Plaintiffs spent sometimes up to
20 four hours of a designated shift sitting in their cars in a grocery store parking lot awaiting
21 direction from Instacart. Plaintiffs were not compensated for this time in any manner.²

22 105. Plaintiffs could sign up for shifts of up to ten (10) hours in duration. If, at the end of a
23 shift, Instacart was experiencing high volumes of orders, Plaintiffs could extend their shifts, in
24 some cases up to fifteen (15) hours. Plaintiffs sometimes worked up to eighty (80) hours per
25 week. Despite these long hours, Plaintiffs were not compensated at the required overtime rates.

26 106. Plaintiffs were also forced to work when they should have been given rest periods and/or

27 ² At times, Instacart would effectuate an “hourly guarantee,” in which case Plaintiffs did receive
28 some amount of money for non-productive hours. However, Instacart regularly did not pay
Plaintiffs the promised “hourly guarantee” and/or would take into consideration any tips received
by Plaintiffs when calculating whether Instacart owed Plaintiffs additional wages under the
“hourly guarantee.”

1 meal periods. While the Instacart App did have a feature which allowed a Shopper to temporarily
2 suspend incoming orders in order to take a break, it only provided for a single twenty (20) minute
3 break over the course of 24 hours regardless of the length of the shift. As explained above,
4 Instacart would terminate the remainder of Plaintiffs' shifts if they failed to acknowledge a batch
5 within two minutes. Thus Plaintiffs were forced to forego taking any additional breaks or else risk
6 having the remainder of their shift terminated.

7 107. At no time during Plaintiffs' employment did Defendants provide Plaintiffs with any
8 written or electronic wage statement showing hours worked, gross and net wages, hourly rates,
9 and federal and state deductions.

10 108. Plaintiffs were paid on a commission basis without regard to the hours worked above
11 eight (8) or ten (10) in a given day or forty (40) in a given week.

12 **Instacart Failed to Reimburse Shoppers For Business-Related Expenses**

13 109. Plaintiffs were required to bear many of the expenses of their employment, including
14 expenses for their vehicles, gas, and other expenses. At times, these expenses caused Plaintiffs'
15 wages to fall below minimum wage.

16 110. The FLSA requires employers to reimburse employees for such expenses, which are for
17 the benefit of the employer, when failing to do so would cause their wages to drop below the
18 federal minimum wage. Similarly, a number of state laws require employers to reimburse
19 employees for such expenses, which are for the benefit of the employer and are necessary for the
20 employees to perform their jobs.

21 111. At all relevant times, Defendants required Plaintiffs to use and maintain insured and
22 licensed vehicles as a condition of their work. Plaintiffs were required to pay all expenses related
23 to the use and maintenance of their vehicles, including expenses related to liability insurance,
24 fuel, routine maintenance, and the upkeep of their vehicles' appearance. Plaintiffs incurred costs
25 related to parking, such as parking meter payments and parking tickets, which were necessitated
26 by Defendants' directives to its drivers. For example, Instacart directed its full-service and
27 delivery-only shoppers to not park in the grocery store parking lots but instead to double-park
28 near the store's entrance while they went in to pick up their order. Defendants also required
Plaintiffs to use their own smart phones and data from their personal cell phone service plans as a
condition of their work in order to receive and carry out work orders. Defendants did not

1 reimburse Plaintiffs for these work-related expenses in any manner.

2 112. At all relevant times, Defendants did not provide Plaintiffs with workers' compensation
3 insurance. Plaintiffs injured in the course and scope of their employment with Defendants were
4 left to rely on either their own private medical insurance or make direct payments for medical
5 treatment rendered as a result of industrial injuries. Plaintiffs were additionally ineligible for
6 workers' compensation disability benefits if they were physically unable to perform their work as
7 a consequence of industrial injuries.

8 113. At all relevant times, Defendants paid taxes in a manner consistent with Plaintiffs'
9 misclassification as independent contractors. As a consequence, Plaintiffs were required to pay
10 increased state and federal taxes at the rate of independent contractors despite the fact they were
11 employees.

12 **Instacart's Online Advertisements**

13 114. Instacart advertised on its website and elsewhere, including but not limited to the website
14 Craigslist and Indeed.com, that Instacart Shoppers could "earn up to \$25 per hour" (or other
15 weekly amount, for example, \$1,500 per week) performing services for Instacart. Instacart made
16 these representations in order to induce potential Shoppers to work for it but with knowledge that
17 it was impossible to earn that hourly rate consistently. Plaintiffs rarely earned an hourly rate of
18 \$25 per hour, and in fact, often earned below minimum wage.

19 115. The advertisements also did not mention that Plaintiffs would be classified as
20 independent contractors and did not mention anything about waiving their rights to participate in
21 a class action or a jury trial or agreeing to arbitrate disputes with Instacart.

22 **Instacart's Willful and Reckless Violation of Labor Laws**

23 116. Instacart willfully violated the Fair Labor Standards Act ("FLSA"). Instacart knew that
24 Plaintiffs were properly treated as employees but chose to misclassify them as independent
25 contractors. Instacart's motivation in misclassifying Plaintiffs and the other Shoppers as
26 independent contractors was to avoid the additional costs and financial responsibilities associated
27 with an employer/employee relationship, including, *inter alia*, the payment of minimum wage
28 and overtime under the FLSA and state labor laws, the payment of wages for non-productive
time, expense reimbursements, payment of state and federal taxes, and other benefits.

117. Instacart also specifically knew and/or recklessly disregarded whether it was violating the

1 FLSA by not paying Plaintiffs minimum wage for all hours worked and overtime for hours over
2 40 worked in a week. Instacart knew of the FLSA, the financial obligations it imposes on
3 employers, and its applicability to Instacart with respect to Plaintiffs and other Shoppers. Again,
4 it was Instacart's knowledge of these financial obligations and its desire to circumvent them that
5 motivated Instacart to willfully misclassify Plaintiffs and the other Shoppers.

6 118. Instacart is a sophisticated entity with operations in nineteen states and the District of
7 Columbia, directing what it refers to as a "fleet" of grocery delivery personnel spread across the
8 country. Instacart even referred to Plaintiffs and other Shoppers as "employees." Further, as
9 alleged above, with respect to in-store shoppers, Instacart is now complying with the FLSA but
10 still chooses to violate the law with respect to full service shoppers and delivery-only drivers.
11 Instacart Vice President of Communications Andrea Saul stated that the conversion of in-store
12 shoppers to employees "is costlier for us."

13 119. Instacart knew Plaintiffs were working more than 40 hours a week and that Instacart was
14 not paying Plaintiffs overtime wages. As alleged above, Instacart calculated and tracked the
15 average hourly wage it paid Plaintiffs and could easily see when Plaintiffs' effective hourly rate
16 fell below the applicable minimum wage. Instacart also knew that there were hours during
17 Plaintiffs shifts when they were not assigned orders and that they were not paid for those hours.

18 120. As alleged herein, Instacart maintained extensive and pervasive control over Plaintiffs'
19 and the other Shoppers' conduct, means and manner of work, appearance, actions, wages, and
20 hours. Instacart had detailed knowledge of and control over how many hours Plaintiffs were
21 working on a daily and weekly basis, including when Plaintiffs worked over 40 hours per week,
22 and how many orders Plaintiffs were assigned and when. Instacart's system is designed to assign
23 shifts up to ten (10) hours in duration, which could be extended to fifteen (15) hours but only
24 allowed for a single twenty (20) minute break over the course of 24 hours regardless of the length
25 of the shift.

26 121. Instacart also knew how much it was paying Plaintiffs and that its method of
27 compensation (i.e., on a piece rate/commission basis) gave no consideration to whether Plaintiffs
28 worked more than 40 hours in a given week or whether there were hours during Plaintiffs' shifts
when they were not assigned orders. Indeed, it was Instacart's practice to deny that overtime
wages were due to be paid to Plaintiffs for work in excess of 40 hours per week and to deny that

1 any wages were due to be paid for non-productive hours even though Instacart knew that, under
2 any set of circumstances or facts, Plaintiffs were entitled to be paid at least minimum wage for
3 each hour that they worked. Instacart has falsely denied and refused and continues to deny
4 falsely and refuse payment for purposes of securing a material economic benefit to itself and with
5 the intent to annoy, harass, oppress, hinder, and defraud Plaintiffs.

6 122. Further compounding its willful actions is the fact that Instacart never provided Plaintiffs
7 with any written or electronic wage statement that showed their hours worked, hourly rates, piece
8 rate information, and federal and state deductions or wage statements that accurately reported
9 their gross and net wages.

10 123. Instacart chose to classify Instacart Shoppers as independent contractors to save money.

11 124. On November 19, 2013, Instacart founder and CEO Apoorva Mehta stated the following:

12 “The reason why Instacart is extremely disruptive, is because we don’t have any
13 physical infrastructure. We have not built any warehouses. We don’t have a fleet
14 of trucks that we own or lease. And we don’t hold any inventory. We have made
15 grocery delivery possible with just software. And the way we’ve been able to do
16 that is leveraging mobile based crowdsourcing. This has allowed us to operate at
17 extremely low fixed costs, get started with very low capital expenditure, and it
18 has allowed us to expand to new cities extremely quickly.”

19 (Source: YouTube, <<https://www.youtube.com/watch?v=MSyYrOvBXMmc>> at 3:00-3:41”
20 (published Nov. 19, 2013).)

21 125. Plaintiffs believe internal Instacart documents exist confirming that Instacart knew the
22 shoppers were supposed to be treated as employees and that Instacart knew Shoppers could not
23 make up to the promised wages advertised online. For example, Plaintiffs understand that
24 Instacart held monthly all-hands meetings, led by CEO Apoorva Mehta. Plaintiffs understand
25 that these meetings were live-streamed over the Internet so corporate employees who were not
26 physically in attendance could watch and that Powerpoint presentations accompanied the
27 meetings.

28 126. During one of these meetings held in or around August 2015, Mr. Mehta addressed the
issue of shopper misclassification, the conversion of in-store shoppers to employees, and the fact
that other shoppers remained classified as independent contractors.

127. Additionally, Instacart managers Susie Sun, Michelle Suwuannukul, and Heather Wake
instructed Operations Associates to continue running the advertisements that represented that

1 Instacart Shoppers could make a certain amount of money per hour even though they were aware
2 that Shoppers were making an average hourly rate that was well below the advertised rate.

3 128. Additionally, in June 2016, the IRS issued a determination finding an Instacart Shopper
4 to be an employee for federal employment tax purposes for work performed during 2015 and
5 state labor commissions in both New York and Colorado have issued findings that Instacart
6 Shoppers are properly classified as “employees.”

7 129. In misclassifying Plaintiffs as independent contractors and failing to pay Plaintiffs wages
8 and compensation due to them, as well as by committing the numerous other violations detailed
9 in this complaint, Defendants, by and through their officers, directors and/or managing agents,
10 acted with malice, oppression and or conscious disregard for the statutory and/or other rights of
11 Plaintiffs, and committed fraud by willfully and wrongly treating Plaintiffs as independent
12 contractors and not employees.

13 **DECLARATORY JUDGMENT ACTION**
14 **FIRST CAUSE OF ACTION**
15 **DECLARATORY JUDGMENT**
16 (Declaratory Judgment Act, 28 U.S.C. § 2201(a))

17 Introduction

18 130. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth
19 in detail herein.

20 131. Plaintiffs bring this action for declaratory judgment against Defendant Instacart,
21 individually and on behalf of a proposed class of all other Shoppers who signed the Independent
22 Contractor Agreement, attached hereto as Exhibit 1, regarding the Parties’ respective rights and
23 obligations under Section 7 the Independent Contractor Agreement (“ICA”), namely whether
24 Plaintiffs are not obligated to submit their wage and hour claims to arbitration.

25 132. Plaintiffs contend that they are not obligated to arbitrate their disputes with Instacart
26 under the arbitration provision contained in Section 7 of the ICA because they contend that
27 provision is unenforceable under the National Labor Relations Act of 1935, 29 U.S.C. §§ 151 *et*
28 *seq.* (“NLRA”), and *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016) (hereinafter
“*Morris*”).

1 133. To the contrary, Instacart contends that the arbitration provision is enforceable and is not
2 rendered invalid by *Morris*.

3 Jurisdiction and Venue

4 134. The potential underlying action by Defendants against Plaintiffs, that is, a petition to
5 compel arbitration of Plaintiffs' claims pursuant to § 4 of the Federal Arbitration Act, 9 U.S.C. §
6 4 ("FAA"), would be subject to federal jurisdiction because the underlying dispute arises in part
7 under federal law, namely the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

8 135. The declaration sought herein is therefore regarding a matter within this Court's federal
9 subject matter jurisdiction pursuant to 28 U.S.C. § 1331 since the claims underlying the dispute
10 between the parties is subject to federal question jurisdiction.

11 136. CAFA Jurisdiction: This Court also has diversity jurisdiction over this declaratory
12 judgment action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§
13 1332(d)(2) and 1453(b). This action is a class action as defined by 28 U.S.C. § 1332(d)(1)(B).
14 The action is characterized as a "Class Action" and Plaintiffs bring it "individually and on behalf
15 of a proposed class." ¶ 131.

16 a. Minimal Diversity: As alleged herein, Instacart is a Delaware corporation with
17 its principal place of business at 50 Beale Street, San Francisco, CA. ¶ 27. Additionally,
18 Plaintiffs are residents of eleven different states and the proposed class consists of thousands of
19 workers nationwide. ¶¶ 8-9, 15-26. Instacart has previously pled that there were 7,696
20 individuals who performed grocery delivery work for Instacart just between January 2012 and
21 February 2015. *See* Instacart's Notice of Removal of Class Action to Federal Court, ¶ 8,
22 *Cobarruviaz v. Maplebear, Inc. dba Instacart*, Case No. 3:15-cv-00697-EMC (N.D. Cal. Feb. 13,
23 2015). This number has undoubtedly increased between February 2015 and the present. This
24 satisfies the requirement of 28 U.S.C. § 1332(d)(5) that the proposed class include at least 100
25 persons. Further, because at least one Plaintiff is from a state other than California, and Instacart
26 is a citizen of both Delaware and California, the diversity requirement of 28 U.S.C. §
1332(d)(2)(A) is met.

27 b. Amount in Controversy Exceeds \$5 Million: The amount in controversy in the
28 underlying dispute exceeds \$5 million, thus satisfying 28 U.S.C. § 1332(d)(2). Plaintiffs believe

1 there to be more than 14,000 members of the proposed class. Plaintiffs allege that they and the
 2 proposed class have been regularly denied proper minimum wage and overtime since December
 3 1, 2012. Instacart has previously pled that:

- 4 • From July, 2014 through the first week of February, 2015, putative class members
 5 worked on-duty for 2,580,054 hours, for which they were compensated. Furthermore, during this time period, there were 2,229 grocery deliverers any given
 6 week, working an average of 35 hours a week each.
- 7 • Conservatively assuming that for every five hours worked, putative class members
 8 were not compensated for one additional “non-productive” hour, potential damages
 9 for non-productive hours worked would total \$4,644,097.20 from July 2014
 10 through the first week of February, 2015 *alone*.
- Similarly, conservatively assuming that putative class members worked 5 hours of
 11 overtime per week for the 33 week period from July, 2014 through the first week of
 12 February, 2015, putative class members could be entitled to aggregate damages
 13 totaling at least \$1,655,032.

14 *See* Instacart’s Notice of Removal of Class Action to Federal Court, ¶¶ 13-15, *Cobarruviaz*, Case
 15 No. C-15-cv-00697 (N.D. Cal. Feb. 13, 2015).

16 In addition to the non-productive time and overtime wages, Plaintiffs also seek expense
 17 reimbursement; restitution and disgorgement; various penalties; an order enjoining Instacart from
 18 continuing to engage in the alleged conduct described in the Complaint; and other further relief as
 19 the Court deems just and proper. Given these requests for relief, the amount in controversy far
 20 exceeds \$5,000,000 in the aggregate, and this Court has jurisdiction under CAFA.

21 c. No Exceptions Apply: None of the exceptions to CAFA jurisdiction are met
 22 here. The “home-state” and “local-controversy” exceptions do not apply because less than two
 23 thirds of the proposed class is from California. On information and belief, Plaintiffs allege that
 24 approximately half of the proposed class members are from California with the other half being
 25 from elsewhere in the United States. The other exceptions are inapplicable here.

26 137. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because, inter alia,
 27 Defendant Instacart is headquartered in and engages and performs business activities in and
 28 throughout San Francisco County. Additionally, many of Defendants’ services involve San
 Francisco County residents, and many of the acts complained of herein occurred in this judicial
 district.

Governing Law: The Ninth Circuit’s Decision in *Morris v. Ernst & Young*

1 138. In *Morris*, the Ninth Circuit held that a labor contract that prevents employees from
2 bringing, in any forum, a concerted legal claim, including a class action, regarding wages, hours,
3 and terms of conditions of employment violates the NLRA, is therefore illegal, and cannot be
4 enforced. 834 F.3d at 979, 983.

5 139. In *Morris*, a class and collective action for alleged misclassification under the FLSA and
6 California law, plaintiffs were required to sign, as a condition of employment, agreements that
7 contained a collective action waiver that required employees to pursue claims exclusively
8 through arbitration and only as individuals in separate proceedings. 834 F.3d at 979. The
9 plaintiffs claimed the “separate proceedings” clause contravened NLRA, among other statutes,
10 relying heavily on determinations by the National Labor Relations Board (“NLRB”) that
11 concerted action waivers violate the NLRA. *Id.* at 979-80.

12 140. In its decision, the Ninth Circuit formally adopted the NLRB’s interpretation of sections
13 7 and 8 of the NLRA as announced in *D.R. Horton*, specifically that:

14 [A]n employer violates the NLRA ‘when it requires employees covered by
15 the Act, as a condition of their employment, to sign an agreement that
16 precludes them from filing joint, class, or collective claims addressing their
17 wages, hours, or other working conditions against the employer in any
form, arbitral or judicial.

18 *Morris*, 834 F.3d at 980 (quoting *D.R. Horton*, 357 NLRB No. 184, slip op. at 1); *see*
19 *also id.* at 982-83 (“the Board’s interpretation of § 7 and § 8 is correct”).

20 141. In so finding, the Ninth Circuit held that a labor contract imposed as a condition of
21 employment, the terms of which prevent the “initiat[ion of] concerted work-related legal claims
22 against the company in any forum,” constitutes an “interference” of the worker’s § 7 rights
23 within the meaning of § 8, and is therefore illegal and unenforceable. 834 F.3d at 979, 982-83.

24 142. In discussing the breadth and nature of workers’ rights under § 7 of the NLRA, the Ninth
25 Circuit explained that § 7 “includes the substantive right to collectively ‘seek to improve
26 working conditions’” (*id.* at 983) and that “employees must be able to initiate a work-related
27 claim together in some forum.” *Id.* at 980. This holding recognizes the fundamental aspect of the
28 right to pursue concerted legal activity under § 7 is the right to initiate legal action together. *See*

1 *Morris*, 834 F.3d at 986, n.11 (discussing workers’ “substantive labor right to initiate concerted
2 activities” under § 7 of the NLRA); at 979-80 (holding § 8 was violated where effect of
3 arbitration agreement was that “employees could not initiate concerted legal claims against the
4 company in any forum”); at 982 (interference with “the initiation of any concerted work-related
5 legal claim, in any forum” violates § 8); at 983-84 (same). For example, the *Morris* court found
6 that a “lawsuit filed in good faith by a group of employees to achieve more favorable terms or
7 conditions of employment” constitutes “concerted activity” under § 7. *Id.* at 981-82.

8 143. Therefore, the Ninth Circuit found that the NLRA establishes a substantive right to
9 pursue class and collective actions in some forum and that a labor contract that precludes
10 workers from proceeding as a class in any forum violates the NLRA, is illegal, and cannot be
11 enforced. *Id.* at 980 (citing *D.R. Horton*, 357 N.L.R.B. No. 184, slip op. at 4-5, 13 (2012)).

12 144. Since *Morris* was issued on August 22, 2016, numerous other courts from this District
13 have issued decisions interpreting and applying *Morris* to other arbitration agreements in labor
14 contracts and ultimately invalidating them pursuant to *Morris*’s holding. In *Gonzalez v. CEVA*
15 *Logistics U.S., Inc.*, Case No. 16-cv-04282-WHO, 2016 WL 6427866, at *1 (N.D. Cal. Oct. 31,
16 2016) and *Mackall v. Healthsource Global Staffing, Inc.*, Case No. 16-cv-03810-WHO, 2016
17 WL 6462089, at *1 (N.D. Cal. Nov. 1, 2016), *appeal filed*, Case No. 16-17103 (9th Cir. Nov. 16,
18 2016), Judge William H. Orrick denied two motions to compel arbitration based on arbitration
19 provisions in labor contracts that contained class action waivers. In doing so, the court
20 acknowledged it was bound by the holding in *Morris* that a class waiver with no opt out right is
21 unenforceable under the NLRA. *Gonzalez*, 2016 WL 6427866, at *6-7; *Mackall*, 2016 WL
22 6462089, at *3.

23 145. Similarly, in *Cashon v Kindred Healthcare Operating, Inc.*, Case No. 16-cv-04889-RS,
24 2016 WL 6611031, at *2 (N.D. Cal. Nov. 9, 2016), Judge Richard Seeborg recognized, in the
25 context of denying a motion to stay a wage and hour class action pending a U.S. Supreme Court
26 decision on *Morris*, that, under *Morris*, a mandatory arbitration clause in a labor contract that
27 precludes class actions, like the one presented in that case, violates Section 7 of the NLRA.
28

1 146. Most recently, in *Whitworth v. SolarCity Corp.*, Case No. 16-cv-01540-JSC, 2016 WL
2 6778662, at *3 (N.D. Cal. Nov. 16, 2016), Magistrate Judge Jacqueline Scott Corley denied a
3 motion to compel arbitration, reaffirming that under *Morris* an arbitration provision in an
4 employment contract that prohibits any dispute from being brought, heard, or arbitrated as a class
5 or collective action is invalid and unenforceable.

6 Factual Allegations

7 147. As alleged above, the Independent Contractor Agreement (“ICA”) is a uniform contract
8 drafted and imposed by Instacart as a condition of employment, which contains a provision
9 requiring all disputes between Plaintiffs and Instacart be “submitted to and determined
10 exclusively by binding arbitration.” *See* Ex. 1, § 7.1.

11 148. The ICA provides that it is a contract existing between Instacart and the individual
12 signatory Shopper only. *See* Ex. 1, pg. 2 (defining the “Parties” as Instacart and the signatory
13 shopper, as “an individual,” defined as “Contractor”).

14 149. Section 7 (the arbitration provision) also provides that the scope of arbitrable disputes
15 includes “any controversy, dispute or claim arising out of or relating to the Services performed
16 *by the Contractor.*” Ex. 1, § 7.1 (emphasis added).

17 150. The arbitration provision further provides that “*the Parties*” (defined as Instacart and the
18 individual Shopper) agree to a single neutral arbitrator, whose award “shall be final and binding
19 *on the Parties,*” that “[*t*]he parties will equally advance all of the arbitrator’s expenses and fees,”
20 and that “[*t*]he Parties agree that the enforceability of the agreement shall be governed by the
21 Federal Arbitration Act (9 U.S.C. §2).” Ex. 1, §§ 7.2-7.4 (emphases added).

22 151. The agreement does not mention the possibility of class wide arbitration. *See generally,*
23 Ex. 1.

24 152. The arbitration provision incorporates only the JAMS Employment Arbitration Rules and
25 Procedures and JAMS Policy on Employment Arbitration Minimum Standards, which make no
26 mention of class actions and do not identify, reference, or incorporate the JAMS Class Action
27 Procedures. *Id.* at § 7.2.

1 153. All Plaintiffs signed the ICA prior to starting to work for Instacart. The FLSA and state
2 labor law claims alleged by Plaintiffs herein would presumably be encompassed within the scope
3 of the ICA's arbitration provision.³

4 154. Plaintiffs' consent to the arbitration agreement requiring resolution of disputes through
5 individual binding arbitration was a condition of being hired, and Plaintiffs and other Instacart
6 Shoppers had no ability to opt out of the provision's terms.

7 155. Instacart, the drafter of the Independent Contractor Agreement, intended for the
8 arbitration provision to require Plaintiffs and other Instacart shoppers to proceed in arbitration on
9 an individual basis and not as a class arbitration. Instacart has repeatedly maintained the
10 arbitration agreement's enforceability and requirement of individual arbitration proceedings in
11 two other cases. *See Cobarruviaz v. Maplebear, Inc. dba Instacart*, Case No. 3:15-cv-00697-
12 EMC (N.D. Cal.) (Chen, J.) and *Sumerlin v. Maplebear, Inc. dba Instacart*, Case No. BC603030
13 (Los Angeles Sup. Ct.) (Wiley, J.).

14 156. In *Cobarruviaz*, a different set of plaintiffs brought similar collective and class action
15 wage and hour claims against Instacart, individually and on behalf of a putative national class of
16 Instacart Shoppers. *See* Collective Action Compl. and First Am. Class Action Compl.,
17 *Cobarruviaz*, Case No. 3:15-cv-00697-EMC (N.D. Cal. April 8, 2015). Instacart moved to
18 compel individual arbitration, and on November 3, 2015, the Honorable Edward M. Chen
19 granted Instacart's motion, ordering all of the *Cobarruviaz* plaintiffs' claims to be resolved in
20 arbitration on an individual basis, except for the representative claim brought under California's
21 Private Attorney General Act of 2004 (Cal. Lab. Code, §§ 2698 *et seq.*) ("PAGA"). *Cobarruviaz*,
22 143 F.Supp.3d 930, 947 (N.D. Cal. Nov. 3, 2015).

23 157. In granting the motion to compel arbitration, the *Cobarruviaz* court agreed with Instacart
24 that the arbitration agreement required that the arbitrations proceed on an individual basis. 143
25

26
27 ³ Plaintiffs make these allegations without waiving the right to assert any and all other defenses
28 to the enforcement of the arbitration agreement.

1 F.Supp.3d at 945-46 (rejecting Plaintiffs’ arguments for why class arbitration was authorized and
2 compelling arbitration “on an individual basis only”).

3 158. Specifically, the court found that “there is no evidence that the parties contemplated or
4 agreed to class-wide arbitration.” 143 F.Supp.3d at 945. The Court noted the agreement “does
5 not mention the possibility of class wide arbitration” but instead focuses on “disputes that arise
6 out of or are related to ‘services performed by the *Contractor*’ or the Agreement, which is
7 specifically between Instacart and the *individual Contractor*.” *Id.* (emphasis in original).

8 159. In *Sumerlin*, a California-only class action involving similar claims, Instacart has
9 maintained that the arbitration agreement is enforceable and would preclude the possibility of
10 class proceedings. *See* Ex. 2, Instacart’s Resp. to Opp’n to Mot. for Prelim. Approval of Class
11 Action Settlement, at pg. 5, *Sumerlin v. Maplear, Inc. dba Instacart*, Case No. BC603030
12 (L.A. Sup. Ct. Aug. 2, 2016) (stating Instacart informed *Sumerlin* Plaintiffs’ counsel about the
13 *Cobarruviaz* order compelling individual arbitration and stated it would similarly move to
14 compel arbitration in *Sumerlin*); at pg. 6-8 (stating key risk of continued litigation was that it was
15 “highly improbable that the case would proceed as a class action in court” in light of the
16 “enforceable” arbitration agreement).

17 160. Similarly, in the context of arbitration demands filed with JAMS, Instacart has asserted
18 that the arbitration agreement requires individual and separate proceedings. For example,
19 Instacart represented to JAMS that Plaintiffs’ counsel, the Arns Law Firm, were required “to
20 submit any other arbitration demands on an individual basis.” Ex. 3, Instacart’s Position
21 Statement re Preliminary Status Conference, pg. 5, *Golden v. Maplear, Inc. dba Instacart*,
22 JAMS Ref. No. 1100083103 (Mar. 17, 2016). Instacart also contended that the claimant to that
23 arbitration proceeding “simply has no standing to litigate on behalf of other Instacart contractors
24 or to take discovery regarding cases other than his own.” *Id.*

25 An Actual Controversy Exists: Plaintiffs’ Position

1 161. Notwithstanding their execution of the ICA, Plaintiffs contend that they are not obligated
2 to arbitrate their disputes with Instacart under the arbitration provision contained in Section 7 of
3 the ICA because *Morris* renders the ICA’s arbitration provision unenforceable.

4 162. The arbitration agreement here requires Plaintiffs to pursue their claims in arbitration on
5 an individual basis only and not concertedly or as a class. This is not in dispute as Instacart’s
6 position is that the Independent Contractor Agreement does not contain any provisions
7 permitting class-wide arbitration and that, under *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*,
8 559 U.S. 662, 685 (2010), the lack of affirmative consent to class-wide arbitration requires
9 Plaintiffs to proceed with individual arbitration.

10 163. As alleged above, the contract is between the individual worker and Instacart, all terms
11 are agreed to by “the Parties,” which is defined as Instacart and the individual worker, and the
12 scope or arbitration provision is limited to the work performed by that particular worker. To
13 borrow from the court’s order compelling individual arbitration in *Cobarruviaz*, “there is no
14 evidence that the parties contemplated or agreed to class-wide arbitration.” 143 F.Supp.3d at
15 945. The agreement “does not mention the possibility of class wide arbitration” but instead
16 focuses on “disputes that arise out of or are related to ‘services performed by the *Contractor*’ or
17 the Agreement, which is specifically between Instacart and the *individual Contractor*.” *Id.*
18 (emphasis in original).

19 164. In light of the clear import of the arbitration provision’s terms, Plaintiffs contend it is
20 unenforceable under *Morris* because Plaintiffs are precluded from initiating class and collective
21 proceedings in all forums.

22 165. Like the arbitration agreements in the post-*Morris* cases (*Gonzalez, supra*, 2016 WL
23 6427866; *Mackall, supra*, 2016 WL 6462089; *Cashon, supra*, 2016 WL 6611031; and
24 *Whitworth, supra*, 2016 WL 6778662), the subject arbitration agreement’s prohibition on class
25 arbitration has the “same effect” as the unenforceable arbitration provision in *Morris*—that is, it
26 violates the substantive federal statutory right under the NLRA to initiate concerted legal
27 activity. This is because, Plaintiffs are precluded, at the outset, from “initiat[ing] a work-related
28

1 legal claim together,” *Morris*, 834 F.3d at 980, because they are limited to pursuing individual
2 arbitrations. Because Instacart’s arbitration agreement has the “same effect” of waiving
3 Plaintiffs’ right to pursue concerted legal activity, including class arbitration, *Morris* therefore
4 renders it illegal and unenforceable.

5 An Actual Controversy Exists: Defendant’s Position

6 166. To the contrary, Instacart contends that the arbitration provision is enforceable and is not
7 rendered invalid by *Morris*.

8 167. Instacart’s position is that *Morris* does not apply to the arbitration provision in the ICA
9 because it does not contain an express “separate proceedings” clause as did the arbitration
10 agreement in *Morris*. Based on this purported distinction, Instacart contends that the arbitration
11 provision does not violate the NLRA because Plaintiffs can engage in joinder of their individual
12 claims in the arbitral forum.

13 168. In light of the Parties’ conflicting positions, a controversy therefore exists over whether,
14 under *Morris*, the ICA’s arbitration provision is enforceable and whether Plaintiffs in the present
15 action are required to arbitrate their FLSA and state labor law claims.

16 Declaratory Judgment Is Appropriate Here

17 169. An actual controversy has arisen and now exists between Plaintiffs and Instacart as to
18 their respective rights and obligations under Section 7 the Independent Contractor Agreement
19 signed by Plaintiffs and Instacart, namely whether Plaintiffs are not obligated to submit their
20 wage and hour claims to arbitration.

21 170. There being a present, actual controversy regarding the rights and obligations of the
22 parties under the ICA, Plaintiffs seek a declaration of those rights and obligations in the present
23 action.

24 171. A declaratory judgment resolving this actual controversy is necessary and appropriate at
25 this time.

26 172. The requested declaratory judgment will serve a useful purpose in clarifying and settling
27 the legal relations in issue. The issue of the enforceability of the arbitration agreement dictates
28

1 whether the remainder of the claims herein should even be asserted in this forum. Declaratory
2 judgment will also terminate and afford relief from the uncertainty, insecurity and controversy
3 giving rise to this action. Finally, a declaratory judgment will advance (and not interfere with)
4 resolution of the entire controversy and can be decided by the federal judge as a matter of law,
5 with little or no discovery.

6 Prayer for Relief

7 173. WHEREFORE, Plaintiffs pray for a declaratory judgment against Defendant as follows:

- 8 a. That the Court declare the respective rights and duties of Plaintiffs and Defendant
9 as under Section 7 the Independent Contractor Agreement signed by Plaintiffs and
10 Instacart, namely whether Plaintiffs are not obligated to submit their wage and hour
11 claims to arbitration because the arbitration provision is unenforceable under the
12 NLRA and *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016);
13 b. That Plaintiffs be awarded its costs, expenses and attorney fees incurred herein; and
14 c. For such other and further relief as the Court deems just and proper.

15 174. Plaintiffs request that this declaratory judgment action be determined on an expedited
16 basis, as a determination of this controversy is a threshold matter of viability of the remaining
17 claims.

18 **THE NATIONWIDE COLLECTIVE ACTION**
19 **SECOND CAUSE OF ACTION**
20 **VIOLATION OF THE FLSA**
(29 U.S.C. §§ 201 et seq.)

21 175. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth
22 in detail herein.

23 176. Plaintiffs bring this cause of action on behalf of themselves and all other Instacart
24 Shoppers who have worked for or on behalf of one or more of the Defendants anywhere in the
25 United States any time between December 1, 2012 and the date of final judgment in this matter.

26 177. Plaintiffs bring this count under 29 U.S.C. § 216(b) of the Fair Labor Standards Act.
27 Plaintiffs and other Instacart Shoppers are similarly situated in that they are all subject to
28 Instacart's common plan or practice of classifying Shoppers as independent contractors, not

1 paying them overtime for all hours worked beyond forty (40) in a given week, and not ensuring
2 that they receive at least the federal minimum wage for all hours worked.

3 178. At all relevant times, Defendants, and each of them, have been the employers of Plaintiffs,
4 their employees, and have been engaged in interstate commerce or in the production of goods for
5 commerce within the meaning of the FLSA. Defendant's annual operating revenues exceed
6 \$500,000.

7 179. Plaintiffs consent to sue for violations of the FLSA pursuant to 29 U.S.C. § 216(b) and
8 256. The written consent forms for Plaintiffs Husting, Clayton, Armstrong, Connolly, Parsons,
9 Raines, Lester, Boven, and Nosek are attached hereto as Exhibit 4. The written consent forms for
10 Plaintiffs Weidner, Richie, and Kendrick will be filed separately in the near future.

11 180. The FLSA, 29 U.S.C. §§ 201 *et seq.*, requires employers, such as Defendants, to
12 compensate their non-exempt employees, such as Plaintiffs, at a rate of not less than the
13 minimum wage for all hours worked. The FLSA further requires employers to compensate
14 employees at or above one and one-half times the regular rate of pay for all hours worked in
15 excess of 40 hours in a single week. In addition, the FLSA requires employers to record, report,
16 and preserve records of hours worked by employees.

17 181. Defendants, and each of them, pursuant to uniform policies and practices, failed to
18 compensate Plaintiffs at a rate not less than the minimum wage for all hours worked, and failed to
19 compensate Plaintiffs at or above one and one-half times the regular rate of pay for all hours
20 worked in excess of 40 hours in a single week, in violation of the FLSA, including 29 U.S.C. §
21 207(a)(1) and § 215(a).

22 182. The FLSA mandates that an employee's wages must be "free and clear" of "kickbacks,"
23 and requires employers to reimburse employees for such expenses, which are for the benefit of
24 the employer, when failing to do so would cause their wages to drop below the federal minimum
25 wage.

26 183. Plaintiffs were required to bear many expenses related to their employment that were for
27 the benefit of Defendants, including expenses related to the maintenance of their vehicles, gas,
28 cell phone bills, and other expenses. Defendants did not reimburse Plaintiffs for these expenses.
At times, these expenses caused Plaintiffs' wages to fall below minimum wage.

184. Defendants, and each of them, have failed to record, report, or preserve records of hours

1 worked by Plaintiffs sufficient to determine wages, hours, and other conditions and practices of
2 employment, in violation of the FLSA, including 29 U.S.C. § 211(c) and § 215(a).

3 185. As alleged above, on or around September 28, 2016, Instacart renamed the “tip” option in
4 the payment screen of its mobile app to “service.” The money Instacart received from customers
5 under the guise of a “service” amount was distributed amongst other Instacart Shoppers,
6 including in-store shoppers who do not customarily and regularly receive. These monies were
7 also distributed to Shoppers in the form of wages, not tips.

8 186. Defendants’ practice of redistributing the “service” amount among Shoppers who do not
9 customarily and regularly receive tips constitutes an illegal tip pool in violation of the FLSA,
10 including 29 U.S.C. § 203(m).

11 187. At times, the retention and redistribution of tips caused Plaintiffs’ wages to fall below the
12 federal minimum wage.

13 188. The conduct described herein constitutes willful violations of the FLSA within the
14 meaning of 29 U.S.C. § 255(a). *See* ¶¶ 112-124.

15 189. Plaintiffs seek recovery of attorneys’ fees and costs to be paid by Defendants, as provided
16 under 29 U.S.C. § 216(b).

17 190. Plaintiffs have incurred economic damages as a direct and proximate consequence of the
18 acts of Defendants alleged herein. Plaintiffs seek damages in the amount of their respective
19 unpaid compensation, unpaid overtime compensation, liquidated damages as provided by the
20 FLSA, 29 U.S.C. § 216(b), interest, and other such legal and equitable relief as the Court deems
21 just and proper.

22 191. This claim is brought on behalf of a class of similarly situated individuals who may
23 choose to “opt in” to this case, pursuant to 29 U.S.C. § 216(b).

24 ///

25 ///

26 ///

27 **STATE-SPECIFIC CLASS ACTION ALLEGATIONS**

28 192. The following Plaintiffs make the following additional claims:

29 a. California: Plaintiffs Husting and Clayton assert, pursuant to Rule 23 of
30 the Federal Rules of Civil Procedure, individually and on behalf of a class of other similarly
31

1 situated Instacart Shoppers who have performed work for Instacart in California at any time from
2 December 1, 2012 to the present, claims under California Labor Code §§ 204, 216, 224, 226,
3 226.7, 226.8, 510, 512, 1174, 1194, 1197, 1198, 2753 and 2802; the California Business &
4 Professions Code § 17200; and for fraud/intentional misrepresentation, tortious interference with
5 prospective economic advantage, and conversion; specifically the third through twelfth causes of
6 action.

7 b. New York: Plaintiff Armstrong asserts, pursuant to Rule 23 of the
8 Federal Rules of Civil Procedure, individually and on behalf of a class of other similarly situated
9 Instacart Shoppers who have performed work for Instacart in New York at any time from
10 December 1, 2010 to the present, claims under the New York Labor Law §§ 195 and 196-d; 652
11 and Part 142 of Title 12 of the New York Compilation of Codes, Rules, and Regulations Sections
12 142-2.2, 142-2.3, and 142-2.4; and for fraud/intentional misrepresentation, tortious interference
13 with prospective economic advantage, and conversion; specifically, the thirteenth through
14 twenty-first causes of action.

15 c. Pennsylvania: Plaintiff Weidner asserts, pursuant to Rule 23 of the
16 Federal Rules of Civil Procedure, individually and on behalf of a class of other similarly situated
17 Instacart Shoppers who have performed work for Instacart in Pennsylvania at any time from
18 December 1, 2013 to the present, claims under the Pennsylvania Minimum Wage Act of 1968, 43
19 Pa. Cons. Stat. §§ 333.101 *et seq.*; the Pennsylvania Wage and Payment Collection Law, 43 Pa.
20 Cons. Stat. §§ 260.1 *et seq.*; various provisions of the Pennsylvania Code; and for
21 fraud/intentional misrepresentation, tortious interference with prospective economic advantage,
22 and conversion; specifically the twenty-second through twenty-eighth causes of action.

23 d. Colorado: Plaintiff Connolly asserts, pursuant to Rule 23 of the Federal
24 Rules of Civil Procedure, individually and on behalf of a class of other similarly situated Instacart
25 Shoppers who have performed work for Instacart in Colorado at any time from December 1, 2013
26 to the present, claims under the Colorado Wage Claim Act, Colo. Rev. Stat. §§ 8-4-101 *et seq.*;
27 the Colorado Minimum Wages of Workers Act, Colo. Rev. Stat. §§ 8-6-101 *et seq.*; Colorado
28 Minimum Wage Order Number 31, 7 Colo. Code Regs. §§ 1103-1 *et seq.*; and for
fraud/intentional misrepresentation, tortious interference with prospective economic advantage,
and conversion; specifically the twenty-ninth through thirty-fifth of action.

1 e. Illinois: Plaintiffs Parsons asserts, pursuant to Rule 23 of the Federal
2 Rules of Civil Procedure, individually and on behalf of a class of other similarly situated Instacart
3 Shoppers who have performed work for Instacart in Illinois at any time from December 1, 2013
4 to the present, claims under the Illinois Wage Payment and Collection Act, 820 Ill. Comp. Stat.
5 Ann. 115/4; the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. Ann. 105/4, 105/4a, and
6 115/4; Title 56 of the Illinois Administrative Code, § 300.540; the Illinois Consumer Fraud and
7 Deceptive Business Practices Act, 815 Ill. Comp. Stat. Ann. 505/2 and 505/7; and for
8 fraud/intentional misrepresentation, tortious interference with prospective economic advantage,
and conversion; specifically the thirty-sixth through forty-third causes of action.

9 f. Washington: Plaintiff Lester asserts, pursuant to Rule 23 of the Federal
10 Rules of Civil Procedure, individually and on behalf of a class of other similarly situated Instacart
11 Shoppers who have performed work for Instacart in Washington at any time from December 1,
12 2013 to the present, claims under the Washington Revised Code §§ 19.86.020, 19.86.090,
13 49.46.090, 49.46.020 and 49.46.130; Washington Administrative Code § 296-126-092; and for
14 fraud/intentional misrepresentation, tortious interference with prospective economic advantage,
and conversion; specifically, the forty-fourth through fifty-first causes of action.

15 g. Indiana: Plaintiff Raines asserts, pursuant to Rule 23 of the Federal Rules
16 of Civil Procedure, individually and on behalf of a class of other similarly situated Instacart
17 Shoppers who have performed work for Instacart in Indiana at any time from December 1, 2014
18 to the present, claims under the Indiana Minimum Wage Law, Ind. Code Ann. § 22-2-2-4, and for
19 fraud/intentional misrepresentation, tortious interference with prospective economic advantage,
20 and conversion; specifically, the fifty-second through fifty-seventh causes of action.

21 h. Texas: Plaintiff Boven asserts, pursuant to Rule 23 of the Federal Rules
22 of Civil Procedure, individually and on behalf of a class of other similarly situated Instacart
23 Shoppers who have performed work for Instacart in Texas at any time from December 1, 2014 to
24 the present, claims under the Texas Lab. Code §§ 62.051 and 62.201; and for fraud/intentional
25 misrepresentation, tortious interference with prospective economic advantage, and conversion;
specifically, the fifty-eighth through sixty-first causes of action.

26 i. Georgia: Plaintiff Nosek asserts, pursuant to Rule 23 of the Federal Rules
27 of Civil Procedure, individually and on behalf of a class of other similarly situated Instacart
28

1 Shoppers who have performed work for Instacart in Georgia at any time from December 1, 2014
2 to the present, claims under the Georgia Minimum Wage Law, Ga. Code Ann. §§ 34-4-3 and 34-
3 4-6; and for fraud/intentional misrepresentation, tortious interference with prospective economic
4 advantage, and conversion; specifically, the sixty-second through sixty-fifth causes of action.

5 j. Oregon: Plaintiff Richie asserts, pursuant to Rule 23 of the Federal Rules
6 of civil Procedure, individually and on behalf of a class of other similarly situated Instacart
7 Shoppers who have performed work for Instacart in Oregon at any time from December 1, 2010
8 to the present, claims under Oregon Revised Statutes §§ 652.120, 652.200, 653.025, 653.055, and
9 653.261; Oregon Administrative Rules, Rule 839-020-0050; and for fraud/intentional
10 misrepresentation, tortious interference with prospective economic advantage, and conversion;
11 specifically, the sixty-sixth through seventy-second causes of action.

12 k. Massachusetts: Plaintiff Kendrick asserts, pursuant to Rule 23 of the
13 Federal Rules of Civil Procedure, individually and on behalf of a class of other similarly situated
14 Instacart Shoppers who have performed work for Instacart in Massachusetts at any time from
15 December 1, 2013 to the present, claims under Chapter 151 of the Massachusetts Annotated
16 Laws, §§ 1, 1A, 1B, and 20; and for fraud/intentional misrepresentation, tortious interference
17 with prospective economic advantage, and conversion; specifically, the seventy-third through
18 seventy-seventh causes of action.

19 **CALIFORNIA CLASS ACTION ALLEGATIONS**

20 193. Plaintiffs Husting and Clayton bring the following causes of action as a class action
21 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class
22 of similarly situated individuals who performed grocery shopping and/or delivery work for or on
23 behalf of one or more of the Defendants in California anytime from December 1, 2012 to the
24 present (“California Class”), specifically the third through twelfth causes of action.

25 194. Plaintiffs reserve the right to amend this California Class definition if discovery and/or
26 further investigation demonstrate that the California Class should be expanded or otherwise
27 modified.

28 195. Plaintiffs and other members of the California Class have uniformly been deprived
reimbursement of their necessary business expenditures and minimum and overtime wages.

196. The members of the California Class are so numerous that joinder of all members would

1 be impracticable.

2 197. There are questions of law and fact common to the members of the California Class that
3 predominate over any questions affecting only individual members, including:

4 a. Whether California class members have been required to follow uniform
5 procedures and policies regarding their work for Instacart;

6 b. Whether the work performed by California class members—providing grocery
7 shopping and/or delivery service to customers—is within Instacart’s usual course of
8 business, and whether such service is fully integrated into Instacart’s business;

9 c. Whether Defendants failed to pay Plaintiffs for all hours of work performed in
10 violation of California law;

11 d. Whether Defendants failed to reimburse Plaintiffs for expenses incurred during the
12 course of their employment;

13 e. Whether Defendants’ conduct violates the California Labor Code;

14 f. Whether Defendants’ conduct violates Section 17200 of the California Business
15 and Professions Code;

16 g. Whether Defendants’ conduct otherwise violates California law; and

17 h. Whether, as a result of Defendants’ misconduct, Plaintiffs are entitled to damages,
18 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
19 nature of such relief.

20 198. Named Plaintiffs Husting and Clayton are members of the California Class who suffered
21 damages as a result of Defendant’s conduct and actions alleged herein.

22 199. Plaintiffs’ claims are typical of the claims of the members of the California Class.
23 Plaintiffs have no interests antagonistic to those of the California Class and are not subject to any
24 unique defenses.

25 200. Plaintiffs will fairly and adequately represent and protect the interests of all members of
26 the California Class and have retained attorneys experienced in class action and complex
27 litigation.

28 201. The questions of law and fact common to the members of the California Class
predominate over any questions affecting only individual members, including legal and factual
issues relating to liability and damages.

1 202. A class action is superior to all other available methods for the fair and efficient
2 adjudication of this controversy for, inter alia, the following reasons:

- 3 a. It is economically impractical for members of the California Class to prosecute
4 individual actions;
- 5 b. The California Class is readily definable;
- 6 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
7 and
- 8 d. A class action will enable claims to be handled in an orderly and expeditious
9 manner, will save time and expense, and will ensure uniformity of decisions.

10 203. Plaintiffs do not anticipate any difficulty in the management of this litigation.

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THIRD CAUSE OF ACTION
CALIFORNIA: UNPAID WAGES
(Cal. Labor Code §§ 216, 1194 & 1197)

204. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth
in detail herein.

205. Defendants, and each of them, have violated and continue to violate California Labor
Code §§ 216, 1194 & 1197 by willfully refusing to pay wages – including the benefits described
above – due and payable to Plaintiffs. As more fully set forth above, Plaintiffs are not
compensated for non-productive hours worked. Additionally, Plaintiffs work and have worked
well in excess of 8 hours a day or 40 hours per week without being appropriately compensated
for hours worked in excess of 40 hours per week and/or 8 hours per day. These unpaid hours
include overtime that should have been paid.

206. Equally, Defendants denied that any wages due for non-productive work and work in
excess of 40 hours per week and/or 8 hours per day were due to be paid to Plaintiffs even though
each Defendants knew that under any set of circumstances or facts, Plaintiffs were entitled to be
paid for each hour that they worked. Defendants have falsely denied and refused and continue to
deny falsely and refuse payment for purposes of securing a material economic benefit to
themselves and with the intent to annoy, harass, oppress, hinder, and defraud Plaintiffs.

207. Such a pattern, practice and uniform administration of a corporate policy designed to
deprive employees of compensation, as described herein, is unlawful and creates an entitlement
to recovery by the Plaintiffs, in a civil action, for the unpaid balance of the amount of unpaid

1 wages, including interest thereon, and reasonable attorneys' fees and costs of suit, as well as the
2 assessment of any other statutory penalties, including waiting time penalties, against Defendants.

3 208. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
4 class of similarly situated individuals who have worked for Instacart in California.

5 **FOURTH CAUSE OF ACTION**
6 **CALIFORNIA: FAILURE TO PAY OVERTIME WAGES**
7 (Cal. Labor Code §§ 204, 510, 1194 & 1198)

8 209. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth
9 in detail herein.

10 210. Plaintiffs have been and are expected to regularly work in excess of eight (8) hours or ten
11 (10) per day and/or forty (40) hours per week. Plaintiffs have regularly worked and continue to
12 regularly work in excess of 8 or 10 hours per day or 40 hours per week.⁵

13 211. At all relevant times, Defendants failed to pay Plaintiffs and all persons similarly situated
14 wages when due, as required by Cal. Lab. Code §§ 204, 510, 1194 & 1198.

15 212. Such a pattern, practice and uniform administration of a corporate policy designed to
16 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
17 to recovery by the Plaintiffs, in a civil action, for the unpaid balance of the amount of overtime
18 and other compensation, including interest thereon, reasonable attorneys' fees and costs of suit, as
19 well as the assessment of any other statutory penalties against Defendants.

20 213. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
21 class of similarly situated individuals who have worked for Instacart in California.

22 **FIFTH CAUSE OF ACTION**
23 **CALIFORNIA: FAILURE TO PAY MINIMUM WAGES**
24 (Cal. Labor Code §§ 204, 1194, 1197)

25 214. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
26 herein.

27 215. Defendants, and each of them, pursuant to uniform policies and practices, failed to
28 compensate Plaintiffs at a rate not less than the minimum wage for all hours worked in violation
of the California Labor Code, including sections 204, 1194 and 1197.

216. As a result of Defendants' conduct, Plaintiffs are entitled to all monetary and other
damages permitted under the California Labor Code and any other applicable law, including the
unpaid balance of the amount of minimum wage, including interest thereon, reasonable attorneys'

1 fees and costs of suit, as well as the assessment of any other statutory penalties against
2 Defendants.

3 217. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
4 class of similarly situated individuals who have worked for Instacart in California.

5 SIXTH CAUSE OF ACTION
6 CALIFORNIA: FAILURE TO PAY WAGES FOR MEAL PERIODS AND REST PERIODS
(Cal. Labor Code §§ 226.7 & 512)

7 218. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
8 herein.

9 219. Defendants have required and continue to require Plaintiffs to work for periods of more
10 than 5 hours per day with no provision of a meal period of at least 30 minutes.

11 220. Defendants have required and continue to require Plaintiffs to work for periods of more
12 than 10 hours per day with no provision of a second meal period of at least 30 minutes.

13 221. Defendants have required and continue to require Plaintiffs to work for periods of more
14 than 4 hours per day with no provision of a rest period of at least 10 minutes.

15 222. Plaintiffs were not properly provided with meal or rest periods as required by California
16 Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Wage Order Nos. 4 and 7, for
17 missed rest and/or meal periods on or after 2012.

18 223. As a result of Defendants' conduct, Plaintiffs are entitled to all monetary and other
19 damages permitted under the California Labor Code and any other applicable law, including, but
20 not limited to, an additional hour of pay for every day that Plaintiffs were not provided meal or
21 rest breaks pursuant to California Labor Code § 226.7.

22 224. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
23 class of similarly situated individuals who have worked for Instacart in California.

24 SEVENTH CAUSE OF ACTION
25 CALIFORNIA: FAILURE TO PROPERLY REPORT PAY
26 (Cal. Labor Code § 226 & 1174)

27 225. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
28 herein.

226. At all relevant times, Defendants failed to keep accurate records of the hours worked by
Plaintiffs in violation of California Labor Code §§ 226 & 1174. Defendants' failure to do so was
knowing and intentional.

1 227. At all relevant times, Defendants failed to provide Plaintiffs with accurate records of pay
2 indicating the wages paid for the hours worked. In addition, Defednant failed to provide
3 Plaintiffs with any information at all indicating the hours worked and state and federal
4 deductions. Further, when Plaintiffs were paid on an hourly basis, Defendants failed to provide
5 Plaintiffs with the applicable hourly rate. When Plaintiffs were paid on a piece-rate basis,
6 Defendants similarly failed to provide Plaintiffs with the applicable piece rate in effect during the
7 relevant pay period and the number of piece-rate units earned. The wage statements also failed to
8 include the Plaintiffs' names, the last four digits of his/her social security number or other
9 employee identification number, and Instacart's name and address. Defendants' failure to do so
was knowing and intentional.

10 228. Plaintiffs suffered actual injury as a result of Defendants' knowing and intentional failure
11 to keep and provide accurate records of said information, because Plaintiffs could not promptly
12 and easily determine from the wage statement alone the following information: (1) the total
13 number of hours they worked, including how much overtime they had worked; (2) the piece rate
14 and the number of piece-rate units earned (when Plaintiffs were paid based on a piece rate); (3)
15 the hourly rate in effect (when Plaintiffs were paid on an hourly basis); (4) the deductions taken
16 by Instacart, if any; and (5) Instacart's address. Plaintiffs could not readily ascertain this
information without reference to other documents or information, if at all.

17 229. As a result of Defendants' conduct, Plaintiffs are entitled pursuant to California Labor
18 Code § 226(e) to all monetary and other damages permitted under the California Labor Code and
19 any other applicable law, reasonable attorneys' fees and costs of suit, as well as the assessment of
20 any other statutory penalties and injunctive relief against Defendants.

21 230. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
22 class of similarly situated individuals who have worked for Instacart in California.

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25 EIGHTH CAUSE OF ACTION
26 CALIFORNIA: FAILURE TO REIMBURSE EXPENSES
27 (Cal. Labor Code §§ 224 & 2802)

28 231. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
herein.

1 232. Throughout their employment, Plaintiffs incurred expenditures or losses related to their
2 employment and in direct consequence of the discharge of their duties as Defendants’ employees,
3 or of their obedience to the directions of Defendants.

4 233. Defendants failed to reimburse or indemnify Plaintiffs for these expenditures or losses.
5 Items and services that Plaintiffs were required to purchase include, but are not limited to gas,
6 automotive insurance, other vehicle maintenance services, parking privileges, smartphones, and
7 smartphone data packages.

8 234. By the conduct described herein, Defendants have violated the California Labor Code.

9 235. As a result of Defendants’ violations, Plaintiffs are entitled to reimbursement of the
10 incurred expenses pursuant to California Labor Code §§ 224 and 2802, as well as attorneys’ fees
11 and costs incurred as a result of such conduct.

12 236. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
13 class of similarly situated individuals who have worked for Instacart in California.⁴

14 NINTH CAUSE OF ACTION
15 CALIFORNIA: UNFAIR, UNLAWFUL, FRAUDULENT BUSINESS PRACTICES
16 (Cal. Bus. & Prof. Code § 17200, et seq.)

17 237. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth
18 in detail herein. Instacart has engaged in unfair, unlawful, and fraudulent business practices as set
19 forth above. By engaging in the above-described acts and practices, Instacart has committed one
20 or more acts of unfair competition within the meaning of Section 17200 of the California
21 Business and Professions Code (“UCL”). These acts and practices constitute a continuing and
22 ongoing unfair and/or unlawful business activity defined by the UCL, and justify the issuance of
23 an injunction, restitution, and other equitable relief pursuant to the UCL.

24 **Instacart’s Unlawful Business Practices:**

25 238. Instacart has unlawfully treated Plaintiffs as independent contractors for purposes of
26 business-related expenses and wages to avoid payment of overtime wages and other benefits in
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28 ⁴ Plaintiffs Husting and Clayton do not seek civil penalties in relation to their third through eighth causes of action alleged herein, because those civil penalties are being sought via a representative action brought pursuant to California’s Private Attorney General Act of 2004 (Cal. Lab. Code, §§ 2698 *et seq.*) (“PAGA”) by the plaintiffs in a related action, *Cobarruviaz v. Maplebear, Inc. dba Instacart*, Case No. 3:15-cv-00697-EMC (N.D. Cal.) (filed Jan. 5, 2015), which is currently pending before the Honorable Edward M. Chen of this District.

1 violation of, inter alia, the FLSA, the California Labor and Civil Code, and the applicable IWC
2 Orders. In addition, Instacart has wrongly, illegally, and unfairly failed to compensate Plaintiffs
3 for work-related expenses including but not limited to gas, vehicle maintenance services, car
4 insurance, smartphone, and smartphone data package.

5 239. Instacart has violated and continues to violate Business & Professions Code § 17200's
6 prohibition against engaging in "unlawful" business acts or practices by, inter alia:

- 7 • Violating, and continuing to violate, the FLSA, 29 U.S.C. §§ 207(a)(1) & 215(a), as set
8 forth above;
- 9 • Violating, and continuing to violate, the FLSA, 29 U.S.C. § 211(c) and § 215(a), as set
10 forth above;
- 11 • Violating, and continuing to violate, the FLSA, 29 U.S.C. § 255(a), as set forth above;
- 12 • Violating, and continuing to violate, Cal. Labor Code §§ 216, 1194 & 1197, as set forth
13 above;
- 14 • Violating, and continuing to violate, Cal. Labor Code §§ 204, 510, 1194 & 1198, as set
15 forth above;
- 16 • Violating, and continuing to violate, Cal. Labor Code §§ 226.7, 512, 1194 & 1197, as set
17 forth above;
- 18 • Violating, and continuing to violate, Cal. Labor Code §§ 224 & 2802, as set forth above;
- 19 • For fraud/intentional misrepresentation, as set forth below;
- 20 • For tortious interference with a prospective economic advantage, as set forth below; and
- 21 • For conversion, as set forth below.

22 240. Instacart has also violated and continues to violate Business & Professions Code §
23 17200's prohibition against engaging in "unlawful" business acts or practices by violating, and
24 continuing to violate, Cal. Labor Code § 351. As alleged above, in or around September 2016,
25 Instacart renamed the "tip" option in the payment screen of its mobile app to be called a "service"
26 amount. Despite its name, the "service" amount was a gratuity. The "service" amount was
27 entirely optional, and customers had full discretion over how much of a "service" amount to pay
28 and whether or not to pay it at all. Indeed, customers had the option of "waiving" the service
amount all together. Despite this payment being a tip, Defendants failed to remit the entirety of
the tip to Plaintiffs. Defendants misled customers to think the "service" amount was a gratuity by

1 failing to properly disclose the nature of the payment and a reasonable customer would likely
2 believe that the “service” amount was a gratuity intended for the shopper. As a result of this
3 belief that the “service” amount was a tip, customers neglected to leave an “additional tip” for
4 their shoppers.

5 241. Plaintiffs have suffered injury in fact and lost money and/or property as a result of
6 Instacart’s unlawful business acts and practices by, *inter alia*, being deprived of compensation for
7 all hours worked including overtime.

8 **Instacart’s Fraudulent Business Practices:**

9 242. Instacart’s acts and practices, as described above, constitute fraudulent business practices
10 within the meaning of Business & Professions Code, §§ 17200, *et seq.*

11 243. As described herein, Instacart failed to keep accurate records of the hours worked by
12 Plaintiffs in violation of the FLSA, 29 U.S.C. § 211(c) and § 215(a). At all relevant times,
13 Instacart provided Plaintiffs with false records of pay indicating the hours worked, wages paid for
14 the hours worked, applicable pay rates, and other information as is alleged above in Plaintiffs’
15 seventh cause of action. In addition, based on fraudulent reporting of hours worked and wages
16 paid, inaccurate information regarding state and federal deductions was provided to Plaintiffs.

17 244. Additionally, as described herein, Instacart represented to Plaintiffs that they, alone, were
18 responsible for the performance of her work and that they, alone, determined the method, details,
19 and means of performing their work. These representations were false.

20 245. Intacart also represented Plaintiffs were independent contractors not entitled to the
21 compensation and reimbursements set forth above, which was, in fact, also false.

22 246. A reasonable person would likely have been deceived by all of these representations, acts,
23 and practices and they therefore constitute fraudulent business within the meaning of the UCL.

24 247. Instacart knew the falsehood of these representations and intended to, and did, induce
25 Plaintiffs’ reliance thereupon. Plaintiffs relied upon the truth of the representations, causing
26 economic harm.

27 248. Plaintiffs suffered concrete and identifiable economic injuries as a consequence of
28 Instacart’s misleading and fraudulent conduct, including but not limited to unpaid wages,
including overtime.

Instacart’s Unfair Business Practices:

1 249. Instacart's acts and practices, as described above, constitute unfair business practices
2 within the meaning of Business & Professions Code, §§ 17200, *et seq.* Such acts and practices
3 were against established public policy and were pursued to attain an unjustified monetary
4 advantage for Instacart by creating personal disadvantage and hardship to its employees.

5 250. Instacart's conduct does not benefit workers or competition. Indeed, the injury to
6 Plaintiffs as a result of Instacart's conduct is far greater than any alleged countervailing benefit.
7 Plaintiffs could not have reasonably avoided the injury they suffered.

8 251. The gravity of the consequences of Instacart's conduct as described above outweighs any
9 justification, motive or reason therefore, is immoral, unethical, oppressive, unscrupulous, and is
10 contrary to the public welfare since it transgresses civil statutes of the State of California
11 designed to protect workers from exploitation.

12 252. Plaintiffs have suffered injury in fact and lost money and/or property as a result of
13 Instacart's unfair business acts and practices by, *inter alia*, being deprived of compensation for all
14 hours worked including overtime.

15 253. By and through its unfair, fraudulent, and/ unlawful business practices and acts described
16 herein, Instacart has obtained valuable services from Plaintiffs and has deprived Plaintiffs of
17 valuable rights and benefits guaranteed by law, all to their detriment. Plaintiffs seek an award of
18 restitution, disgorgement, injunctive relief and all other relief allowed under the UCL, including
19 interest and attorneys' fees pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

20 254. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
21 class of similarly situated individuals who have worked for Instacart in California.

22 TENTH CAUSE OF ACTION
23 CALIFORNIA: FRAUD/INTENTIONAL MISPREPRESENTATION
24 (California Common Law)

25 255. Plaintiffs hereby reallege and incorporates by reference all paragraphs above as if set
26 forth in detail herein.

27 256. Instacart represented to Plaintiffs that they, alone, were responsible for the performance
28 of their work and that they, alone, determined the method, details, and means of performing their
work. These representations were, in fact, false.

257. Intacart also represented to Plaintiffs that Plaintiffs were independent contractors not
entitled to the compensation and reimbursements set forth above, which was, in fact, also false.

1 258. Instacart, at the time it made the representations set forth above, knew the falsehood of
2 these representations and intended to, and did, induce Plaintiffs' reliance thereupon. Plaintiffs
3 reasonably relied upon the truth of the aforementioned statements and representations in entering
4 into and continuing in an employment relationship with Instacart according to the terms
5 established by Instacart. Plaintiffs' reliance was a substantial factor in causing economic harm.

6 259. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
7 fraudulent conduct, Plaintiffs suffered concrete and identifiable economic injuries, including but
8 not limited to unpaid wages, including overtime.

9 260. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
10 class of similarly situated individuals who have worked for Instacart in California.

11 **ELEVENTH CAUSE OF ACTION**
12 **CALIFORNIA: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC**
13 **ADVANTAGE**
14 **(California Common Law)**

15 261. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth
16 in detail herein.

17 262. As alleged above, in or around September 2016, Instacart renamed the "tip" option in the
18 payment screen of its mobile app to "service."

19 263. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiffs' income came
20 from tips. Since the change, Plaintiffs have suffered a drastic decrease in tips received.

21 264. Instacart intentionally and maliciously recharacterized the tip as a "service" amount but
22 kept it optional in order to mislead and confuse customers into believing that the extra
23 compensation they chose to add to their bill was going to the shoppers, when in fact the money
24 went directly to Instacart.

25 265. Additionally, Instacart intentionally and maliciously created an "additional tip" option to
26 mislead customers into believing that an "additional tip" would be duplicative of any
27 discretionary payment they had already chosen to give under the guise of a "service" amount.
28 Instacart did so in order to appropriate the money customers would otherwise have chosen to give
directly to their Shoppers. Defendants misled customers to think the "service" amount was a
gratuity by failing to properly disclose the nature of the payment and a reasonable customer
would likely believe that the "service" amount was a gratuity intended for the Shopper.

1 266. At the time a customer entered the payment screen, an economic relationship had formed
2 between the customer and Shopper.

3 267. At the time when the customer entered the payment screen, there was a high probability of
4 future economic benefit to the Shopper in the form of a tip.

5 268. Instacart's changes to the App's tipping structure were independent wrongful acts in
6 violation of the FLSA's prohibition of invalid tip-pools.

7 269. At all times, Instacart had knowledge of the economic relationship formed between
8 Plaintiffs and the customers.

9 270. At all times, Instacart acted intentionally and maliciously to disrupt the economic
10 relationship between Plaintiffs and the customers by interfering with Plaintiffs' enjoyment of an
11 expectancy of tips from customers.

12 271. Instacart's changes to the tipping structure caused actual disruption of the economic
13 relationship between Plaintiffs and the customers.

14 272. As a direct, proximate, and foreseeable result of Defendant's intentional acts and conduct,
15 Plaintiffs have suffered, and will continue to suffer, economic injuries.

16 273. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a
17 class of similarly situated individuals who have worked for Instacart in California.

18 TWELFTH CAUSE OF ACTION
19 CALIFORNIA: CONVERSION
20 (California Common Law)

21 274. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth
22 in detail herein.

23 275. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
24 Plaintiffs had a right to possess the full amount of tips given to them by customers.

25 276. As alleged above, the optional "service" amount paid by customers was actually a tip to
26 which the Shopper was entitled.

27 277. Defendants wrongfully and illegally took from Plaintiffs a portion of the tips given to
28 Plaintiffs by customers.

278. Plaintiffs suffered economic harm in the amount of the tips misappropriated by
Defendants.

279. This claim is brought by Plaintiffs Husting and Clayton on behalf of themselves and a

1 class of similarly situated individuals who have worked for Instacart in California.

2 **NEW YORK CLASS ACTION ALLEGATIONS**

3 280. Plaintiff LaDia Armstrong asserts, pursuant to Rule 23 of the Federal Rules of Civil
4 Procedure, individually and on behalf of a class of other similarly situated Instacart Shoppers
5 who have worked in New York anytime from December 1, 2010 to the present (“New York
6 Class”), claims under New York state law, specifically, the thirteenth through twenty-first causes
7 of action.

8 281. Plaintiff Armstrong and other New York Class members have uniformly been deprived
9 reimbursement of their necessary business expenditures and minimum and overtime wages.

10 282. The members of the New York Class are so numerous that joinder of all members would
11 be impracticable.

12 283. There are questions of law and fact common to the members of the New York Class that
13 predominate over any questions affecting only individual members, including:

14 a. Whether New York Class members have been required to follow uniform
15 procedures and policies regarding their work for Instacart;

16 b. Whether the work performed by New York Class members—providing grocery
17 shopping and/or delivery service to customers—is within Instacart’s usual course of
18 business, and whether such service is fully integrated into Instacart’s business;

19 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
20 violation of New York law;

21 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
22 course of their employment;

23 e. Whether Defendants’ conduct violates the New York Labor Law;

24 f. Whether Defendants’ conduct violates Title 12, Sections 142-2.2, 142-2.3, and
25 142-2.4 of the New York Compilation of Codes, Rules, and Regulations;

26 g. Whether Defendants’ conduct otherwise violates New York law; and

27 h. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,
28 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
nature of such relief.

29 284. Named Plaintiff LaDia Armstrong is a member of the New York Class who suffered

1 damages as a result of Defendants' conduct and actions alleged herein.

2 285. The claims of Plaintiff Armstrong are typical of the claims of the members of the New
3 York Class. Plaintiff Armstrong has no interests antagonistic to those of the New York Class and
4 is not subject to any unique defenses.

5 286. Plaintiff Armstrong will fairly and adequately represent and protect the interests of all
6 members of the New York Class and have retained attorneys experienced in class action and
7 complex litigation.

8 287. The questions of law and fact common to the members of the New York Class
9 predominate over any questions affecting only individual members, including legal and factual
10 issues relating to liability and damages.

11 288. A class action is superior to all other available methods for the fair and efficient
12 adjudication of this controversy for, inter alia, the following reasons:

- 13 a. It is economically impractical for members of the New York Class to prosecute
14 individual actions;
- 15 b. The New York Class is readily definable;
- 16 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
17 and
- 18 d. A class action will enable claims to be handled in an orderly and expeditious
19 manner, will save time and expense, and will ensure uniformity of decisions.

20 289. Plaintiff Armstrong does not anticipate any difficulty in the management of this litigation.

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THIRTEENTH CAUSE OF ACTION
NEW YORK: FAILURE TO PAY OVERTIME WAGES
(N.Y. Comp. Codes R. & Regs. 12, § 142-2.2)

29 290. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
30 in detail herein.

31 291. Plaintiff has been and is expected to regularly work in excess of forty (40) hours per
32 week. Plaintiff has regularly worked and continues to regularly work in excess of 40 hours per
33 week.

34 292. At all relevant times, Defendants failed to pay Plaintiff and all persons similarly situated
35 overtime wages when due, as required by N.Y. Comp. Codes R. & Regs. 12, § 142-2.2.

36 293. Such a pattern, practice and uniform administration of a corporate policy designed to

1 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
2 to recovery by the Plaintiff, in a civil action, for the unpaid balance of the amount of overtime
3 and other compensation, including interest thereon, civil penalties, including, but not limited to,
4 penalties available under the New York Labor Law §§ 198 and 663, reasonable attorneys' fees
5 and costs of suit, as well as the assessment of any other statutory penalties, including waiting time
6 penalties, against Defendants.

7 294. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
8 situated individuals who have worked for Instacart in New York.

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FOURTEENTH CAUSE OF ACTION
NEW YORK: FAILURE TO PAY MINIMUM WAGES
(N.Y. Lab. Law § 652)

295. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
herein.

296. Defendants, and each of them, pursuant to uniform policies and practices, failed to
compensate Plaintiff at a rate not less than the minimum wage for all hours worked in violation of
New York state law, including N.Y. Lab. Law § 652 and N.Y. Comp. Codes R. & Regs. 12, §
142-2.1.

297. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
permitted under the New York Labor Law and any other applicable law, including, but not
limited to, civil penalties pursuant to N.Y. Labor Law §§ 198 and 663.

298. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
situated individuals who have worked for Instacart in New York.

FIFTEENTH CAUSE OF ACTION
NEW YORK: FAILURE TO PAY SPREAD OF HOURS PAY
(N.Y. Comp. Codes R. & Regs. 12, § 142-2.4)

299. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
herein.

300. N.Y. Comp. Codes R. & Regs. 12, § 142-2.4 requires that employees receive one hour's
pay at the basic minimum hourly wage rate, in addition to the statutorily required minimum
wage, for any day which the spread of hours exceeds ten (10) hours.

301. Defendants, and each of them, pursuant to uniform policies and practices, failed to
compensate Plaintiff the required additional hour of compensation at the minimum hourly wage

1 rate for shifts that exceeded ten (10) hours, in violation of N.Y. Comp. Codes R. & Regs. 12, §
2 142-2.4.

3 302. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
4 permitted under the New York Labor Law and any other applicable law, including, but not
5 limited to, civil penalties pursuant to N.Y. Labor Law §§ 198 and 663.

6 303. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
7 situated individuals who have worked for Instacart in New York.

8 **SIXTEENTH CAUSE OF ACTION**
9 **NEW YORK: FAILURE TO PAY CALL-IN PAY**
10 **(N.Y. Comp. Codes R. & Regs. 12, § 142-2.3)**

11 304. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
12 herein.

13 305. N.Y. Comp. Codes R. & Regs. 12, § 142-2.3 requires that employees who, by request or
14 permission of the employer, report for work on any day be paid for at least four hours, or the
15 number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly
16 wage.

17 306. At all relevant times, Defendants failed to pay Plaintiff and all persons similarly situated
18 wages when due, as required by N.Y. Comp. Codes R. & Regs. 12, § 142-2.3.

19 307. Defendants, and each of them, pursuant to uniform policies and practices, failed to
20 compensate Plaintiff at a rate not less than the minimum wage for at least four hours per day for
21 each day on which Plaintiff reported for work at the request of Defendant, or the number of hours
22 in the regularly scheduled shift where in excess of four hours, in violation of N.Y. Comp. Codes
23 R. & Regs. 12, § 142-2.3.

24 308. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
25 permitted under the New York Labor Law and any other applicable law, including, but not
26 limited to, civil penalties pursuant to N.Y. Labor Law §§ 198 and 663.

27 309. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
28 situated individuals who have worked for Instacart in New York.

SEVENTEENTH CAUSE OF ACTION
NEW YORK: FAILURE TO PROVIDE PROPER WAGE STATEMENT
(N.Y. Lab. Law § 195)

304. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully

1 herein.

2 311. At all relevant times, Defendants failed to keep accurate records of pay indicating the
3 hours worked and/or the wages paid for the hours worked by Plaintiff in violation of N.Y. Labor
4 Law § 195.

5 312. At all relevant times, Defendants failed to provide Plaintiff with statutorily required wage
6 statements provided for in N.Y. Labor Law § 195. Defendant failed to provide wage statements
7 that indicate the hours worked and/or the wages paid for the hours worked. In addition, based on
8 fraudulent reporting of hours worked and wages paid, inaccurate information regarding state and
federal deductions were provided to Plaintiff.

9 313. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
10 permitted under the New York Labor Law and any other applicable law, including, but not
11 limited to, statutory damages in the amount of two hundred and fifty dollars (\$250) for each
12 workweek that the violations occurred or continue to occur, but not to exceed a total of five
13 thousand dollars (\$5,000) per Plaintiff, together with costs and reasonable attorneys' fees, as
14 provided by the N.Y. Lab. Law § 198, and such other legal and equitable relief as the Court
deems just and proper.

15 314. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
16 situated individuals who have worked for Instacart in New York.

17 EIGHTEENTH CAUSE OF ACTION
18 NEW YORK: EMPLOYER RETENTION OF GRATUITIES
19 (NY CLS Labor § 196-d)

20 315. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
in detail herein.

21 316. As alleged above, on or around September 28, 2016, Instacart renamed the "tip" option in
22 the payment screen of its mobile app to "service."

23 317. This "service" amount was entirely optional, and customers had full discretion over
24 whether or not to pay it at all. Despite its name, the "service" amount was a gratuity.

25 318. The Defendants never provided clear written notice in the mobile app that the "service"
amount was not a gratuity.

26 319. A reasonable customer would likely believe that the "service" amount was a gratuity
27 intended for the shopper.
28

1 320. As a result of this belief that the “service” amount was a tip, customers neglected to leave
2 an “additional tip” for their shoppers.

3 321. Plaintiff seeks to recover the “service” amounts paid for her delivery orders, attorneys’
4 fees, interests, and costs.

5 322. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
6 situated individuals who have worked for Instacart in New York.

7 NINETEENTH CAUSE OF ACTION
8 NEW YORK: FRAUD/INTENTIONAL MISREPRESENTATION
9 (New York Common Law)

10 323. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
11 forth in detail herein.

12 324. Instacart represented to Plaintiff that she, alone, was responsible for the performance of
13 her work and that she, alone, determined the method, details, and means of performing her work.
14 These representations were, in fact, false.

15 325. Intacart also represented Plaintiff was an independent contractor not entitled to the
16 compensation and reimbursements set forth above, which was, in fact, also false.

17 326. Instacart, at the time it made the representations set forth above, knew the falsehood of
18 these representations and intended to, and did, induce Plaintiff’s reliance thereupon. Plaintiff
19 reasonably relied upon the truth of the aforementioned statements and representations in entering
20 into and continuing in an employment relationship with Instacart according to the terms
21 established by Instacart. Plaintiff’s reliance was a substantial factor in causing economic harm.

22 327. As a direct, proximate and foreseeable result of Instacart’s misrepresentations and
23 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
24 not limited to unpaid wages, including overtime.

25 328. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
26 situated individuals who have worked for Instacart in New York.

27 TWENTIETH CAUSE OF ACTION
28 NEW YORK: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
ADVANTAGE
(New York Common Law)

329. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
in detail herein.

1 330. As alleged above, on or around September 28, 2016, Instacart renamed the “tip” option in
2 the payment screen of its mobile app to “service.”

3 331. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff’s income came
4 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

5 332. Instacart intentionally and maliciously recharacterized the tip as a “service” amount but
6 kept it optional in order to mislead and confuse customers into believing that the extra
7 compensation they chose to add to their bill was going to the shoppers, when in fact the money
8 went directly to Instacart.

9 333. Additionally, Instacart intentionally and maliciously created an “additional tip” option to
10 mislead customers into believing that an “additional tip” would be duplicative of any
11 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
12 money customers would otherwise have chosen to give directly to their shoppers.

13 334. At the time the customer entered the payment screen, an economic relationship had
14 formed between the customer and shopper.

15 335. At the time when the customer entered the payment screen, there was a high probability of
16 future economic benefit to the shopper in the form of tips.

17 336. Instacart’s changes to the app’s tipping structure were an independent wrongful act in
18 violation of the FLSA’s prohibition of invalid tip-pools.

19 337. At all times, Instacart had knowledge of the economic relationship formed between
20 Plaintiff and the customers.

21 338. At all times, Instacart acted intentionally and maliciously to disrupt the economic
22 relationship between Plaintiff and the customers by interfering with Plaintiff’s enjoyment of an
23 expectancy of tips from customers.

24 339. Instacart’s change in its tipping structure caused actual disruption of the economic
25 relationship between Plaintiff and the customers.

26 340. As a direct, proximate, and foreseeable result of Defendant’s intentional acts and conduct,
27 Plaintiff has suffered, and will continue to suffer, economic injuries.

28 341. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
situated individuals who have worked for Instacart in New York.

TWENTY-FIRST CAUSE OF ACTION
NEW YORK: CONVERSION

(New York Common Law)

1
2 342. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth
3 in detail herein.

4 343. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
5 Plaintiff had a right to possess the full amount of tips given to her by customers.

6 344. As alleged above, the optional “service” amount paid by customers was actually a tip.

7 345. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
8 Plaintiff by customers.

9 346. Plaintiff suffered economic harm in the amount of the tips misappropriated by
10 Defendants.

11 347. This claim is brought by Plaintiff Armstrong on behalf of herself and a class of similarly
12 situated individuals who have worked for Instacart in New York.

13 **PENNSYLVANIA CLASS ACTION ALLEGATIONS**

14 348. Plaintiff Stefanie Weidner asserts, pursuant to Rule 23 of the Federal Rules of Civil
15 Procedure, individually and on behalf of a class of other similarly situated Instacart Shoppers
16 who have worked in Pennsylvania anytime from November 2013 to the present (“Pennsylvania
17 Class”), claims under Pennsylvania state law, specifically, the twenty-second through twenty-
18 eighth causes of action.

19 349. Plaintiff Weidner and other Pennsylvania Class members have uniformly been deprived
20 reimbursement of their necessary business expenditures and minimum and overtime wages.

21 350. The members of the Pennsylvania Class are so numerous that joinder of all members
22 would be impracticable.

23 351. There are questions of law and fact common to the members of the Pennsylvania Class
24 that predominate over any questions affecting only individual members, including:

25 a. Whether Pennsylvania Class members have been required to follow uniform
26 procedures and policies regarding their work for Instacart;

27 b. Whether the work performed by Pennsylvania Class members—providing grocery
28 shopping and/or delivery service to customers—is within Instacart’s usual course of
business, and whether such service is fully integrated into Instacart’s business;

c. Whether Defendants failed to pay Plaintiff for all hours of work performed in

1 violation of Pennsylvania law;

2 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
3 course of their employment;

4 e. Whether Defendants' conduct violates the Pennsylvania Minimum Wage Act of
5 1968 ("PMWA"), 43 Pa. Cons. Stat. §§ 333.101 *et seq.*;

6 f. Whether Defendants' conduct violates the Pennsylvania Wage Payment and
7 Collection Law ("PWPCL"), 43 Pa. Cons. Stat. §§ 260.1 *et seq.*;

8 g. Whether Defendants' conduct violates the Pennsylvania Code of administrative
9 regulations;

10 h. Whether Defendants' conduct otherwise violates Pennsylvania law; and

11 i. Whether, as a result of Defendants' misconduct, Plaintiff is entitled to damages,
12 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
13 nature of such relief.

14 352. Named Plaintiff Weidner is a member of the Pennsylvania Class who suffered damages as
15 a result of Defendant's conduct and actions alleged herein.

16 353. The claims of Plaintiff Weidner are typical of the claims of the members of the
17 Pennsylvania Class. Plaintiff Weidner has no interests antagonistic to those of the Pennsylvania
18 Class and is not subject to any unique defenses.

19 354. Plaintiff Weidner will fairly and adequately represent and protect the interests of all
20 members of the Pennsylvania Class and have retained attorneys experienced in class action and
21 complex litigation.

22 355. The questions of law and fact common to the members of the Pennsylvania Class
23 predominate over any questions affecting only individual members, including legal and factual
24 issues relating to liability and damages.

25 356. A class action is superior to all other available methods for the fair and efficient
26 adjudication of this controversy for, inter alia, the following reasons:

27 a. It is economically impractical for members of the Pennsylvania Class to prosecute
28 individual actions;

b. The Pennsylvania Class is readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation;

1 and

2 d. A class action will enable claims to be handled in an orderly and expeditious
3 manner, will save time and expense, and will ensure uniformity of decisions.

4 357. Plaintiff Weidner does not anticipate any difficulty in the management of this litigation.

5 TWENTY-SECOND CAUSE OF ACTION
6 PENNSYLVANIA: UNPAID WAGES

(Penn. Wage Payment and Collection Law, 43 Pa. Cons. Stat. § 260.3)

7 358. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
8 in detail herein.

9 359. Defendants, and each of them, have violated and continue to violate the PWPCCL, 43 Pa.
10 Cons. Stat. § 260.3 by willfully refusing to pay wages – including the benefits described above –
11 due and payable to Plaintiff. As more fully set forth above, Plaintiff was not compensated for
12 non-productive hours worked. Additionally, Plaintiff worked well in excess of 40 hours per week
13 without being appropriately compensated for hours worked in excess of 40 hours per week.
14 These unpaid hours include overtime that should have been paid.

15 360. Equally, Defendants denied that any wages due for non-productive work and work in
16 excess of 40 hours per week were due to be paid to Plaintiff even though each Defendants knew
17 that under any set of circumstances or facts, Plaintiff was entitled to be paid for each hour that she
18 worked. Defendants have falsely denied and refused and continue to deny falsely and refuse
19 payment for purposes of securing a material economic benefit to themselves and with the intent to
20 annoy, harass, oppress, hinder, and defraud Plaintiff.

21 361. Such a pattern, practice and uniform administration of a corporate policy designed to
22 deprive employees of compensation, as described herein, is unlawful and creates an entitlement to
23 recovery by the Plaintiff, in a civil action pursuant to 43 Pa. Cons. Stat. § 260.9a, for the unpaid
24 balance of the amount of overtime and other compensation, including interest thereon, civil
25 penalties, including, but not limited to, penalties available under 43 Pa. Cons. Stat. § 260.10,
26 reasonable attorneys' fees and costs of suit, as well as the assessment of any other statutory
27 penalties and liquidated damages, pursuant to 43 Pa. Cons. Stat. § 260.9a, against Defendants and
28 such other legal and equitable relief as the Court deems just and proper.

362. This claim is brought by Plaintiff Weidner on behalf of herself and a class of similarly
situated individuals who have worked for Instacart in Pennsylvania.

TWENTY-THIRD CAUSE OF ACTION
PENNSYLVANIA: FAILURE TO PAY OVERTIME

(Penn. Minimum Wage Act, 43 Pa. Cons. Stat. § 333.104(c); 34 Pa. Code § 231.41)

1
2
3 363. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
4 in detail herein.

5 364. Plaintiff has been and are expected to regularly work in excess of forty (40) hours per
6 week. Plaintiff has regularly worked and continue to regularly work in excess of 40 hours per
7 week.

8 365. At all relevant times, Defendants failed to pay Plaintiff and all persons similarly situated
9 overtime wages when due, as required by the PMWA, 43 Pa. Cons. Stat. § 333.104(c), and 34 Pa.
10 Code § 231.41.

11 366. Such a pattern, practice and uniform administration of a corporate policy designed to
12 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
13 to recovery by the Plaintiff, in a civil action pursuant to 43 Pa. Cons. Stat. § 333.113, for the
14 unpaid balance of the amount of overtime and other compensation, including interest thereon,
15 reasonable attorneys' fees and costs of suit, as well as civil penalties against Defendants and such
16 other legal and equitable relief as the Court deems just and proper.

17 367. This claim is brought by Plaintiff Weidner on behalf of herself and a class of similarly
18 situated individuals who have worked for Instacart in Pennsylvania.

TWENTY-FOURTH CAUSE OF ACTION
PENNSYLVANIA: FAILURE TO PAY MINIMUM WAGES
(Penn. Minimum Wage Act, 43 Pa. Cons. Stat. § 333.104(a))

19 368. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
20 herein.

21 369. Defendants, and each of them, pursuant to uniform policies and practices, failed to
22 compensate Plaintiff at a rate not less than the minimum wage for all hours worked in violation of
23 the PMWA, 43 Pa. Cons. Stat. § 333.104(a).

24 370. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
25 permitted under Pennsylvania law and any other applicable law, including, but not limited to,
26 liquidated damages equal in amount to the unpaid compensation for the hours worked for which
27 she did not receive compensation equal to the minimum wage, together with interest, costs and
28 reasonable attorneys' fees, pursuant to 43 Pa. Cons. Stat. § 333.113.

1 371. This claim is brought by Plaintiff Weidner on behalf of herself and a class of similarly
2 situated individuals who have worked for Instacart in Pennsylvania.

3 TWENTY-FIFTH CAUSE OF ACTION
4 PENNSYLVANIA: FAILURE TO PROVIDE PROPER WAGE STATEMENT
(43 Pa. Cons. Stat. § 333.108; 34 Pa. Code §§ 231.31 & 231.36)

5 372. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
6 herein.

7 373. Pursuant to 43 Pa. Cons. Stat. § 333.108 and 34 Pa. Code § 231.31, employers are
8 required to keep a true and accurate record of, among other items, the hours worked each day and
9 each workweek by its employees, and how much overtime was worked. Additionally, pursuant
10 to 34 Pa. Code § 231.36, employers are required to furnish a statement to all employees with each
11 payment of wages indicating the number of hours worked during the specific pay period.

12 374. At all relevant times, Defendants failed to keep accurate records of pay indicating the
13 hours worked and/or the wages paid for the hours worked by Plaintiff in violation of 43 Pa. Cons.
14 Stat. § 333.108 and 34 Pa. Code § 231.31.

15 375. At all relevant times, Defendants did not furnish accurate statements to Plaintiff, in
16 violation of 34 Pa. Code § 231.36. Defendants failed to provide wage statements that indicate the
17 hours worked and/or the wages paid for the hours worked. In addition, based on fraudulent
18 reporting of hours worked and wages paid, inaccurate information regarding state and federal
19 deductions were provided to Plaintiff.

20 376. Therefore, Plaintiff Weidner, on behalf of herself and a class of similarly situated
21 individuals who have worked for Instacart in Pennsylvania, request all such relief that this Court
22 deems appropriate pursuant to Pennsylvania law and other applicable rules and regulations.

23 ///

24 ///

25 ///

26 TWENTY-SIXTH CAUSE OF ACTION
27 PENNSYLVANIA: FRAUD/INTENTIONAL MISREPRESENTATION
28 (Pennsylvania Common Law)

377. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
forth in detail herein.

1 378. Instacart represented to Plaintiff that she, alone, was responsible for the performance of
2 her work and that she, alone, determined the method, details, and means of performing her work.
3 These representations were, in fact, false.

4 379. Intacart also represented Plaintiff was an independent contractor not entitled to the
5 compensation and reimbursements set forth above, which was, in fact, also false.

6 380. Instacart, at the time it made the representations set forth above, knew the falsehood of
7 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
8 reasonably relied upon the truth of the aforementioned statements and representations in entering
9 into and continuing in an employment relationship with Instacart according to the terms
10 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

11 381. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
12 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
13 not limited to unpaid wages, including overtime.

14 382. This claim is brought by Plaintiff Weidner on behalf of herself and a class of similarly
15 situated individuals who have worked for Instacart in Pennsylvania.

16 TWENTY-SEVENTH CAUSE OF ACTION
17 PENNSYLVANIA: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
18 ADVANTAGE
19 (Pennsylvania Common Law)

20 383. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
21 in detail herein.

22 384. As alleged above, on or around September 28, 2016, Instacart renamed the "tip" option in
23 the payment screen of its mobile app to "service."

24 385. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff's income came
25 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

26 386. Instacart intentionally and maliciously recharacterized the tip as a "service" amount but
27 kept it optional in order to mislead and confuse customers into believing that the extra
28 compensation they chose to add to their bill was going to the shoppers, when in fact the money
went directly to Instacart.

387. Additionally, Instacart intentionally and maliciously created an "additional tip" option to
mislead customers into believing that an "additional tip" would be duplicative of any

1 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
2 money customers would otherwise have chosen to give directly to their shoppers.

3 388. At the time the customer entered the payment screen, an economic relationship had
4 formed between the customer and shopper.

5 389. At the time when the customer entered the payment screen, there was a high probability of
6 future economic benefit to the shopper in the form of tips.

7 390. Instacart's changes to the app's tipping structure were an independent wrongful act in
8 violation of the FLSA's prohibition of invalid tip-pools.

9 391. At all times, Instacart had knowledge of the economic relationship formed between
10 Plaintiff and the customers.

11 392. At all times, Instacart acted intentionally and maliciously to disrupt the economic
12 relationship between Plaintiff and the customers by interfering with Plaintiff's enjoyment of an
13 expectancy of tips from customers.

14 393. Instacart's change in its tipping structure caused actual disruption of the economic
15 relationship between Plaintiff and the customers.

16 394. As a direct, proximate, and foreseeable result of Defendant's intentional acts and conduct,
17 Plaintiff has suffered, and will continue to suffer, economic injuries.

18 395. This claim is brought by Plaintiff Weidner on behalf of herself and a class of similarly
19 situated individuals who have worked for Instacart in Pennsylvania.

20 TWENTY-EIGHTH CAUSE OF ACTION
21 PENNSYLVANIA: CONVERSION
22 (Pennsylvania Common Law)

23 396. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth
24 in detail herein.

25 397. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
26 Plaintiff had a right to possess the full amount of tips given to her by customers.

27 398. As alleged above, the optional "service" amount paid by customers was actually a tip.

28 399. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
Plaintiff by customers.

400. Plaintiff suffered economic harm in the amount of the tips misappropriated by
Defendants.

1 401. This claim is brought by Plaintiff Weidner on behalf of herself and a class of similarly
2 situated individuals who have worked for Instacart in New York.

3 **COLORADO CLASS ACTION ALLEGATIONS**

4 402. Plaintiff Connolly asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
5 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
6 delivery persons who have worked in Colorado any time from December 1, 2013 to the present
7 (“Colorado Class”), claims under Colorado state law, specifically, the twenty-ninth through
8 thirty-fifth causes of action.

9 403. Plaintiff Connolly and other Colorado Class members have uniformly been deprived
10 reimbursement of their necessary business expenditures and minimum and overtime wages.

11 404. The members of the Colorado Class are so numerous that joinder of all members would
12 be impracticable.

13 405. There are questions of law and fact common to the members of the Colorado Class that
14 predominate over any questions affecting only individual members, including:

- 15 a. Whether Colorado Class members have been required to follow uniform
16 procedures and policies regarding their work for Instacart;
- 17 b. Whether the work performed by Colorado Class members—providing grocery
18 shopping and/or delivery service to customers—is within Instacart’s usual course of
19 business, and whether such service is fully integrated into Instacart’s business;
- 20 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
21 violation of Colorado law;
- 22 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
23 course of their employment;
- 24 e. Whether Defendants’ conduct violates the Colorado Wage Claim Act (“CWCA”),
25 Colo. Rev. Stat. §§ 8-4-101 *et seq.*;
- 26 f. Whether Defendants’ conduct violates the Colorado Minimum Wage of Workers
27 Act (“CMWA”), Colo. Rev. Stat. §§ 8-6-101 *et seq.* as implemented by the Colorado
28 Minimum Wage Order, No. 31 (“MWO”), 7 Colo. Code Regs. § 1103-1;
- g. Whether Defendants’ conduct otherwise violates Colorado law; and
- h. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,

1 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
2 nature of such relief.

3 406. Named Plaintiff Connolly is a member of the Colorado Class who suffered damages as a
4 result of Defendant's conduct and actions alleged herein.

5 407. Plaintiff Connolly's claims are typical of the claims of the members of the Colorado
6 Class. Plaintiff Connolly has no interests antagonistic to those of the Colorado Class and is not
7 subject to any unique defenses.

8 408. Plaintiff Connolly will fairly and adequately represent and protect the interests of all
9 members of the Colorado Class and has retained attorneys experienced in class action and
10 complex litigation.

11 409. The questions of law and fact common to the members of the Colorado Class predominate
12 over any questions affecting only individual members, including legal and factual issues relating
13 to liability and damages.

14 410. A class action is superior to all other available methods for the fair and efficient
15 adjudication of this controversy for, inter alia, the following reasons:

16 a. It is economically impractical for members of the Colorado Class to prosecute
17 individual actions;

18 b. The Colorado Class is readily definable;

19 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
20 and

21 d. A class action will enable claims to be handled in an orderly and expeditious
22 manner, will save time and expense, and will ensure uniformity of decisions.

23 411. Plaintiff Connolly does not anticipate any difficulty in the management of this litigation.

24 TWENTY-NINTH CAUSE OF ACTION
25 COLORADO: FAILURE TO PAY OVERTIME WAGES
26 (Colo. Rev. Stat. §§ 8-6-101 *et seq.*; 7 Colo. Code Regs. § 1103-1)

27 412. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
28 in detail herein.

413. Plaintiff has been and is expected to regularly work in excess of twelve (12) hours per day
and/or forty (40) hours per week. Plaintiff has regularly worked and continues to regularly work
in excess of twelve (12) hours per day and/or 40 hours per week.

1 414. At all relevant times, Defendants failed to pay Plaintiff and all persons similarly situated
2 overtime wages when due, as required by the CMWA, Colo. Rev. Stat. §§ 8-6-101 *et seq.*, as
3 implemented by the MWO, 7 Colo. Code Regs. § 1103-1:4.

4 415. Such a pattern, practice and uniform administration of a corporate policy designed to
5 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
6 to recovery by the Plaintiff, in a civil action pursuant to 7 Colo. Code Regs. § 1103-1:18, for the
7 unpaid balance of the full amount of overtime and other compensation, including interest thereon,
8 civil penalties, reasonable attorneys' fees and costs of suit pursuant to Colo. Rev. Stat. § 8-6-118
and such other legal and equitable relief as the Court deems just and proper.

9 416. This claim is brought by Plaintiff Connolly on behalf of herself and a class of similarly
10 situated individuals who have worked for Instacart in Colorado.

11 **THIRTIETH CAUSE OF ACTION**
12 **COLORADO: FAILURE TO PAY MINIMUM WAGES**
(Colo. Rev. Stat. §§ 8-6-101 *et seq.*; 7 Colo. Code Regs. § 1103-1)

13 417. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
14 herein.

15 418. Defendants, and each of them, pursuant to uniform policies and practices, failed to
16 compensate Plaintiff at a rate not less than the minimum wage for all hours worked in violation of
17 Colorado state law, including the CMWA, Colo. Rev. Stat. § 8-6-108.5 and the MWO, 7 Colo.
Code Regs. § 1103-1:3.

18 419. Such a pattern, practice and uniform administration of a corporate policy designed to
19 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
20 to recovery by the Plaintiff, in a civil action pursuant to Colo. Rev. Stat. § 8-6-118 and 7 Colo.
21 Code Regs. § 1103-1:18, to damages equal to the difference between the minimum wage and
22 actual wages received after accounting for deduction for job-related expenses, including interest
23 thereon, reasonable attorneys' fees and costs of suit pursuant to Colo. Rev. Stat. § 8-6-118 and
24 such other legal and equitable relief as the Court deems just and proper.

25 420. This claim is brought by Plaintiff Connolly on behalf of herself and a class of similarly
26 situated individuals who have worked for Instacart in Colorado.

27 **THIRTY-FIRST CAUSE OF ACTION**
28 **COLORADO: FAILURE TO PAY WAGES FOR MEAL AND REST PERIODS**
(Colo. Rev. Stat. §§ 8-6-101 *et seq.*; 7 Colo. Code Regs. §§ 1103-1:7, 1103-1:8)

1 421. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
2 herein.

3 422. Defendants are required under Colorado law to pay Plaintiff for their time worked,
4 including the time they spent working during their unpaid meal periods. 7 Colo. Code Regs. §§
5 1103-1:2, 1103-1:7.

6 423. Defendants have required and continue to require Plaintiff to work for periods of more
7 than 5 hours per day with no provision of a meal period of at least 30 minutes, in violation of the
8 MWO, 7 Colo. Code Regs. § 1103-1:7.

9 424. Defendants have required and continue to require Plaintiff to work for periods of more
10 than 4 hours per day with no provision of a rest period of at least 10 minutes, in violation of the
11 MWO, 7 Colo. Code Regs. § 1103-1:8.

12 425. Plaintiff was not properly provided with meal or rest periods as required by 7 Colo. Code
13 Regs. §§ 1103-1:7 and 1103-1:8 for missed rest and/or meal periods on or after 2012. As such,
14 Defendants have not paid Plaintiff for her overtime wages related to unpaid meal periods.

15 426. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
16 permitted under Colorado law and any other applicable law, and such other legal and equitable
17 relief as the Court deems just and proper.

18 427. This claim is brought by Plaintiff Connolly on behalf of herself and a class of similarly
19 situated individuals who have worked for Instacart in Colorado.

20 **THIRTY-SECOND CAUSE OF ACTION**
21 **COLORADO: FAILURE TO PROVIDE PROPER WAGE STATEMENT**
22 **(Colo. Rev. Stat. § 8-4-103(4); 7 Colo. Code Regs. § 1103-1:12)**

23 428. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
24 herein.

25 429. At all relevant times, Defendants failed to keep accurate records of pay indicating the
26 hours worked and/or the wages paid for the hours worked by Plaintiff in violation of the MWO, 7
27 Colo. Code Regs. § 1103-1:12.

28 430. At all relevant times, Defendants failed to provide Plaintiff with statutorily required wage
statements provided for in the CWCA, Colo. Rev. Stat. § 8-4-103(4) and the MWO, 7 Colo. Code
Regs. § 1103-1:12. Defendant failed to provide wage statements that indicate the hours worked
and/or the wages paid for the hours worked. In addition, based on fraudulent reporting of hours

1 worked and wages paid, inaccurate information regarding state and federal deductions were
2 provided to Plaintiff.

3 431. Therefore, Plaintiff Connolly, on behalf of herself and a class of similarly situated
4 individuals who have worked for Instacart in Colorado, request all such relief that this Court
5 deems appropriate pursuant to Colorado law and other applicable rules and regulations, in
6 addition to an award of reasonable attorney's fees and costs pursuant to Colo. Rev. Stat. § 8-4-
110(1).

7 432. This claim is brought by Plaintiff Connolly on behalf of herself and a class of similarly
8 situated individuals who have worked for Instacart in Colorado.

9
10 **THIRTY-THIRD CAUSE OF ACTION**
COLORADO: FRAUD/INTENTIONAL MISREPRESENTATION
(Colorado Common Law)

11 433. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
12 forth in detail herein.

13 434. Instacart represented to Plaintiff that she, alone, was responsible for the performance of
14 her work and that she, alone, determined the method, details, and means of performing her work.
15 These representations were, in fact, false.

16 435. Intacart also represented Plaintiff was an independent contractor not entitled to the
17 compensation and reimbursements set forth above, which was, in fact, also false.

18 436. Instacart, at the time it made the representations set forth above, knew the falsehood of
19 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
20 reasonably relied upon the truth of the aforementioned statements and representations in entering
21 into and continuing in an employment relationship with Instacart according to the terms
22 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

23 437. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
24 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
25 not limited to unpaid wages, including overtime.

26 438. This claim is brought by Plaintiff Connolly on behalf of herself and a class of similarly
27 situated individuals who have worked for Instacart in Colorado.

28
THIRTY-FOURTH CAUSE OF ACTION
COLORADO: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
ADVANTAGE

(Colorado Common Law)

1
2 439. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
3 in detail herein.

4 440. As alleged above, on or around September 28, 2016, Instacart renamed the “tip” option in
5 the payment screen of its mobile app to “service.”

6 441. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff’s income came
7 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

8 442. Instacart intentionally and maliciously recharacterized the tip as a “service” amount but
9 kept it optional in order to mislead and confuse customers into believing that the extra
10 compensation they chose to add to their bill was going to the shoppers, when in fact the money
11 went directly to Instacart.

12 443. Additionally, Instacart intentionally and maliciously created an “additional tip” option to
13 mislead customers into believing that an “additional tip” would be duplicative of any
14 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
15 money customers would otherwise have chosen to give directly to their shoppers.

16 444. At the time the customer entered the payment screen, an economic relationship had
17 formed between the customer and shopper.

18 445. At the time when the customer entered the payment screen, there was a high probability of
19 future economic benefit to the shopper in the form of tips.

20 446. Instacart’s changes to the app’s tipping structure were an independent wrongful act in
21 violation of the FLSA’s prohibition of invalid tip-pools.

22 447. At all times, Instacart had knowledge of the economic relationship formed between
23 Plaintiff and the customers.

24 448. At all times, Instacart acted intentionally and maliciously to disrupt the economic
25 relationship between Plaintiff and the customers by interfering with Plaintiff’s enjoyment of an
26 expectancy of tips from customers.

27 449. Instacart’s change in its tipping structure caused actual disruption of the economic
28 relationship between Plaintiff and the customers.

450. As a direct, proximate, and foreseeable result of Defendant’s intentional acts and conduct,
Plaintiff has suffered, and will continue to suffer, economic injuries.

1 451. This claim is brought by Plaintiff Connolly on behalf of herself and a class of similarly
2 situated individuals who have worked for Instacart in Colorado.

3 **THIRTY-FIFTH CAUSE OF ACTION**
4 **COLORADO: CONVERSION**
5 **(Colorado Common Law)**

6 452. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth
7 in detail herein.

8 453. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
9 Plaintiff had a right to possess the full amount of tips given to her by customers.

10 454. As alleged above, the optional “service” amount paid by customers was actually a tip.

11 455. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
12 Plaintiff by customers.

13 456. Plaintiff suffered economic harm in the amount of the tips misappropriated by
14 Defendants.

15 457. This claim is brought by Plaintiff Connolly on behalf of themselves and a class of
16 similarly situated individuals who have worked for Instacart in New York.

17 **ILLINOIS CLASS ACTION ALLEGATIONS**

18 458. Plaintiff Parsons asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
19 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
20 delivery persons who have worked in Illinois anytime from November 2013 to the present
21 (“Illinois Class”), claims under Illinois state law, specifically, the thirty-sixth through forty-third
22 causes of action.

23 459. Plaintiff Parson and other Illinois Class members have uniformly been deprived
24 reimbursement of their necessary business expenditures and minimum and overtime wages.

25 460. The members of the Illinois Class are so numerous that joinder of all members would be
26 impracticable.

27 461. There are questions of law and fact common to the members of the Illinois Class that
28 predominate over any questions affecting only individual members, including:

- a. Whether Illinois Class members have been required to follow uniform procedures and policies regarding their work for Instacart;
- b. Whether the work performed by Illinois Class members—providing grocery

1 shopping and/or delivery service to customers—is within Instacart’s usual course of
2 business, and whether such service is fully integrated into Instacart’s business;

3 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
4 violation of Illinois law;

5 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
6 course of his employment;

7 e. Whether Defendants’ conduct violates the Illinois Wage Payment and Collection
8 Act, 820 Ill. Comp. Stat. Ann. 115/4;

9 f. Whether Defendants’ conduct violates the Illinois Minimum Wage Law, 820 Ill.
10 Comp. Stat. Ann. 105/4, 105/4a, and 115/4;

11 g. Whether Defendants’ conduct violates Title 56 of the Illinois Administrative
12 Code, § 300.540;

13 h. Whether Defendants’ conduct violates the Illinois Consumer Fraud and Deceptive
14 Business Practices Act, 815 Ill. Comp. Stat. Ann. 505/2 and 505/7;

15 i. Whether Defendants’ conduct otherwise violates Illinois law; and

16 j. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,
17 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
18 nature of such relief.

19 462. Named Plaintiff Parsons is a member of the Illinois Class who suffered damages as a
20 result of Defendant’s conduct and actions alleged herein.

21 463. Plaintiff Parsons’ claims are typical of the claims of the members of the Illinois Class.
22 Plaintiff Parsons has no interests antagonistic to those of the Illinois Class and is not subject to
23 any unique defenses.

24 464. Plaintiff Parsons will fairly and adequately represent and protect the interests of all
25 members of the Illinois Class and has retained attorneys experienced in class action and complex
26 litigation.

27 465. The questions of law and fact common to the members of the Illinois Class predominate
28 over any questions affecting only individual members, including legal and factual issues relating
to liability and damages.

466. A class action is superior to all other available methods for the fair and efficient

1 adjudication of this controversy for, inter alia, the following reasons:

- 2 a. It is economically impractical for members of the Illinois Class to prosecute
3 individual actions;
- 4 b. The Illinois Class is readily definable;
- 5 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
6 and
- 7 d. A class action will enable claims to be handled in an orderly and expeditious
8 manner, will save time and expense, and will ensure uniformity of decisions.

9 467. Plaintiff Parsons does not anticipate any difficulty in the management of this litigation.

10 **THIRTY-SIXTH CAUSE OF ACTION**
ILLINOIS: UNPAID WAGES

11 (Ill. Wage Payment and Collection Act, 820 Ill. Comp. Stat. Ann. 115/4)

12 468. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
13 in detail herein.

14 469. Instacart has violated and continues to violate Illinois Wage Payment and Collection Act,
15 820 Ill. Comp. Stat. Ann. 115/4 and Illinois Minimum Wage Law, 820 Ill. Comp. Stat. Ann.
16 105/4 by refusing to pay wages – including the benefits described above – due and payable to
17 Plaintiff. As more fully set above, Plaintiff was not compensated for non-productive hours
18 worked. Additionally, Plaintiff worked in excess of 40 hours per week without being
19 appropriately compensated for hours worked in excess of 40 hours per week. These unpaid hours
20 include overtime that should have been paid.

21 470. Equally, Instacart denied that any wages due for non-productive work were due to be paid
22 to Plaintiff even though Instacart knew that under any set of circumstances or facts, Plaintiff was
23 entitled to be paid for each hour that he worked. Instacart has falsely denied and refused and
24 continues to falsely deny and refuse payment for purposes of securing a material economic
25 benefit to themselves and with the intent to annoy, harass, oppress, hinder, and defraud Plaintiff.

26 471. Such a pattern, practice, and uniform administration of a corporate policy designed to
27 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
28 to recovery by Plaintiff, in a civil action pursuant to 820 Ill. Comp. Stat. Ann. 115/14 and 820 Ill.
Comp. Stat. Ann. 105/12, for the amount of any such underpayments, additional damages of two
percent of the amount of any such underpayments for each month following the date of payment

1 during which such underpayments remain unpaid, and costs and reasonable attorneys fees, as
2 well as civil penalties against Instacart and such other legal and equitable relief as the Court
3 deems just and proper.

4 472. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
5 situated individuals who have worked for Instacart in Illinois.

6 **THIRTY-SEVENTH CAUSE OF ACTION**
7 **ILLINOIS: FAILURE TO PAY MINIMUM WAGES**
8 (Ill. Minimum Wage Law, 820 Ill. Comp. Stat. Ann. 105/4)

9 473. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
10 forth in detail herein.

11 474. Instacart, pursuant to uniform policies and practices, failed to compensate Plaintiff at a
12 rate not less than the minimum wage for all hours worked in violation of the Illinois Minimum
13 Wage Law, 820 Ill. Comp. Stat. Ann. 105/4.

14 475. As a result of Instacart's conduct, pursuant to 820 Ill. Comp. Stat. Ann. 104/12, Plaintiff
15 is entitled to the amount of any such underpayments, additional damages of two percent of the
16 amount of any such underpayments for each month following the date of payment during which
17 such underpayments remain unpaid, and costs and reasonable attorneys fees, as well as civil
18 penalties against Instacart and such other legal and equitable relief as the Court deems just and
19 proper.

20 476. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
21 situated individuals who have worked for Instacart in Illinois.

22 **THIRTY-EIGHTH CAUSE OF ACTION**
23 **ILLINOIS: FAILURE TO PAY OVERTIME WAGES**
24 (Ill. Minimum Wage Law, 820 Ill. Comp. Stat. Ann. 105/4a)

25 477. Plaintiff hereby alleges and incorporates by reference all paragraphs above as if set forth
26 in detail herein.

27 478. Plaintiff was at various times throughout his employment expected to work in excess of
28 forty (40) hours per week. Plaintiff at various times worked in excess of 40 hours per week. At
all relevant times, Instacart failed to pay Plaintiff wages when due, as required by 820 Ill. Comp.
Stat. Ann. 105/4a.

479. Such a pattern, practice and uniform administration of a corporate policy designed to
deprive employees of compensation, as described herein, is unlawful and creates an entitlement

1 to recovery by Plaintiff, in a civil action, for the unpaid balance of the amount of overtime and
2 other compensation, additional damages of two percent of the amount of any such
3 underpayments for each month following the date of payment during which such underpayments
4 remain unpaid, and reasonable attorneys' fees and costs of suit, as well as the assessment of any
5 other statutory penalties, pursuant to 820 Ill. Comp. Stat. Ann. 105/12.

6 480. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
7 situated individuals who have worked for Instacart in Illinois.

8 **THIRTY-NINTH CAUSE OF ACTION**
9 **ILLINOIS: FAILURE TO REIMBURSE EXPENSES**

10 (Ill. Wage Payment and Collection Act, 820 Ill. Comp. Stat. Ann. 115/4; Ill. Admin. Code tit. 56,
11 § 300.540)

12 481. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
13 forth in detail herein.

14 482. Throughout his employment, Plaintiff incurred expenditures or losses related to his
15 employment and in direct consequence of the discharge of his duties as Instacart's employee, or
16 of his obedience to the directions of Instacart.

17 483. Instacart failed to reimburse or indemnify Plaintiff for these expenditures or losses. Items
18 and services that Plaintiff was required to purchase include, but are not limited to gas,
19 automotive insurance, other vehicle maintenance services, parking privileges, his smartphone,
20 and smartphone data package.

21 484. By the conduct described herein, Instacart has violated the Illinois Wage Payment and
22 Collection Act.

23 485. As a result of Instacart's violation, Plaintiff is entitled to all monetary and other damages
24 permitted under Illinois law and any other applicable law, including, but not limited to, damages
25 equal in amount to the expenses for which he did not receive reimbursement, additional damages
26 of two percent of the amount of any such underpayments for each month following the date of
27 payment during which such underpayments remain unpaid, and costs and reasonable attorneys
28 fees.

486. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
situated individuals who have worked for Instacart in Illinois.

FORTIETH CAUSE OF ACTION
ILLINOIS: UNFAIR AND DECEPTIVE BUSINESS PRACTICES ACT

1 (Ill. Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. Ann. 505/2; 815
2 Ill. Comp. Stat. Ann. 505/7)

3 487. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
4 forth in detail herein.

5 488. Instacart has engaged in unfair and deceptive business practices as set forth above. By
6 engaging in the above-described acts and practices, Instacart has committed one or more acts of
7 unfair competition within the meaning of the Illinois Consumer Fraud and Deceptive Business
8 Practices Act, 815 Ill. Comp. Stat. Ann. 505/2. These acts and practices constitute a continuing
9 and ongoing unfair and deceptive business practice and justify an award of actual damages, the
10 issuance of an injunction, and other equitable relief pursuant to the 815 Ill. Comp. Stat. Ann.
11 505/10a.

12 **a. Instacart's Deceptive Business Practices:**

13 489. Instacart's acts and practices, as described above, constitute fraudulent business practices
14 within the meaning of 815 Ill. Comp. Stat. Ann. 505/2.

15 490. As described herein, Instacart failed to keep accurate records of the hours worked by
16 Plaintiff. At all relevant times, Instacart failed to provide Plaintiff with accurate records of pay
17 indicating the hours worked and/or the wages paid for the hours worked. In addition, based on
18 fraudulent reporting of hours worked and wages paid, inaccurate information regarding state and
19 federal deductions were provided to Plaintiff.

20 491. Additionally, as described herein, Instacart represented to Plaintiff that he, alone, was
21 responsible for the performance of his work and that he, alone, determined the method, details,
22 and means of performing his work. These representations were false.

23 492. Intacart also represented Plaintiff was an independent contractor not entitled to the
24 compensation and reimbursements set forth above, which was, in fact, also false.

25 493. Instacart knew the falsehood of these representations and intended to, and did, induce
26 Plaintiff's reliance thereupon. Plaintiff relied upon the truth of the representations, causing
27 economic harm.

28 494. Plaintiff suffered concrete and identifiable economic injuries as a consequence of
Instacart's misleading and fraudulent conduct, including but not limited to unpaid wages
including overtime.

b. Instacart's Unfair Business Practices:

1 495. Instacart's acts and practices, as described above, constitute unfair business practices
2 within the meaning of 815 Ill. Comp. Stat. Ann. 505/2. Such acts and practices were against
3 established public policy and were pursued to attain an unjustified monetary advantage for
4 Instacart by creating personal disadvantage and hardship to its employees.

5 496. Instacart's conduct does not benefit workers or competition. Indeed, the injury to Plaintiff
6 as a result of Instacart's conduct is far greater than any alleged countervailing benefit. Plaintiff
7 could not have reasonably avoided the injury he suffered.

8 497. The gravity of the consequences of Instacart's conduct as described above outweighs any
9 justification, motive or reason therefore, is immoral, unethical, oppressive, unscrupulous, and is
10 contrary to the public welfare since it transgresses civil statutes of the State of Illinois designed
11 to protect workers from exploitation.

12 498. Plaintiff has suffered injury in fact and lost money and/or property as a result of
13 Instacart's unfair business acts and practices by, inter alia, being deprived of compensation for
14 all hours worked including overtime and being paid at a rate substantially less than the promised
15 amount that Instacart advertised he could make.

16 499. By and through its unfair and deceptive business practices and acts described herein,
17 Instacart has obtained valuable services from Plaintiff and has deprived Plaintiff of valuable
18 rights and benefits guaranteed by law, all to his detriment. Plaintiff seeks an order of the Court
19 awarding restitution, disgorgement, injunctive relief and all other relief allowed under the Illinois
20 Unfair and Deceptive Business Practices Act.

21 500. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
22 situated individuals who have worked for Instacart in Illinois.

23 ///
24 ///

25 FORTY-FIRST CAUSE OF ACTION
26 ILLINOIS: FRAUD/INTENTIONAL REPRESENTATION
27 (Illinois Common Law)

28 501. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
forth in detail herein.

502. Instacart represented to Plaintiff that he, alone, was responsible for the performance of
his work and that he, alone, determined the method, details, and means of performing his work.
These representations were, in fact, false.

1 503. Intacart also represented Plaintiff was an independent contractor not entitled to the
2 compensation and reimbursements set forth above, which was, in fact, also false.

3 504. Instacart, at the time it made the representations set forth above, knew the falsehood of
4 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
5 reasonably relied upon the truth of the aforementioned statements and representations in entering
6 into and continuing in an employment relationship with Instacart according to the terms
7 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

8 505. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
9 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
10 not limited to unpaid wages, including overtime.

11 506. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
12 situated individuals who have worked for Instacart in Illinois.

13 FORTY-SECOND CAUSE OF ACTION
14 ILLINOIS: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
15 ADVANTAGE
16 (Illinois Common Law)

17 507. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
18 in detail herein.

19 508. As alleged above, on or around September 28, 2016, Instacart renamed the "tip" option in
20 the payment screen of its mobile app to "service."

21 509. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff's income came
22 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

23 510. Instacart intentionally and maliciously recharacterized the tip as a "service" amount but
24 kept it optional in order to mislead and confuse customers into believing that the extra
25 compensation they chose to add to their bill was going to the shoppers, when in fact the money
26 went directly to Instacart.

27 511. Additionally, Instacart intentionally and maliciously created an "additional tip" option to
28 mislead customers into believing that an "additional tip" would be duplicative of any
discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
money customers would otherwise have chosen to give directly to their shoppers.

512. At the time the customer entered the payment screen, an economic relationship had

1 formed between the customer and shopper.

2 513. At the time when the customer entered the payment screen, there was a high probability of
3 future economic benefit to the shopper in the form of tips.

4 514. Instacart's changes to the app's tipping structure were an independent wrongful act in
5 violation of the FLSA's prohibition of invalid tip-pools.

6 515. At all times, Instacart had knowledge of the economic relationship formed between
7 Plaintiff and the customers.

8 516. At all times, Instacart acted intentionally and maliciously to disrupt the economic
9 relationship between Plaintiff and the customers by interfering with Plaintiff's enjoyment of an
10 expectancy of tips from customers.

11 517. Instacart's change in its tipping structure caused actual disruption of the economic
12 relationship between Plaintiff and the customers.

13 518. As a direct, proximate, and foreseeable result of Defendant's intentional acts and conduct,
14 Plaintiff has suffered, and will continue to suffer, economic injuries.

15 519. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
16 situated individuals who have worked for Instacart in Illinois.

17 **FORTY-THIRD CAUSE OF ACTION**
18 **ILLINOIS: CONVERSION**
19 **(Illinois Common Law)**

20 520. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
21 in detail herein.

22 521. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
23 Plaintiff had a right to possess the full amount of tips given to him by customers.

24 522. As alleged above, the optional "service" amount paid by customers was actually a tip.

25 523. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
26 Plaintiff by customers.

27 524. Plaintiff suffered economic harm in the amount of the tips misappropriated by
28 Defendants.

525. This claim is brought by Plaintiff Parsons on behalf of himself and a class of similarly
situated individuals who have worked for Instacart in Illinois.

WASHINGTON CLASS ACTION ALLEGATIONS

1 526. Plaintiff Lester asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
2 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
3 delivery persons who have worked in Washington anytime from December 1, 2013 to the present
4 (“Washington Class”), claims under Washington state law, specifically, the forty-fourth through
5 fifty-first causes of action.

6 527. Plaintiff Lester and other Washington Class members have uniformly been deprived
7 reimbursement of their necessary business expenditures and minimum and overtime wages.

8 528. The members of the Washington Class are so numerous that joinder of all members would
9 be impracticable.

10 529. There are questions of law and fact common to the members of the Washington Class that
11 predominate over any questions affecting only individual members, including:

12 a. Whether Washington Class members have been required to follow uniform
13 procedures and policies regarding their work for Instacart;

14 b. Whether the work performed by Washington Class members—providing grocery
15 shopping and/or delivery service to customers—is within Instacart’s usual course of
16 business, and whether such service is fully integrated into Instacart’s business;

17 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
18 violation of Illinois law;

19 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
20 course of their employment;

21 e. Whether Defendants’ conduct violates the Washington Revised Code §§
22 19.86.020, 19.86.090, 49.46.090, 49.46.020, and 49.46.130;

23 f. Whether Defendants’ conduct violates the Washington Administrative Code §§
24 296-126-092;

25 g. Whether Defendants’ conduct otherwise violates Washington law; and

26 h. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,
27 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
28 nature of such relief.

530. Named Plaintiff Lester is a member of the Washington Class who suffered damages as a
result of Defendant’s conduct and actions alleged herein.

1 531. Plaintiff Lester’s claims are typical of the claims of the members of the Washington
2 Class. Plaintiff Lester has no interests antagonistic to those of the Washington Class and is not
3 subject to any unique defenses.

4 532. Plaintiff Lester will fairly and adequately represent and protect the interests of all
5 members of the Washington Class and has retained attorneys experienced in class action and
6 complex litigation.

7 533. The questions of law and fact common to the members of the Washington Class
8 predominate over any questions affecting only individual members, including legal and factual
9 issues relating to liability and damages.

10 534. A class action is superior to all other available methods for the fair and efficient
11 adjudication of this controversy for, inter alia, the following reasons:

- 12 a. It is economically impractical for members of the Washington Class to prosecute
13 individual actions;
- 14 b. The Washington Class is readily definable;
- 15 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
16 and
- 17 d. A class action will enable claims to be handled in an orderly and expeditious
18 manner, will save time and expense, and will ensure uniformity of decisions.

19 535. Plaintiff Lester does not anticipate any difficulty in the management of this litigation.

20 ///

21 ///

22 ///

23 ///

24 FORTY-FOURTH CAUSE OF ACTION
25 WASHINGTON: UNPAID WAGES

26 ((Wash. Rev. Code Ann. §§ 49.46.090, 49.46.020 & 49.46.130; Wash. Admin. Code § 296-126-
27 092)

28 536. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
forth in detail herein.

537. Instacart has violated and continues to violate the Revised Code of Washington §§
49.46.090, 49.46.020 & 49.46.130 by willfully refusing to pay wages – including the benefits

1 described above – due and payable to Plaintiff. As more fully set forth above, Plaintiff was not
2 compensated for non-productive hours worked. Additionally, Plaintiff worked well in excess of
3 40 hours per week without being appropriately compensated for hours worked in excess of 40
4 hours per week. These unpaid hours include overtime that should have been paid.

5 538. Equally, Instacart denied that any wages due for non-productive work and work in excess
6 of 40 hours per week were due to be paid to Plaintiff even though Instacart knew that under any
7 set of circumstances or facts, Plaintiff was entitled to be paid for each hour that she worked.
8 Instacart has falsely denied and refused and continue to deny falsely and refuse payment for
9 purposes of securing a material economic benefit to themselves and with the intent to annoy,
harass, oppress, hinder, and defraud Plaintiff.

10 539. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
11 situated individuals who have worked for Instacart in Washington.

12 FORTY-FIFTH CAUSE OF ACTION
WASHINGTON: FAILURE TO PAY OVERTIME WAGES
13 (Wash. Rev. Code Ann. § 49.46.130)

14 540. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
15 forth in detail herein.

16 541. Plaintiff was expected to regularly work in excess of forty (40) hours per week. Plaintiff
17 regularly worked in excess of 40 hours per week. At all relevant times, Instacart failed to pay
18 Plaintiff wages when due, as required by Wash. Rev. Code Ann. § 49.46.130. Further, Plaintiff
19 was not compensated the additional hours of wages owed to her for each day she was not
provided meal or rest breaks in accordance with Wash. Admin. Code § 296-126-092.

20 542. Such a pattern, practice and uniform administration of a corporate policy designed to
21 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
22 to recovery by Plaintiff, in a civil action, for the unpaid balance of the amount of overtime and
23 other compensation, including interest thereon, reasonable attorneys' fees and costs of suit, as
24 well as the assessment of any other statutory penalties, including waiting time penalties, against
Instacart.

25 543. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
26 situated individuals who have worked for Instacart in Washington.

27 FORTY-SIXTH CAUSE OF ACTION

WASHINGTON: FAILURE TO PAY MINIMUM WAGES
(Wash. Rev. Code Ann. § 49.46.020)

1
2 544. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
3 forth in detail herein.

4 545. Instacart, pursuant to uniform policies and practices, failed to compensate Plaintiff at a
5 rate not less than the minimum wage for all hours worked in violation of the Revised Code of
6 Washington, including section 49.46.020.

7 546. As a result of Instacart's conduct, Plaintiff is entitled to all monetary and other damages
8 permitted under the Revised Code of Washington and any other applicable law.

9 547. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
10 situated individuals who have worked for Instacart in Washington.

11 FORTY-SEVENTH CAUSE OF ACTION
WASHINGTON: UNFAIR AND DECEPTIVE BUSINESS PRACTICES
12 (Wash. Rev. Code Ann. §§ 19.86.020, 19.86.090)

13 548. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
14 forth in detail herein. Instacart has engaged in unfair and deceptive business practices as set forth
15 above. By engaging in the above-described acts and practices, Instacart has committed one or
16 more acts of unfair competition within the meaning of Section 19.86.020 of the Revised Code of
17 Washington. These acts and practices constitute a continuing and ongoing unfair and/or
18 deceptive business activity, and justify the issuance of an injunction, restitution, and other
equitable relief pursuant to Wash. Rev. Code Ann. §19.86.090.

19 **Instacart's Deceptive Business Practices:**

20 549. Instacart's acts and practices, as described above, constitute fraudulent business practices
within the meaning of Wash. Rev. Code Ann. §§ 19.86.020.

21 550. As described herein, Instacart failed to keep accurate records of the hours worked by
22 Plaintiff in violation of the FLSA, 29 U.S.C. § 211(c) and § 215(a). At all relevant times,
23 Instacart failed to provide Plaintiff with accurate records of pay indicating the hours worked
24 and/or the wages paid for the hours worked. In addition, based on fraudulent reporting of hours
25 worked and wages paid, inaccurate information regarding state and federal deductions were
26 provided to Plaintiff.

1 551. Instacart also misrepresented to Plaintiff through its advertisement on Craigslist that she
2 could make \$25 per hour.

3 552. Additionally, as described herein, Instacart represented to Plaintiff that she, alone, was
4 responsible for the performance of her work and that she, alone, determined the method, details,
5 and means of performing her work. These representations were false.

6 553. Instacart also represented Plaintiff was an independent contractor not entitled to the
7 compensation and reimbursements set forth above, which was, in fact, also false.

8 554. Instacart knew the falsehood of these representations and intended to, and did, induce
9 Plaintiff's reliance thereupon. Plaintiff relied upon the truth of the representations, causing
10 economic harm.

11 555. Plaintiff suffered concrete and identifiable economic injuries as a consequence of
12 Instacart's misleading and fraudulent conduct, including but not limited to unpaid wages,
13 including overtime, car repair payments, and higher car insurance premiums.

14 **Instacart's Unfair Business Practices:**

15 556. Instacart's acts and practices, as described above, constitute unfair business practices
16 within the meaning of Wash. Rev. Code Ann. § 19.86.020. Such acts and practices were against
17 established public policy and were pursued to attain an unjustified monetary advantage for
18 Instacart by creating personal disadvantage and hardship to its employees.

19 557. Instacart's conduct does not benefit workers or competition. Indeed, the injury to Plaintiff
20 as a result of Instacart's conduct is far greater than any alleged countervailing benefit. Plaintiff
21 could not have reasonably avoided the injury she suffered.

22 558. The gravity of the consequences of Instacart's conduct as described above outweighs any
23 justification, motive or reason therefore, is immoral, unethical, oppressive, unscrupulous, and is
24 contrary to the public welfare since it transgresses civil statutes of the State of Washington
25 designed to protect workers from exploitation.

26 559. Plaintiff has suffered injury in fact and lost money and/or property as a result of
27 Instacart's unfair business acts and practices by, inter alia, being deprived of compensation for
28 all hours worked including overtime and being paid at a rate substantially less than the \$25 per
hour that Instacart advertised she could make.

1 560. By and through its unfair and/or deceptive practices and acts described herein, Instacart
2 has obtained valuable services from Plaintiff and has deprived Plaintiff of valuable rights and
3 benefits guaranteed by law, all to her detriment. Plaintiff seeks an order of the Court awarding
4 restitution, injunctive relief and all other relief allowed under Wash. Rev. Code Ann. §
5 19.86.090, including reasonable attorneys' fees.

6 561. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
7 situated individuals who have worked for Instacart in Washington.

8 FORTY-EIGHTH CAUSE OF ACTION
9 WASHINGTON: FRAUD/INTENTIONAL MISREPRESENTATION
10 (Washington Common Law)

11 562. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
12 forth in detail herein.

13 563. Instacart represented to Plaintiff that she, alone, was responsible for the performance of
14 her work and that she, alone, determined the method, details, and means of performing her work.
15 These representations were, in fact, false.

16 564. Intacart also represented Plaintiff was an independent contractor not entitled to the
17 compensation and reimbursements set forth above, which was, in fact, also false.

18 565. Instacart, at the time it made the representations set forth above, knew the falsehood of
19 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
20 reasonably relied upon the truth of the aforementioned statements and representations in entering
21 into and continuing in an employment relationship with Instacart according to the terms
22 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

23 566. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
24 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
25 not limited to unpaid wages, including overtime.

26 567. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
27 situated individuals who have worked for Instacart in Washington.

28 FORTY-NINTH CAUSE OF ACTION
WASHINGTON: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
ADVANTAGE
(Washington Common Law)

568. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth

1 in detail herein.

2 569. As alleged above, on or around September 28, 2016, Instacart renamed the “tip” option in
3 the payment screen of its mobile app to “service.”

4 570. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff’s income came
5 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

6 571. Instacart intentionally and maliciously recharacterized the tip as a “service” amount but
7 kept it optional in order to mislead and confuse customers into believing that the extra
8 compensation they chose to add to their bill was going to the shoppers, when in fact the money
9 went directly to Instacart.

10 572. Additionally, Instacart intentionally and maliciously created an “additional tip” option to
11 mislead customers into believing that an “additional tip” would be duplicative of any
12 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
13 money customers would otherwise have chosen to give directly to their shoppers.

14 573. At the time the customer entered the payment screen, an economic relationship had
15 formed between the customer and shopper.

16 574. At the time when the customer entered the payment screen, there was a high probability of
17 future economic benefit to the shopper in the form of tips.

18 575. Instacart’s changes to the app’s tipping structure were an independent wrongful act in
19 violation of the FLSA’s prohibition of invalid tip-pools.

20 576. At all times, Instacart had knowledge of the economic relationship formed between
21 Plaintiff and the customers.

22 577. At all times, Instacart acted intentionally and maliciously to disrupt the economic
23 relationship between Plaintiff and the customers by interfering with Plaintiff’s enjoyment of an
24 expectancy of tips from customers.

25 578. Instacart’s change in its tipping structure caused actual disruption of the economic
26 relationship between Plaintiff and the customers.

27 579. As a direct, proximate, and foreseeable result of Defendant’s intentional acts and conduct,
28 Plaintiff has suffered, and will continue to suffer, economic injuries.

580. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
situated individuals who have worked for Instacart in Washington.

FIFTIETH CAUSE OF ACTION
WASHINGTON: CONVERSION
(Washington Common Law)

1
2
3 581. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth
4 in detail herein.

5 582. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
6 Plaintiff had a right to possess the full amount of tips given to her by customers.

7 583. As alleged above, the optional “service” amount paid by customers was actually a tip.

8 584. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
9 Plaintiff by customers.

10 585. Plaintiff suffered economic harm in the amount of the tips misappropriated by
11 Defendants.

12 586. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
13 situated individuals who have worked for Instacart in Washington.

FIFTY-FIRST CAUSE OF ACTION
WASHINGTON: UNPAID WAGES FOR MEAL AND REST PERIODS
(Wash. Admin. Code § 296-126-092)

14
15 587. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
16 forth in detail herein.

17 588. Plaintiff was not properly provided with meal or rest periods as required by Washington
18 Administrative Code § 296-126-092.

19 589. Instacart required Plaintiff to work for periods of more than 5 hours per day with no
20 provision of a meal period of at least 30 minutes. Instacart required Plaintiff to work for periods
21 of more than 10 hours per day with no provision of a second meal period of at least 30 minutes.

22 590. To the extent Instacart provided Plaintiff with a break, the break was unpaid and less than
23 30 minutes.

24 591. Instacart required Plaintiff to work for periods of more than 4 hours per day with no
25 provision of a rest period of at least 10 minutes.

26 592. As a result of Instacart’s conduct, Plaintiff is entitled to all monetary and other damages
27 permitted under the Revised Code of Washington and any other applicable law, including, but
28 not limited to, the full amount of unpaid wages for meal and/or rest breaks, and costs including
reasonable attorney’s fees, pursuant to Wash. Rev. Code Ann. § 49.46.090.

1 593. This claim is brought by Plaintiff Lester on behalf of herself and a class of similarly
2 situated individuals who have worked for Instacart in Washington.

3 **INDIANA CLASS ACTION ALLEGATIONS**

4 594. Plaintiff Raines asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
5 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
6 delivery persons who have worked in Indiana anytime from December 1, 2014 to the present
7 (“Indiana Class”), claims under Indiana state law, specifically, the fifty-two through fifty-seventh
8 causes of action.

9 595. Plaintiff Raines and other Indiana Class members have uniformly been deprived
10 reimbursement of their necessary business expenditures and minimum and overtime wages.

11 596. The members of the Indiana Class are so numerous that joinder of all members would be
12 impracticable.

13 597. There are questions of law and fact common to the members of the Indiana Class that
14 predominate over any questions affecting only individual members, including:

15 a. Whether Indiana Class members have been required to follow uniform procedures
16 and policies regarding their work for Instacart;

17 b. Whether the work performed by Indiana Class members—providing grocery
18 shopping and/or delivery service to customers—is within Instacart’s usual course of
19 business, and whether such service is fully integrated into Instacart’s business;

20 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
21 violation of Illinois law;

22 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
23 course of their employment;

24 e. Whether Defendants’ conduct violates the Indiana Minimum Wage Law, Ind.
25 Code Ann. § 22-2-2-4;

26 f. Whether Defendants’ conduct otherwise violates Indiana law; and

27 g. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,
28 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
nature of such relief.

598. Named Plaintiff Raines is a member of the Indiana Class who suffered damages as a

1 result of Defendant's conduct and actions alleged herein.

2 599. Plaintiff Raines claims are typical of the claims of the members of the Indiana Class.
3 Plaintiff Raines has no interests antagonistic to those of the Indiana Class and is not subject to
4 any unique defenses.

5 600. Plaintiff Raines will fairly and adequately represent and protect the interests of all
6 members of the Indiana Class and has retained attorneys experienced in class action and complex
7 litigation.

8 601. The questions of law and fact common to the members of the Indiana Class predominate
9 over any questions affecting only individual members, including legal and factual issues relating
10 to liability and damages.

11 602. A class action is superior to all other available methods for the fair and efficient
12 adjudication of this controversy for, inter alia, the following reasons:

- 13 a. It is economically impractical for members of the Indiana Class to prosecute
14 individual actions;
- 15 b. The Indiana Class is readily definable;
- 16 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
17 and
- 18 d. A class action will enable claims to be handled in an orderly and expeditious
19 manner, will save time and expense, and will ensure uniformity of decisions.

20 603. Plaintiff Raines does not anticipate any difficulty in the management of this litigation.

21 FIFTY-SECOND CAUSE OF ACTION
22 INDIANA: UNPAID WAGES
23 (Ind. Code Ann. §§ 22-2-5-1 & 22-2-5-2)

24 604. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
25 forth in detail herein.

26 605. Instacart has violated and continues to violate the Indiana Code §§ 22-2-5-1 and 22-2-5-2
27 by willfully refusing to pay wages – including the benefits described above – due and payable to
28 Plaintiff. As more fully set forth above, Plaintiff was not compensated for non-productive hours
worked. Additionally, Plaintiff worked well in excess of 40 hours per week without being
appropriately compensated for hours worked in excess of 40 hours per week. These unpaid
hours include overtime that should have been paid.

1 606. Equally, Instacart denied that any wages due for non-productive work and work in excess
2 of 40 hours per week were due to be paid to Plaintiff even though Instacart knew that under any
3 set of circumstances or facts, Plaintiff was entitled to be paid for each hour that he worked.
4 Instacart has falsely denied and refused and continue to deny falsely and refuse payment for
5 purposes of securing a material economic benefit to themselves and with the intent to annoy,
6 harass, oppress, hinder, and defraud Plaintiff.

7 607. This claim is brought by Plaintiff Raines on behalf of himself and a class of similarly
8 situated individuals who have worked for Instacart in Indiana.

9
10 FIFTY-THIRD CAUSE OF ACTION
11 INDIANA: FAILURE TO PAY MINIMUM WAGES
12 (Ind. Code Ann. § 22-2-2-4)

13 608. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
14 forth in detail herein.

15 609. Instacart, pursuant to uniform policies and practices, failed to compensate Plaintiff at a
16 rate not less than the minimum wage for all hours worked in violation of the Indiana Minimum
17 Wage Law.

18 610. As a result of Instacart's conduct, Plaintiff is entitled to all monetary and other damages
19 permitted under the Indiana Minimum Wage Law.

20 611. This claim is brought by Plaintiff Raines on behalf of himself and a class of similarly
21 situated individuals who have worked for Instacart in Indiana.

22 FIFTY-FOURTH CAUSE OF ACTION
23 INDIANA: FAILURE TO PAY OVERTIME WAGES
24 (Ind. Code Ann. § 22-2-2-4)

25 612. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
26 forth in detail herein.

27 613. Plaintiff was expected to regularly work in excess of forty (40) hours per week. Plaintiff
28 regularly worked in excess of 40 hours per week. At all relevant times, Instacart failed to pay
Plaintiff wages when due, as required by Ind. Code Ann. § 22-2-2-4.

Such a pattern, practice and uniform administration of a corporate policy designed to
deprive employees of compensation, as described herein, is unlawful and creates an entitlement
to recovery by Plaintiff, in a civil action, for the unpaid balance of the amount of overtime and
other compensation, including interest thereon, an additional amount in liquidated damages, and

1 reasonable attorneys' fees and costs of suit, as well as the assessment of any other statutory
2 penalties.

3 615. This claim is brought by Plaintiff Raines on behalf of himself and a class of similarly
4 situated individuals who have worked for Instacart in Indiana.

5 FIFTY-FIFTH CAUSE OF ACTION
6 INDIANA: FRAUD/INTENTIONAL MISREPRESENTATION
7 (Indiana Common Law)

8 616. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
9 forth in detail herein.

10 617. Instacart represented to Plaintiff that he, alone, was responsible for the performance of
11 her work and that he, alone, determined the method, details, and means of performing his work.
12 These representations were, in fact, false.

13 618. Instacart also represented Plaintiff was an independent contractor not entitled to the
14 compensation and reimbursements set forth above, which was, in fact, also false.

15 619. Instacart, at the time it made the representations set forth above, knew the falsehood of
16 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
17 reasonably relied upon the truth of the aforementioned statements and representations in entering
18 into and continuing in an employment relationship with Instacart according to the terms
19 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

20 620. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
21 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
22 not limited to unpaid wages, including overtime.

23 621. This claim is brought by Plaintiff Raines on behalf of himself and a class of similarly
24 situated individuals who have worked for Instacart in Indiana.

25 FIFTY-SIXTH CAUSE OF ACTION
26 INDIANA: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
27 ADVANTAGE
28 (Indiana Common Law)

622. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
in detail herein.

623. As alleged above, on or around September 28, 2016, Instacart renamed the "tip" option in
the payment screen of its mobile app to "service."

1 624. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff's income came
2 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

3 625. Instacart intentionally and maliciously recharacterized the tip as a "service" amount but
4 kept it optional in order to mislead and confuse customers into believing that the extra
5 compensation they chose to add to their bill was going to the shoppers, when in fact the money
6 went directly to Instacart.

7 626. Additionally, Instacart intentionally and maliciously created an "additional tip" option to
8 mislead customers into believing that an "additional tip" would be duplicative of any
9 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
10 money customers would otherwise have chosen to give directly to their shoppers.

11 627. At the time the customer entered the payment screen, an economic relationship had
12 formed between the customer and shopper.

13 628. At the time when the customer entered the payment screen, there was a high probability of
14 future economic benefit to the shopper in the form of tips.

15 629. Instacart's changes to the app's tipping structure were an independent wrongful act in
16 violation of the FLSA's prohibition of invalid tip-pools.

17 630. At all times, Instacart had knowledge of the economic relationship formed between
18 Plaintiff and the customers.

19 631. At all times, Instacart acted intentionally and maliciously to disrupt the economic
20 relationship between Plaintiff and the customers by interfering with Plaintiff's enjoyment of an
21 expectancy of tips from customers.

22 632. Instacart's change in its tipping structure caused actual disruption of the economic
23 relationship between Plaintiff and the customers.

24 633. As a direct, proximate, and foreseeable result of Defendant's intentional acts and conduct,
25 Plaintiff has suffered, and will continue to suffer, economic injuries.

26 634. This claim is brought by Plaintiff Raines on behalf of himself and a class of similarly
27 situated individuals who have worked for Instacart in Indiana.

28
FIFTY-SEVENTH CAUSE OF ACTION
INDIANA: CONVERSION
(Indiana Common Law)

635. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth

1 in detail herein.

2 636. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
3 Plaintiff had a right to possess the full amount of tips given to him by customers.

4 637. As alleged above, the optional “service” amount paid by customers was actually a tip.

5 638. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
6 Plaintiff by customers.

7 639. Plaintiff suffered economic harm in the amount of the tips misappropriated by
8 Defendants.

9 640. This claim is brought by Plaintiff Raines on behalf of himself and a class of similarly
10 situated individuals who have worked for Instacart in Indiana.

11 **TEXAS CLASS ACTION ALLEGATIONS**

12 641. Plaintiff Boven asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
13 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
14 delivery persons who have worked in Texas anytime from December 1, 2014 to the present
15 (“Texas Class”), claims under Texas state law, specifically, the fifty-eighth through sixty-one
16 causes of action.

17 642. Plaintiff Boven and other Texas Class members have uniformly been deprived
18 reimbursement of their necessary business expenditures and minimum and overtime wages.

19 643. The members of the Texas Class are so numerous that joinder of all members would be
20 impracticable.

21 644. There are questions of law and fact common to the members of the Texas Class that
22 predominate over any questions affecting only individual members, including:

- 23 a. Whether Texas Class members have been required to follow uniform procedures
24 and policies regarding their work for Instacart;
- 25 b. Whether the work performed by Texas Class members—providing grocery
26 shopping and/or delivery service to customers—is within Instacart’s usual course of
27 business, and whether such service is fully integrated into Instacart’s business;
- 28 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
violation of Illinois law;
- d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the

1 course of their employment;

2 e. Whether Defendants' conduct violates the Texas Lab. Code §§ 62.051 and 62.201;

3 f. Whether Defendants' conduct otherwise violates Texas law; and

4 g. Whether, as a result of Defendants' misconduct, Plaintiff is entitled to damages,
5 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
6 nature of such relief.

7 645. Named Plaintiff Boven is a member of the Texas Class who suffered damages as a result
8 of Defendant's conduct and actions alleged herein.

9 646. Plaintiff Boven's claims are typical of the claims of the members of the Texas Class.
10 Plaintiff Boven has no interests antagonistic to those of the Texas Class and is not subject to any
11 unique defenses.

12 647. Plaintiff Boven will fairly and adequately represent and protect the interests of all
13 members of the Texas Class and has retained attorneys experienced in class action and complex
14 litigation.

15 648. The questions of law and fact common to the members of the Texas Class predominate
16 over any questions affecting only individual members, including legal and factual issues relating
17 to liability and damages.

18 649. A class action is superior to all other available methods for the fair and efficient
19 adjudication of this controversy for, inter alia, the following reasons:

20 a. It is economically impractical for members of the Texas Class to prosecute
21 individual actions;

22 b. The Texas Class is readily definable;

23 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
24 and

25 d. A class action will enable claims to be handled in an orderly and expeditious
26 manner, will save time and expense, and will ensure uniformity of decisions.

27 650. Plaintiff Boven does not anticipate any difficulty in the management of this litigation.

28
FIFTY-EIGHTH CAUSE OF ACTION
TEXAS: FAILURE TO PAY MINIMUM WAGES
(Texas Lab. Code §§ 62.051 & 62.201 *et seq.*)

1 651. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
2 forth in detail herein.

3 652. Instacart, pursuant to uniform policies and practices, failed to compensate Plaintiff at a
4 rate not less than the minimum wage for all hours worked in violation of the Texas Labor Code.

5 653. As a result of Instacart's conduct, Plaintiff is entitled to all monetary and other damages
6 permitted under the Texas Labor Code, including, but not limited to, the amount of the unpaid
7 wages plus an additional equal amount as liquidated damages, as well as reasonable attorney's
8 fees and costs.

9 654. This claim is brought by Plaintiff Boven on behalf of himself and a class of similarly
10 situated individuals who have worked for Instacart in Texas.

11 FIFTY-NINTH CAUSE OF ACTION
12 TEXAS: FRAUD/INTENTIONAL MISREPRESENTATION
13 (Texas Common Law)

14 655. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
15 forth in detail herein.

16 656. Instacart represented to Plaintiff that he, alone, was responsible for the performance of
17 her work and that she, alone, determined the method, details, and means of performing her work.
18 These representations were, in fact, false.

19 657. Intacart also represented Plaintiff was an independent contractor not entitled to the
20 compensation and reimbursements set forth above, which was, in fact, also false.

21 658. Instacart, at the time it made the representations set forth above, knew the falsehood of
22 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
23 reasonably relied upon the truth of the aforementioned statements and representations in entering
24 into and continuing in an employment relationship with Instacart according to the terms
25 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

26 659. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
27 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
28 not limited to unpaid wages, including overtime.

660. This claim is brought by Plaintiff Boven on behalf of himself and a class of similarly
situated individuals who have worked for Instacart in Texas.

SIXTIETH CAUSE OF ACTION

1 TEXAS: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
2 (Texas Common Law)

3 661. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
4 in detail herein.

5 662. As alleged above, on or around September 28, 2016, Instacart renamed the “tip” option in
6 the payment screen of its mobile app to “service.”

7 663. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff’s income came
8 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

9 664. Instacart intentionally and maliciously recharacterized the tip as a “service” amount but
10 kept it optional in order to mislead and confuse customers into believing that the extra
11 compensation they chose to add to their bill was going to the shoppers, when in fact the money
12 went directly to Instacart.

13 665. Additionally, Instacart intentionally and maliciously created an “additional tip” option to
14 mislead customers into believing that an “additional tip” would be duplicative of any
15 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
16 money customers would otherwise have chosen to give directly to their shoppers.

17 666. At the time the customer entered the payment screen, an economic relationship had
18 formed between the customer and shopper.

19 667. At the time when the customer entered the payment screen, there was a high probability of
20 future economic benefit to the shopper in the form of tips.

21 668. Instacart’s changes to the app’s tipping structure were an independent wrongful act in
22 violation of the FLSA’s prohibition of invalid tip-pools.

23 669. At all times, Instacart had knowledge of the economic relationship formed between
24 Plaintiff and the customers.

25 670. At all times, Instacart acted intentionally and maliciously to disrupt the economic
26 relationship between Plaintiff and the customers by interfering with Plaintiff’s enjoyment of an
27 expectancy of tips from customers.

28 671. Instacart’s change in its tipping structure caused actual disruption of the economic
relationship between Plaintiff and the customers.

672. As a direct, proximate, and foreseeable result of Defendant’s intentional acts and conduct,
Plaintiff has suffered, and will continue to suffer, economic injuries.

1 673. This claim is brought by Plaintiff Boven on behalf of himself and a class of similarly
2 situated individuals who have worked for Instacart in Texas

3 **SIXTY-FIRST CAUSE OF ACTION**
4 **TEXAS: CONVERSION**
(Texas Common Law)

5 674. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth
6 in detail herein.

7 675. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
8 Plaintiff had a right to possess the full amount of tips given to him by customers.

9 676. As alleged above, the optional “service” amount paid by customers was actually a tip.

10 677. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
11 Plaintiff by customers.

12 678. Plaintiff suffered economic harm in the amount of the tips misappropriated by
13 Defendants.

14 679. This claim is brought by Plaintiff Boven on behalf of himself and a class of similarly
15 situated individuals who have worked for Instacart in Texas.

16 **GEORGIA CLASS ACTION ALLEGATIONS**

17 680. Plaintiff Nosek asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
18 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
19 delivery persons who have worked in Georgia anytime from December 1, 2014 to the present
20 (“Georgia Class”), claims under Georgia state law, specifically, the sixty-second through sixty-
21 fifth causes of action.

22 681. Plaintiff Nosek and other Georgia Class members have uniformly been deprived
23 reimbursement of their necessary business expenditures and minimum and overtime wages.

24 682. The members of the Georgia Class are so numerous that joinder of all members would be
25 impracticable.

26 683. There are questions of law and fact common to the members of the Georgia Class that
27 predominate over any questions affecting only individual members, including:

- 28 a. Whether Georgia Class members have been required to follow uniform procedures and policies regarding their work for Instacart;
- b. Whether the work performed by Georgia Class members—providing grocery

1 shopping and/or delivery service to customers—is within Instacart’s usual course of
2 business, and whether such service is fully integrated into Instacart’s business;

3 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
4 violation of Illinois law;

5 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
6 course of their employment;

7 e. Whether Defendants’ conduct violates the Georgia Minimum Wage Law, Ga.
8 Code Ann. §§ 34-4-3 and 34-4-6;

9 f. Whether Defendants’ conduct otherwise violates Georgia law; and

10 g. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,
11 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
12 nature of such relief.

13 684. Named Plaintiff Nosek is a member of the Georgia Class who suffered damages as a
14 result of Defendant’s conduct and actions alleged herein.

15 685. Plaintiff Nosek’s claims are typical of the claims of the members of the Georgia Class.
16 Plaintiff Nosek has no interests antagonistic to those of the Georgia Class and is not subject to
17 any unique defenses.

18 686. Plaintiff Nosek will fairly and adequately represent and protect the interests of all
19 members of the Georgia Class and has retained attorneys experienced in class action and complex
20 litigation.

21 687. The questions of law and fact common to the members of the Georgia Class predominate
22 over any questions affecting only individual members, including legal and factual issues relating
23 to liability and damages.

24 688. A class action is superior to all other available methods for the fair and efficient
25 adjudication of this controversy for, inter alia, the following reasons:

26 a. It is economically impractical for members of the Georgia Class to prosecute
27 individual actions;

28 b. The Georgia Class is readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
and

1 d. A class action will enable claims to be handled in an orderly and expeditious
2 manner, will save time and expense, and will ensure uniformity of decisions.

3 689. Plaintiff Nosek does not anticipate any difficulty in the management of this litigation.

4 SIXTY-SECOND CAUSE OF ACTION
5 GEORGIA: FAILURE TO PAY MINIMUM WAGES
6 (Ga. Code Ann. §§ 34-4-3 & 34-4-6)

7 690. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
8 forth in detail herein.

9 691. Instacart, pursuant to uniform policies and practices, failed to compensate Plaintiff at a
10 rate not less than the minimum wage for all hours worked in violation of Georgia law.

11 692. As a result of Instacart's conduct, Plaintiff is entitled to all monetary and other damages
12 permitted under the Georgia Minimum Wage Law, Ga. Code Ann. §§ 34-4-3, including, but not
13 limited to, the amount of the unpaid wages plus an additional equal amount as liquidated
14 damages, as well as reasonable attorney's fees and costs.

15 693. This claim is brought by Plaintiff Nosek on behalf of herself and a class of similarly
16 situated individuals who have worked for Instacart in Georgia.

17 SIXTY-THIRD CAUSE OF ACTION
18 GEORGIA: FRAUD/INTENTIONAL MISREPRESENTATION
19 (Georgia Common Law)

20 694. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
21 forth in detail herein.

22 695. Instacart represented to Plaintiff that she, alone, was responsible for the performance of
23 her work and that she, alone, determined the method, details, and means of performing her work.
24 These representations were, in fact, false.

25 696. Intacart also represented Plaintiff was an independent contractor not entitled to the
26 compensation and reimbursements set forth above, which was, in fact, also false.

27 697. Instacart, at the time it made the representations set forth above, knew the falsehood of
28 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
reasonably relied upon the truth of the aforementioned statements and representations in entering
into and continuing in an employment relationship with Instacart according to the terms
established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

1 698. As a direct, proximate and foreseeable result of Instacart’s misrepresentations and
2 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
3 not limited to unpaid wages, including overtime.

4 699. This claim is brought by Plaintiff Nosek on behalf of herself and a class of similarly
5 situated individuals who have worked for Instacart in Georgia.

6 SIXTY-FOURTH CAUSE OF ACTION
7 GEORGIA: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
8 ADVANTAGE
9 (Georgia Common Law)

10 700. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
11 in detail herein.

12 701. As alleged above, on or around September 28, 2016, Instacart renamed the “tip” option in
13 the payment screen of its mobile app to “service.”

14 702. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff’s income came
15 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

16 703. Instacart intentionally and maliciously recharacterized the tip as a “service” amount but
17 kept it optional in order to mislead and confuse customers into believing that the extra
18 compensation they chose to add to their bill was going to the shoppers, when in fact the money
19 went directly to Instacart.

20 704. Additionally, Instacart intentionally and maliciously created an “additional tip” option to
21 mislead customers into believing that an “additional tip” would be duplicative of any
22 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
23 money customers would otherwise have chosen to give directly to their shoppers.

24 705. At the time the customer entered the payment screen, an economic relationship had
25 formed between the customer and shopper.

26 706. At the time when the customer entered the payment screen, there was a high probability of
27 future economic benefit to the shopper in the form of tips.

28 707. Instacart’s changes to the app’s tipping structure were an independent wrongful act in
violation of the FLSA’s prohibition of invalid tip-pools.

708. At all times, Instacart had knowledge of the economic relationship formed between
Plaintiff and the customers.

1 709. At all times, Instacart acted intentionally and maliciously to disrupt the economic
2 relationship between Plaintiff and the customers by interfering with Plaintiff's enjoyment of an
3 expectancy of tips from customers.

4 710. Instacart's change in its tipping structure caused actual disruption of the economic
5 relationship between Plaintiff and the customers.

6 711. As a direct, proximate, and foreseeable result of Defendant's intentional acts and conduct,
7 Plaintiff has suffered, and will continue to suffer, economic injuries.

8 712. This claim is brought by Plaintiff Nosek on behalf of herself and a class of similarly
9 situated individuals who have worked for Instacart in Georgia.

10 **SIXTY-FIFTH CAUSE OF ACTION**
11 **GEORGIA: CONVERSION**
12 **(Georgia Common Law)**

13 713. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
14 in detail herein.

15 714. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
16 Plaintiff had a right to possess the full amount of tips given to her by customers.

17 715. As alleged above, the optional "service" amount paid by customers was actually a tip.

18 716. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
19 Plaintiff by customers.

20 717. Plaintiff suffered economic harm in the amount of the tips misappropriated by
21 Defendants.

22 718. This claim is brought by Plaintiff Nosek on behalf of herself and a class of similarly
23 situated individuals who have worked for Instacart in Georgia.

24 **OREGON CLASS ACTION ALLEGATIONS**

25 719. Plaintiff Richie asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
26 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
27 delivery persons who have worked in Oregon from December 1, 2010 to the present ("Oregon
28 Class"), claims under Oregon state law, specifically, the sixty-sixth through seventy-second
causes of action.

720. Plaintiff Richie and other Oregon Class members have uniformly been deprived
reimbursement of their necessary business expenditures and minimum and overtime wages.

1 721. The members of the Oregon Class are so numerous that joinder of all members would be
2 impracticable.

3 722. There are questions of law and fact common to the members of the Oregon Class that
4 predominate over any questions affecting only individual members, including:

5 a. Whether Oregon Class members have been required to follow uniform procedures
6 and policies regarding their work for Instacart;

7 b. Whether the work performed by Oregon Class members—providing grocery
8 shopping and/or delivery service to customers—is within Instacart’s usual course of
9 business, and whether such service is fully integrated into Instacart’s business;

10 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
11 violation of Illinois law;

12 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
13 course of his employment;

14 e. Whether Defendants’ conduct violates the Oregon Revised Statutes §§ 652.120,
15 652.200, 653.025, and 653.261;

16 f. Whether Defendants’ conduct violates Rule 839-020-0050 of the Oregon
17 Administrative Rules;

18 g. Whether Defendants’ conduct otherwise violates Oregon law; and

19 h. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,
20 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
21 nature of such relief.

22 723. Named Plaintiff Richie is a member of the Oregon Class who suffered damages as a result
23 of Defendant’s conduct and actions alleged herein.

24 724. Plaintiff Richie’s claims are typical of the claims of the members of the Oregon Class.
25 Plaintiff Richie has no interests antagonistic to those of the Oregon Class and is not subject to any
26 unique defenses.

27 725. Plaintiff Richie will fairly and adequately represent and protect the interests of all
28 members of the Oregon Class and has retained attorneys experienced in class action and complex
litigation.

726. The questions of law and fact common to the members of the Oregon Class predominate

1 over any questions affecting only individual members, including legal and factual issues relating
2 to liability and damages.

3 727. A class action is superior to all other available methods for the fair and efficient
4 adjudication of this controversy for, inter alia, the following reasons:

5 a. It is economically impractical for members of the Oregon Class to prosecute
6 individual actions;

7 b. The Oregon Class is readily definable;

8 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
9 and

10 d. A class action will enable claims to be handled in an orderly and expeditious
11 manner, will save time and expense, and will ensure uniformity of decisions.

12 728. Plaintiff Richie does not anticipate any difficulty in the management of this litigation.

13 SIXTY-SIXTH CAUSE OF ACTION
14 OREGON: UNPAID WAGES
15 (Or. Rev. Stat. Ann. §§ 652.120 & 652.200)

16 729. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
17 in detail herein.

18 730. Defendants, and each of them, have violated and continue to violate Oregon Revised
19 Statutes §§ 652.120 and 652.200 by willfully refusing to pay wages – including the benefits
20 described above – due and payable to Plaintiff. As more fully set forth above, Plaintiff is not
21 compensated for non-productive hours worked. Additionally, Plaintiff works and has worked
22 well in excess of 8 hours a day or 40 hours per week without being appropriately compensated
23 for hours worked in excess of 40 hours per week and/or 8 hours per day. These unpaid hours
24 include overtime that should have been paid.

25 731. Equally, Defendants denied that any wages due for non-productive work and work in
26 excess of 40 hours per week and/or 8 hours per day were due to be paid to Plaintiff even though
27 each Defendants knew that under any set of circumstances or facts, Plaintiff was entitled to be
28 paid for each hour that they worked. Defendants have falsely denied and refused and continue to
deny falsely and refuse payment for purposes of securing a material economic benefit to
themselves and with the intent to annoy, harass, oppress, hinder, and defraud Plaintiff.

732. This claim is brought by Plaintiff Richie on behalf of himself and a class of similarly

1 situated individuals who have worked for Instacart in Oregon.

2 SIXTY-SEVENTH CAUSE OF ACTION
3 OREGON: FAILURE TO PAY OVERTIME WAGES
(Or. Rev. Stat. Ann. §§ 653.261 & 653.055)

4 733. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
5 in detail herein.

6 734. Plaintiff has been and is expected to regularly work in excess of eight (8) hours per day
7 and/or forty (40) hours per week. Plaintiff has regularly worked and continue to regularly work
8 in excess of 8 hours per day or 40 hours per week.

9 735. At all relevant times, Defendants failed to pay Plaintiff and all persons similarly situated
10 wages when due, as required by Or. Rev. Stat. Ann. §§ 653.261 & 653.055.

11 736. Such a pattern, practice and uniform administration of a corporate policy designed to
12 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
13 to recovery by the Plaintiff, in a civil action, for the unpaid balance of the amount of overtime
14 and other compensation, including interest thereon, civil penalties, including, but not limited to,
15 penalties available under Oregon Revised Statutes § 652.150 and reasonable attorneys' fees and
16 costs of suit, as well as the assessment of any other statutory penalties, against Defendants.

17 737. This claim is brought by Plaintiff Richie on behalf of himself and a class of similarly
18 situated individuals who have worked for Instacart in Oregon.

19 SIXTY-EIGHTH CAUSE OF ACTION
20 OREGON: FAILURE TO PAY MINIMUM WAGES
(Or. Rev. Stat. Ann. §§ 653.025 & 653.055)

21 738. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
22 herein.

23 739. Defendants, and each of them, pursuant to uniform policies and practices, failed to
24 compensate Plaintiff at a rate not less than the minimum wage for all hours worked in violation of
25 the Oregon Revised Statutes § 653.025.

26 740. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
27 permitted under the Oregon Revised Statutes and any other applicable law, including, but not
28 limited to, civil penalties pursuant to Oregon Revised Statutes § 652.150.

741. This claim is brought by Plaintiff Richie on behalf of themselves and a class of similarly
situated individuals who have worked for Instacart in Oregon.

SIXTY-NINTH CAUSE OF ACTION
OREGON: FAILURE TO PAY WAGES FOR MEAL PERIODS AND REST PERIODS
(Or. Rev. Stat. Ann. §§ 653.025; Or. Admin. R. 839-020-0050)

742. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully herein.

743. Defendants have required and continue to require Plaintiff to work for periods of more than 6 hours per day with no provision of a meal period of at least 30 minutes.

744. Defendants have required and continue to require Plaintiff to work for periods of more than 8 hours per day with no provision of a second meal period of at least 30 minutes.

745. Defendants have required and continue to require Plaintiff to work for periods of more than 4 hours per day with no provision of a rest period of at least 10 minutes.

746. Plaintiff was not properly provided with meal or rest periods as required by Oregon Revised Statutes § 653.025, and Oregon Administrative Rules, Rule 839-020-0050..

747. As a result of Defendants’ conduct, Plaintiff is entitled to all monetary and other damages permitted under the Oregon Revised Statutes and any other applicable law, including, but not limited to, civil penalties pursuant to Oregon Revised Statutes § 652.150.

748. This claim is brought by Plaintiff Richie on behalf of himself and a class of similarly situated individuals who have worked for Instacart in Oregon.

SEVENTIETH CAUSE OF ACTION
OREGON: FRAUD/INTENTIONAL MISREPRESENTATION
(Oregon Common Law)

749. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth in detail herein.

750. Instacart represented to Plaintiff that he, alone, was responsible for the performance of her work and that he, alone, determined the method, details, and means of performing his work. These representations were, in fact, false.

751. Intacart also represented Plaintiff was an independent contractor not entitled to the compensation and reimbursements set forth above, which was, in fact, also false.

752. Instacart, at the time it made the representations set forth above, knew the falsehood of these representations and intended to, and did, induce Plaintiff’s reliance thereupon. Plaintiff reasonably relied upon the truth of the aforementioned statements and representations in entering

1 into and continuing in an employment relationship with Instacart according to the terms
2 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

3 753. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
4 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
5 not limited to unpaid wages, including overtime.

6 754. This claim is brought by Plaintiff Richie on behalf of himself and a class of similarly
7 situated individuals who have worked for Instacart in Oregon.

8 SEVENTY-FIRST CAUSE OF ACTION
9 OREGON: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
10 ADVANTAGE
11 (Oregon Common Law)

12 755. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
13 in detail herein.

14 756. As alleged above, on or around September 28, 2016, Instacart renamed the "tip" option in
15 the payment screen of its mobile app to "service."

16 757. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff's income came
17 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

18 758. Instacart intentionally and maliciously recharacterized the tip as a "service" amount but
19 kept it optional in order to mislead and confuse customers into believing that the extra
20 compensation they chose to add to their bill was going to the shoppers, when in fact the money
21 went directly to Instacart.

22 759. Additionally, Instacart intentionally and maliciously created an "additional tip" option to
23 mislead customers into believing that an "additional tip" would be duplicative of any
24 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
25 money customers would otherwise have chosen to give directly to their shoppers.

26 760. At the time the customer entered the payment screen, an economic relationship had
27 formed between the customer and shopper.

28 761. At the time when the customer entered the payment screen, there was a high probability of
future economic benefit to the shopper in the form of tips.

762. Instacart's changes to the app's tipping structure were an independent wrongful act in
violation of the FLSA's prohibition of invalid tip-pools.

1 763. At all times, Instacart had knowledge of the economic relationship formed between
2 Plaintiff and the customers.

3 764. At all times, Instacart acted intentionally and maliciously to disrupt the economic
4 relationship between Plaintiff and the customers by interfering with Plaintiff's enjoyment of an
5 expectancy of tips from customers.

6 765. Instacart's change in its tipping structure caused actual disruption of the economic
7 relationship between Plaintiff and the customers.

8 766. As a direct, proximate, and foreseeable result of Defendant's intentional acts and conduct,
9 Plaintiff has suffered, and will continue to suffer, economic injuries.

10 767. This claim is brought by Plaintiff Richie on behalf of himself and a class of similarly
11 situated individuals who have worked for Instacart in Oregon.

12 SEVENTY-SECOND CAUSE OF ACTION
13 OREGON: CONVERSION
14 (Oregon Common Law)

15 768. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth
16 in detail herein.

17 769. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
18 Plaintiff had a right to possess the full amount of tips given to her by customers.

19 770. As alleged above, the optional "service" amount paid by customers was actually a tip.

20 771. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
21 Plaintiff by customers.

22 772. Plaintiff suffered economic harm in the amount of the tips misappropriated by
23 Defendants.

24 773. This claim is brought by Plaintiff Richie on behalf of himself and a class of similarly
25 situated individuals who have worked for Instacart in Oregon.

26 MASSACHUSETTS CLASS ACTION ALLEGATIONS

27 774. Plaintiff Kendrick asserts, pursuant to Rule 23 of the Federal Rules of Civil Procedure,
28 individually and on behalf of a class of other similarly situated Instacart shoppers, drivers and
delivery persons who have worked in Massachusetts anytime from December 1, 2013 to the
present ("Massachusetts Class"), claims under Massachusetts state law, specifically, the seventy-

1 third through seventy-seventh causes of action.

2 775. Plaintiff Kendrick and other Massachusetts Class members have uniformly been deprived
3 reimbursement of their necessary business expenditures and minimum and overtime wages.

4 776. The members of the Massachusetts Class are so numerous that joinder of all members
5 would be impracticable.

6 777. There are questions of law and fact common to the members of the Massachusetts Class
7 that predominate over any questions affecting only individual members, including:

8 a. Whether Massachusetts Class members have been required to follow uniform
9 procedures and policies regarding their work for Instacart;

10 b. Whether the work performed by Massachusetts Class members—providing
11 grocery shopping and/or delivery service to customers—is within Instacart’s usual course
12 of business, and whether such service is fully integrated into Instacart’s business;

13 c. Whether Defendants failed to pay Plaintiff for all hours of work performed in
14 violation of Illinois law;

15 d. Whether Defendants failed to reimburse Plaintiff for expenses incurred during the
16 course of their employment;

17 e. Whether Defendants’ conduct violates Chapter 151 of the Massachusetts
18 Annotated Laws, §§ 1, 1A, 1B, and 20;

19 f. Whether Defendants’ conduct otherwise violates Massachusetts law; and

20 g. Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to damages,
21 restitution, equitable relief and/or other damages and relief, and, if so, the amount and
22 nature of such relief.

23 778. Named Plaintiff Kendrick is a member of the Massachusetts Class who suffered damages
24 as a result of Defendant’s conduct and actions alleged herein.

25 779. Plaintiff Kendrick’s claims are typical of the claims of the members of the Massachusetts
26 Class. Plaintiff Kendrick has no interests antagonistic to those of the Massachusetts Class and is
27 not subject to any unique defenses.

28 780. Plaintiff Kendrick will fairly and adequately represent and protect the interests of all
members of the Massachusetts Class and has retained attorneys experienced in class action and
complex litigation.

1 781. The questions of law and fact common to the members of the Massachusetts Class
2 predominate over any questions affecting only individual members, including legal and factual
3 issues relating to liability and damages.

4 782. A class action is superior to all other available methods for the fair and efficient
5 adjudication of this controversy for, inter alia, the following reasons:

6 a. It is economically impractical for members of the Massachusetts Class to
7 prosecute individual actions;

8 b. The Massachusetts Class is readily definable;

9 c. Prosecution as a class action will eliminate the possibility of repetitious litigation;
10 and

11 d. A class action will enable claims to be handled in an orderly and expeditious
12 manner, will save time and expense, and will ensure uniformity of decisions.

13 783. Plaintiff Kendrick does not anticipate any difficulty in the management of this litigation.

14 SEVENTY-THIRD CAUSE OF ACTION
15 MASSACHUSETTS: FAILURE TO PAY OVERTIME WAGES
16 (Mass. Ann. Laws ch. 151, §§ 1A, 1B & 20)

17 784. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
18 in detail herein.

19 785. Plaintiff has been and are expected to regularly work in excess of forty (40) hours per
20 week. Plaintiff has regularly worked and continue to regularly work in excess 40 hours per week.

21 786. At all relevant times, Defendants failed to pay Plaintiff and all persons similarly situated
22 wages when due, as required by Mass. Ann. Laws ch. 151, §§ 1A, 1B, & 20.

23 787. Such a pattern, practice and uniform administration of a corporate policy designed to
24 deprive employees of compensation, as described herein, is unlawful and creates an entitlement
25 to recovery by the Plaintiff, in a civil action, for the unpaid balance of the amount of overtime
26 and other compensation, including interest thereon, reasonable attorneys' fees and costs of suit, as
27 well as treble damages for each day Plaintiff was uncompensated.

28 788. This claim is brought by Plaintiff Kendrick on behalf of himself and a class of similarly
situated individuals who have worked for Instacart in Massachusetts.

SEVENTY-FOURTH CAUSE OF ACTION
MASSACHUSETTS: FAILURE TO PAY MINIMUM WAGES
(Mass. Ann. Laws ch. 151, § 1 & 20)

1 789. Plaintiff realleges and incorporate the above allegations by reference as if set forth fully
2 herein.

3 790. Defendants, and each of them, pursuant to uniform policies and practices, failed to
4 compensate Plaintiff at a rate not less than the minimum wage for all hours worked in violation of
5 the Chapter 151 of Massachusetts Annotated Laws, including sections 1 and 20.

6 791. As a result of Defendants' conduct, Plaintiff is entitled to all monetary and other damages
7 permitted under the Massachusetts Annotated Laws and any other applicable law.

8 792. This claim is brought by Plaintiff Kendrick on behalf of himself and a class of similarly
9 situated individuals who have worked for Instacart in Massachusetts.

10 SEVENTY-FIFTH CAUSE OF ACTION
11 MASSACHUSETTS: FRAUD/INTENTIONAL MISREPRESENTATION
12 (Massachusetts Common Law)

13 793. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set
14 forth in detail herein.

15 794. Instacart represented to Plaintiff that he, alone, was responsible for the performance of
16 her work and that she, alone, determined the method, details, and means of performing her work.
17 These representations were, in fact, false.

18 795. Intacart also represented Plaintiff was an independent contractor not entitled to the
19 compensation and reimbursements set forth above, which was, in fact, also false.

20 796. Instacart, at the time it made the representations set forth above, knew the falsehood of
21 these representations and intended to, and did, induce Plaintiff's reliance thereupon. Plaintiff
22 reasonably relied upon the truth of the aforementioned statements and representations in entering
23 into and continuing in an employment relationship with Instacart according to the terms
24 established by Instacart. Plaintiff's reliance was a substantial factor in causing economic harm.

25 797. As a direct, proximate and foreseeable result of Instacart's misrepresentations and
26 fraudulent conduct, Plaintiff suffered concrete and identifiable economic injuries, including but
27 not limited to unpaid wages, including overtime.

28 798. This claim is brought by Plaintiff Kendrick on behalf of himself and a class of similarly
situated individuals who have worked for Instacart in Massachusetts.

SEVENTY-SIXTH CAUSE OF ACTION
MASSACHUSETTS: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC
ADVANTAGE

(Massachusetts Common Law)

1
2 799. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
3 in detail herein.

4 800. As alleged above, on or around September 28, 2016, Instacart renamed the “tip” option in
5 the payment screen of its mobile app to “service.”

6 801. Prior to the change in the tipping structure, 50 to 60 percent of Plaintiff’s income came
7 from tips. Since the change, Plaintiff has suffered a drastic decrease in tips received.

8 802. Instacart intentionally and maliciously recharacterized the tip as a “service” amount but
9 kept it optional in order to mislead and confuse customers into believing that the extra
10 compensation they chose to add to their bill was going to the shoppers, when in fact the money
11 went directly to Instacart.

12 803. Additionally, Instacart intentionally and maliciously created an “additional tip” option to
13 mislead customers into believing that an “additional tip” would be duplicative of any
14 discretionary payment they had already chosen to give. Instacart did so in order to appropriate the
15 money customers would otherwise have chosen to give directly to their shoppers.

16 804. At the time the customer entered the payment screen, an economic relationship had
17 formed between the customer and shopper.

18 805. At the time when the customer entered the payment screen, there was a high probability of
19 future economic benefit to the shopper in the form of tips.

20 806. Instacart’s changes to the app’s tipping structure were an independent wrongful act in
21 violation of the FLSA’s prohibition of invalid tip-pools.

22 807. At all times, Instacart had knowledge of the economic relationship formed between
23 Plaintiff and the customers.

24 808. At all times, Instacart acted intentionally and maliciously to disrupt the economic
25 relationship between Plaintiff and the customers by interfering with Plaintiff’s enjoyment of an
26 expectancy of tips from customers.

27 809. Instacart’s change in its tipping structure caused actual disruption of the economic
28 relationship between Plaintiff and the customers.

810. As a direct, proximate, and foreseeable result of Defendant’s intentional acts and conduct,
Plaintiff has suffered, and will continue to suffer, economic injuries.

1 811. This claim is brought by Plaintiff Kendrick on behalf of himself and a class of similarly
2 situated individuals who have worked for Instacart in Massachusetts.

3 SEVENTY-SEVENTH CAUSE OF ACTION
4 MASSACHUSETTS: CONVERSION
5 (Massachusetts Common Law)

6 812. Plaintiff hereby realleges and incorporate by reference all paragraphs above as if set forth
7 in detail herein.

8 813. Under the FLSA, tips are the property of the employees to whom they are paid. Thus,
9 Plaintiff had a right to possess the full amount of tips given to her by customers.

10 814. As alleged above, the optional “service” amount paid by customers was actually a tip.

11 815. Defendants wrongfully and illegally took from Plaintiff a portion of the tips given to
12 Plaintiff by customers.

13 816. Plaintiff suffered economic harm in the amount of the tips misappropriated by
14 Defendants.

15 817. This claim is brought by Plaintiff Kendrick on behalf of himself and a class of similarly
16 situated individuals who have worked for Instacart in Massachusetts.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, pray for judgment against Defendants as follows:

- A. An order certifying this case as a class action and appointing Plaintiffs Husting, Clayton, Armstrong, Weidner, Connolly, Parsons, Raines, Lester, Boven, Nosek, Richie, and Kendrick, and their counsel to represent the Class;
- B. For a declaration that the arbitration provision in the Independent Contractor Agreement is unenforceable under the National Labor Relations Act and *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016);
- C. For a declaratory judgment that the practices complained of herein are unlawful under the FLSA;
- D. For a declaratory judgment that the practices complained of herein are unlawful under appropriate state law;
- E. For actual and compensatory damages according to proof pursuant to the FLSA; the California Labor Code, applicable California IWC Orders; the New York Labor Law, applicable New York codes, rules, and regulations; Pennsylvania law and applicable codes, rules, orders, and regulations; Colorado law and applicable code, rules, orders, and regulations; Illinois law and applicable code, rules, orders, and regulations, and all other applicable laws and regulations; Washington law and applicable code, rules, orders, and regulations, and all other applicable laws and regulations; Indiana law and applicable code, rules, orders, and regulations, and all other applicable laws and regulations; Texas law and applicable code, rules, orders, and regulations, and all other applicable laws and regulations; Georgia law and applicable code, rules, orders, and regulations, and all other applicable laws and regulations; Oregon law and applicable code, rules, orders, and regulations, and all other applicable laws and regulations; and Massachusetts law and applicable code, rules, orders, and regulations, and all other applicable laws and regulations.
- F. For restitution and disgorgement to the extent permitted by applicable law;
- G. For an order enjoining Defendants from continuing to engage in the conduct described herein;
- H. For civil and statutory penalties available under applicable law;
- I. For pre-judgment and post-judgment interest;
- J. For an award of attorneys' fees, costs and expenses as authorized by applicable law; and

- 1 K. For punitive damages according to proof;
2 L. For such other and further relief as this Court may deem just and proper.

3 **JURY DEMAND**

4 Plaintiffs demand a trial by jury on all causes of action so triable.

5
6
7 _____
8 Robert S. Arns (SBN 65071)
9 Jonathan E. Davis (SBN 191346)
10 Julie C. Erickson (SBN 293111)
11 515 Folsom Street, Third Floor
12 San Francisco, CA 94105
13 Telephone: (415) 495-7800
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Exhibit 1

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement") is made effective as of _____ by and between Mapbear, Inc., doing business as Instacart ("Company"), and _____, an individual ("Contractor") (collectively referred to as the "Parties").

Full Name

1 SERVICES OF CONTRACTOR

Company hereby engages Contractor to perform, and Contractor agrees to perform, the services described in Exhibit A attached to this Agreement (the "Services"). If Company desires that Contractor perform additional Services, Company and Contractor shall execute an additional exhibit to this Agreement setting forth the nature of such additional Services, the fees payable for such Services and any other terms and conditions with respect thereto. Each such additional exhibit shall incorporate the terms and conditions set forth herein, except as expressly set forth in such additional exhibit. The standard for acceptance of the Services to be performed hereunder shall be compliance in all material respects with the standards and requirements set forth in Exhibit A (or any additional exhibit). All Services shall be subject to Company's review and approval.

2 FEES

Company agrees to pay Contractor for the Services pursuant to the fee schedule set forth in Exhibit A. As a condition of receiving payment, Contractor shall provide Company with Contractor's taxpayer identification number and submit an invoice to Company in a format acceptable to Company. Contractor shall be responsible for all expenses incurred or necessary in the performance of the Services, including but not limited to telephone, mailing and travel expenses. Contractor shall pay twenty-five cents per batch picked for use of the proprietary "Instacart Shopper" app provided to contractor by Company.

3 TERM OF AGREEMENT

This Agreement will continue for the period of time necessary for Contractor to complete the Services, or upon delivery to Contractor of written notice from Company terminating this Agreement, which may be provided at any time. Unless Contractor shall have breached its obligations hereunder, if Company shall terminate this Agreement before Contractor shall have completed the Services, Company shall pay Contractor its fees to the extent performed, completed and delivered as of the effective date of termination in compliance with Company's specifications or otherwise accepted in writing by Company. If Contractor shall have breached its obligations under this Agreement, any amount payable by Company may be reduced by the actual damages suffered by Company as a result thereof. A breach by Contractor shall include, but not be limited to, Contractor's failure to complete the Services specified herein in a manner satisfactory to Company and as required by Exhibit A, Contractor's unauthorized disclosure of Confidential Information (as defined below), breach of any other obligations hereunder, or Contractor's carelessness, misconduct or unjustifiable neglect of its duties hereunder.

4 RELATIONSHIP OF THE PARTIES

- 4.1 Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor look to Company as Contractor's employer, partner, joint venturer, agent, or principal, nor shall this Agreement be construed to establish any such relationship. Contractor shall not be entitled to any benefits accorded to Company's employees, including workers' compensation, disability insurance, health insurance, vacation, or sick pay.
- 4.2 Contractor shall be solely responsible for payment of worker's compensation, disability insurance, health insurance, and/or other similar benefits, unemployment or other similar insurance, all necessary liability insurance of Contractor and its personnel, if appropriate, and for withholding income and reporting wages on behalf of its personnel in accordance with all applicable laws, statutes, and regulations and/or other similar taxes or social security for Contractor as levied by any governmental authority. Company shall not be liable for any penalties and/or late fees, which may be imposed if such taxes are not paid by Contractor. Contractor further agrees that Contractor shall defend, indemnify and hold Company, and its affiliates, and their respective officers, directors, shareholders, employees, agents, successors and permitted assigns thereof harmless for any and all judgments, fines, costs, penalties, assessments or fees associated with such required payments.
- 4.3 Contractor has no authority to make promises, agreements or otherwise make commitments on Company's behalf.
- 4.4 Contractor may represent, perform services for, or be employed by, any additional persons, or companies as Contractor sees fit.

5 CONTRACTOR'S REPRESENTATIONS AND INDEMNITIES

- 5.1 Contractor represents that Contractor has the qualifications, licenses and ability to perform the Services in a competent, professional manner. Contractor shall be solely responsible for the performance of the Services and shall determine the method, details, and means of performing the Services, subject to the standards set forth herein or in Exhibit A.
- 5.2 Contractor shall and does hereby indemnify, defend, and hold harmless Company, and Company's officers, directors, shareholders, employees and agents, and its or their successors and assigns, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that any of the foregoing persons may incur or suffer and that result from, or are related to, the performance of Services by Contractor, or any breach or failure of Contractor to perform any of the representations, warranties, and agreements set forth in this Agreement.
- 5.3 Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, workers' compensation, automotive liability, or other insurance as well as licenses and permits usual or necessary for performing the Services. Contractor shall provide proof of insurance coverage upon request by Company.

6 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

- 6.1 During the course of Contractor's relationship with Company, Contractor may have access to and become acquainted with confidential, proprietary and trade secret information of Company and/or its clients (collectively, "Confidential Information"), which is very valuable to Company. Confidential Information includes all information relating in any manner to the business of Company or its clients, as applicable, and its and their consultants, customers, clients, and business associates, which is not known generally to the public. Confidential Information also includes, but is not limited to, trade secrets, client or vendor lists, client information, contracts, agreements, accounting or financial information, pricing information, business plans and data, formulae, technical know how, processes, methods, techniques, procedures, software, data bases, personnel information, marketing strategies and data, pending projects and proposals, programs, designs, drawings, diagrams, test data, research and other such information of a confidential nature regardless of whether furnished before or after the date hereof, whether oral or written, and regardless of the form of communication or the manner in which it is furnished and all analyses, compilations, data, studies, notes, interpretations, memoranda, extracts or other documents prepared by Contractor containing or based in whole or in part on any such furnished information. Contractor specifically agrees that all Confidential Information shall be treated as confidential without regard to whether any specific item of information or material has been labeled "Confidential," "Secret," or "Trade Secret," or any similar designation. Confidential Information does not include, however, information that Contractor can show by documentary evidence: (i) is or becomes generally available to the public through no wrongful act of Contractor; or (ii) has been independently acquired or developed by Contractor without violating any of Contractor's obligations under any agreement with Company, any agreement with a third party, or applicable law.
- 6.2 Contractor (i) will hold and maintain all Confidential Information in the strictest confidence; (ii) except as reasonably necessary to perform Contractor's Services or as authorized in writing by Company, will not at any time, whether during or subsequent to the Term of this Agreement, in any fashion, form or manner, either directly or indirectly, use, divulge, disclose or communicate any Confidential Information to any person, firm, corporation or entity in any manner whatsoever; and (iii) shall require, and insure that, its directors, officers, employees, agents and permitted subcontractors who may receive Confidential Information maintain the same in strict confidence and not use or disclose the information except as permitted under this Agreement. Contractor acknowledges that further customer-specific compliance requirements may be applicable and enforceable against Contractor.
- 6.3 Contractor agrees that all drawings, memorandums, invoices, diaries, project books, notebooks, sketches, reports, manuals, computer programs, computer files and any other materials in any manner and in any medium affecting, recording or relating to Company's Confidential Information shall at all times be and remain Company's sole property, and shall not be removed from Company's premises under any circumstances whatsoever without Company's prior written consent, except when (and only for the period) necessary to carry out Contractor's Services hereunder, and if removed shall be immediately returned to Company upon termination of this Agreement, and no copies shall be kept by Contractor. Upon Company's request, Contractor will provide a declaration to Company certifying that all Confidential Information and all copies thereof have been delivered to Company, and deleted from Contractor's computers, lap tops, or other electronic or recording device.
- 6.4 If Contractor is required by applicable law or regulation or by legal process to disclose any Confidential Information, Contractor will immediately notify Company in writing prior to making any such disclosure and assist Company in seeking a protective order or other

appropriate remedy. Contractor further agrees that if Company is not successful in precluding the requesting legal body from reviewing the Confidential Information, Contractor will furnish only that portion of the Confidential Information that is legally required and will exercise its best efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

- 6.5 The restrictions placed upon Contractor in this Section will survive the termination of this Agreement, and continue in perpetuity. Contractor agrees that any breach of any term of this Section is a material breach of this Agreement.

7 DISPUTE RESOLUTION

- 7.1 Following the full opportunity to discuss and negotiate over this dispute resolution procedure, the Parties agree that to the fullest extent permitted by law, any controversy, dispute or claim arising out of or relating to the Services performed by the Contractor, this Agreement, the breach, termination, interpretation, enforcement, validity, scope and applicability of any such agreement, or any allegations of discrimination or harassment on any basis under federal, state, or local law, which could otherwise be heard before any court of competent jurisdiction (a "Dispute"), shall be submitted to and determined exclusively by binding arbitration. The Parties agree that a Dispute arising under any law that requires resort to an administrative agency may be brought before such agency as permitted by law, and that after exhaustion of administrative remedies, the Parties must pursue such Dispute through this binding arbitration procedure to the fullest extent permitted by law.
- 7.2 The arbitration shall be administered by JAMS at its office located at Two Embarcadero Center, Suite 1500, San Francisco, CA 94111, pursuant to its Employment Arbitration Rules and Procedures and subject to JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness (collectively, "Rules") that are in effect when arbitration is demanded. Attached as Exhibit B is a copy of the current version of the Rules. Any subsequent modifications to the Rules would be available at www.jamsadr.com. In the event of any conflict between the Rules and this Agreement, this Agreement shall apply. The Parties agree to submit to the jurisdiction of a single neutral arbitrator selected in accordance with the Rules.
- 7.3 The parties will equally advance all of the arbitrator's expenses and fees. The arbitrator will allow for sufficient discovery procedures, including access to essential documents and witnesses, to satisfy principles of due process. The arbitrator may award any remedy or relief available under applicable law in a court proceeding, including, without limitation, damages, costs, and injunctive relief. The arbitrator shall not have the power or authority to commit errors of law or legal reasoning. After completion of the arbitration, the arbitrator shall submit a decision in writing, specifying the findings of fact and the conclusions of law on which the decision is based; in his discretion, the arbitrator may award fees and costs to the prevailing party.
- 7.4 The Parties agree that the enforceability of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. § 2), and acknowledge that Company's business and the nature of Contractor's services involve interstate commerce. The arbitrator shall apply California substantive law to the proceeding, except for any claim to which Federal substantive law would apply. **The Parties each expressly waive the right to a jury trial and agree that the arbitrator's award shall be final and binding on the Parties.** Any action to review the arbitration award for legal error or to have it confirmed, corrected or vacated shall be decided

pursuant to California law and shall be filed and maintained in a California state court of competent jurisdiction.

8 NOTICES

All notices, consents, or communications required or permitted under this Agreement shall be in writing and shall be addressed to the other Party at the address set forth on the signature page of this Agreement. A notice shall be effective (i) upon personal delivery if given by hand delivery, (ii) the date of the completed transmission if given by facsimile, (iii) one business day after deposit, prepaid, with Federal Express or similar overnight delivery service for next business day delivery, or (iv) two business days after deposit with the United States Post Office, by registered or certified mail, postage prepaid. Each Party may, by five days advance written notice to all other Parties, specify any other address for the receipt of such notices.

9 SUCCESSORS AND ASSIGNS

This Agreement is intended to bind and inure to the benefit of and be enforceable by Company, Contractor, and their respective heirs, successors and assigns, except that Contractor may not assign Contractor's rights or delegate Contractor's duties or obligations hereunder (including, without limitation, pursuant to any subcontract) without the prior written consent of Company, which may be given or withheld in the sole and absolute discretion of Company.

10 SEVERABILITY

If any provision of this Agreement, or any part thereof, be declared or determined by any arbitrator or court to be illegal, invalid or unenforceable and are therefore stricken or deemed waived, the remainder of the provision and the Agreement shall nonetheless remain binding in effect, and shall be interpreted in a way to achieve the goals or intent of the stricken or waived provisions to the extent such interpretation is consistent with applicable law.

11 WAIVER

No waiver by any Party to this Agreement of any provision hereof shall be deemed to be a waiver of any other provision of this Agreement, or of any subsequent breach of such provision, or a waiver of any other provision of this Agreement by any other Party.

12 REMEDIES CUMULATIVE

Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which either Party may have under this Agreement or applicable law. All rights and remedies of each Party to this agreement, whether under this Agreement or applicable law, shall be cumulative.

13 GOVERNING LAW

This Agreement and the rights of the Parties shall be governed by and construed in accordance with the laws of the State of California. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against either Party.

14 ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements between Contractor and Company, whether oral or in writing, and contains all of the covenants and agreements between Contractor and Company with respect to Contractor's services. Contractor and Company each acknowledge that no representations, inducements, promises, or agreements, originally or otherwise, have been made to either Party to the other, or by anyone acting on behalf of either Party, which are not embodied herein. This Agreement can only be modified by a written agreement executed by Contractor and by the President of Company.

IN WITNESS WHEREOF, the Parties have executed this Independent Contractor Agreement effective on the day and year first written above.

COMPANY

CONTRACTOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

SSN: _____

Mailing Address:

Mailing Address:

Instacart
92 South Park Street
San Francisco, CA 94107

Street: _____
City, State, Zip, _____

EXHIBIT A

1 SERVICES TO BE PERFORMED

Company has retained Contractor to perform the following Services:

- Shopping and delivery services for customers of Company

2 FEES AND PAYMENT

The project fees applicable for the Services are as follows:

For each "batch" of orders picked, contractor will receive the greater of \$5 (five dollars) per batch or 50 (fifty) cents per item picked. Contractor will receive an additional commission of \$5 per order delivered. Contractor will also receive an additional twenty five cents per batch if he or she wears an "Instacart" shirt while picking the batch and delivering all orders comprised of that batch. The contractor will be charged \$0.25/batch for the use of the app.

This compensation schedule can be changed by Instacart at any time with ten days' notice.

EXHIBIT B

JAMS Employment Arbitration Rules and Procedures and Policy on Employment Arbitration Minimum Standards of Procedural Fairness

Effective July 15, 2009

This document presents the principles and policies of JAMS on the use of arbitration for resolving employment-related disputes. These policies include the "Minimum Standards of Procedural Fairness," which apply to arbitrations based on pre-dispute agreements that are required as a condition of employment. JAMS will administer mandatory arbitrations in employment cases only if the arbitration provision complies with JAMS Minimum Standards.

JAMS continues to urge employers and employees to use, at the earliest point possible, mediation and other ADR processes that encourage consensual resolution of disputes in a fair, affordable, and efficient manner. We also recommend that employers consult with counsel when considering, drafting, or implementing pre-dispute arbitration clauses that relate to statutory employment claims.

A. Preference for Mediation and Voluntary Arbitration

JAMS encourages the use of mediation and of voluntary arbitration that is not a condition of initial or continued employment. JAMS does not take a position on the enforceability of condition-of-employment arbitration clauses, but it monitors developments in courts, legislatures and regulatory agencies concerning the enforceability of the clauses. If courts rule definitively that such clauses are unenforceable, or if laws or regulations proscribe their use, JAMS will comply with the rulings or laws in the applicable cases or jurisdictions. Absent such proscriptions, JAMS accepts arbitration assignments based on condition-of-employment clauses (provided the Minimum Standards are met), but does not encourage the use of such clauses.

B. Minimum Standards of Procedural Fairness

If an arbitration is based on a clause or agreement that is required as a condition of employment, JAMS will accept the assignment only if the proceeding complies with the "Minimum Standards of Procedural Fairness for Employment Arbitration."

Standard No. 1: All Remedies Available

All remedies that would be available under the applicable law in a court proceeding, including attorneys fees and exemplary damages, as well as statutes of limitations, must remain available in the arbitration. Post-arbitration remedies, if any, must remain available to an employee.

Comment: This standard does not make any change in the remedies available. Its purpose is to ensure that the remedies available in arbitrations and court proceedings are the same. JAMS does not object if an employer chooses to limit its own post-arbitration remedies.

Standard No. 2: Arbitrator Neutrality

The arbitrator(s) must be neutral, and an employee must have the right to participate in the selection of the arbitrator(s).

Standard No. 3: Representation by Counsel

The agreement or clause must provide that an employee has the right to be represented by counsel. Nothing in the clause or procedures may discourage the use of counsel.

Standard No. 4: Access to Information/Discovery

The procedures must provide for an exchange of core information prior to the arbitration.

Comment: Generally this discovery should include at least (a) exchange of relevant documents, (b) identification of witnesses, and (c) one deposition for each side, i.e., of the employee and of a supervisor or other decision-maker of the employer. Other discovery should be available at the arbitrator's discretion.

Standard No. 5: Presentation of Evidence

At the arbitration hearing, both the employee and the employer must have the right to (a) present proof, through testimony and documentary evidence, and (b) to cross-examine witnesses.

Standard No. 6: Costs and Location Must Not Preclude Access to Arbitration

An employee's access to arbitration must not be precluded by the employee's inability to pay any costs or by the location of the arbitration. The only fee that an employee may be required to pay is JAMS' initial Case Management Fee. All other costs must be borne by the company, including any additional JAMS Case Management Fee and all professional fees for the arbitrator's services. In California, the arbitration provision may not require an employee who does not prevail to pay the fees and costs incurred by the opposing party.

Comment: JAMS does not preclude an employee from contributing to administrative and arbitrator fees and expenses.

Standard No. 7: Mutuality

JAMS will not administer arbitrations pursuant to clauses that lack mutuality. Both the employer and the employee must have the same obligation (either to arbitrate or go to court) with respect to the same kinds of claims.

Standard No. 8: Written Awards

An arbitration award will consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim. The Arbitrator will also provide a concise written statement of the reasons for the Award, stating the essential findings and conclusions on which the award is based.

*** If JAMS becomes aware that an arbitration clause or procedure does not comply with the Minimum Standards, it will notify the employer of the Minimum Standards and inform the employer that the arbitration demand will not be accepted unless there is full compliance with those standards. In assessing whether the standards are met and whether to accept the arbitration assignment, JAMS, as the ADR provider, will limit its inquiry to a facial review of the clause or procedure. If a factual inquiry is required, for example, to determine compliance with Minimum Standards, it must be conducted by an arbitrator or court.

C. Questions About Enforcement and Arbitrability

If a party contests the enforceability of a pre-dispute arbitration agreement that was required as a condition of employment, and if compliance with the Minimum Standards is in question, JAMS will, if given notice of the dispute, defer administering the arbitration for a reasonable period of time to allow the contesting party to seek a judicial ruling on the issue. JAMS will comply with that judicial determination. If there is no judicial determination within a reasonable period of time, JAMS will resolve questions of arbitrability under the applicable JAMS Arbitration Rules & Procedures for Employment Disputes.

D. Other

Parties to an employment arbitration may choose to follow the Arbitration Rules & Procedures for Employment Disputes that were developed by JAMS. These Rules & Procedures exceed the Minimum Standards by providing further procedural protections, including additional discovery and an optional appeal process, to all parties in an employment arbitration.

JAMS is committed to ensuring that all staff who work on employment-related dispute resolution issues are aware of these principles and policies. Internal controls are used to ensure knowledge and compliance by the staff, and to ensure that the company's marketing activities in the employment area do not give rise to any actual or perceived conflict of interest on the part of JAMS or its neutrals.

Note: These Minimum Standards do not apply if the agreement to arbitrate was individually negotiated by the employee and employer or the employee was represented or advised by counsel during the negotiations.

Exhibit 2

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9 Attorneys for Defendant MAPLEBEAR INC.
 d/b/a INSTACART, a Corporation
 10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 IN AND FOR THE COUNTY OF LOS ANGELES
 13

14 ALICIA SUMERLIN, DENICE SEALY,
 ERA ALTA, DENISSE SCHWARTZ,
 15 NICOLE CRAWFORD and CORDARO
 SADDER individuals, on behalf of
 16 themselves, and on behalf of all persons
 similarly situated,

17 Plaintiffs,

18 v.

19 MAPLEBEAR INC., d/b/a INSTACART, a
 Corporation; and DOES 1 through 50,
 20 inclusive,

21 Defendant.

Case No. BC 603030

**INSTACART'S RESPONSE TO
 OPPOSITION TO MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT**

Date: August 5, 2016
 Time: 11:00 a.m.
 Dept: 311

Judge: Hon. John Shepard Wiley

Date Filed: December 2, 2015

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13	Fed. R. Civ. P. 23.....	9
14	<u>State Rules</u>	
15	Cal. R. Ct. 3-13	4, 5
16	Cal. R. Ct. 3.769.....	1, 3

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1 **I. INTRODUCTION**

2 Proposed Intervenors and Objectors Dominic Cobarruviaz and Arlin Golden’s (hereinafter
3 “Objectors”) *ex parte* opposition to Plaintiffs’ motion for preliminary approval of the parties’
4 settlement comes nearly nine months after their own class action against Instacart was dismissed
5 in federal court on November 3, 2015. *See Cobarruviaz, et al. v. Maplebear, Inc.*, 143 F. Supp.
6 3d 930, 947 (N.D. Cal. 2015) (dismissing Objectors’ class action claims and compelling
7 individual arbitrations). As noted in Instacart’s previously-filed opposition to Objectors’ *ex parte*
8 applications, Objectors have already lost their bid to represent a class of Instacart contractors and
9 cannot circumvent the federal court’s order by filing a motion to intervene in this action.

10 Objectors’ opposition should instead be treated as a formal objection to the settlement and
11 heard at the statutorily provided time—after preliminary approval. Under California Rule of
12 Court 3.769, the objection and opt-out processes work together to ensure that those individuals
13 who would like to participate in the settlement can raise any objections to the settlement at the
14 appropriate time, and that others who do not want to participate can opt out. If Objectors were
15 allowed to object prior to preliminary approval, they could seek to undo or modify the settlement,
16 only to then opt out during the later opt-out period. This would unfairly allow Objectors to
17 undermine the settlement’s benefits to other potential class members, even if they never plan to
18 participate in the settlement themselves. Objectors’ rights are adequately protected by the
19 statutory objection and opt-out procedures of the California Rules, and they should not be
20 permitted to bypass those procedures through an improper intervention motion or premature
21 objection. *See also Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 253 (2001) (“In the
22 context of a class settlement, objecting is the procedural equivalent of intervening.”).

23 The proposed settlement was the product of a contentious, arms-length mediation before a
24 highly-respected mediator, Mark Rudy. Prior to the mediation, the parties exchanged significant
25 information regarding Plaintiffs’ claims, and Plaintiffs retained an outside expert to analyze
26 damages. The non-reversionary settlement amount (\$2 million) is a substantial amount for any
27 wage-and-hour action, particularly one in which the defendant has strong defenses. Indeed, the
28 proposed settlement offers the best opportunity for Plaintiffs to obtain recovery on a class-wide

1 basis. If the proposed settlement is not approved, Instacart has every intention to move to compel
2 individual arbitrations and to dismiss the class action. To date, every court to review Instacart's
3 arbitration agreement has enforced it. *See Cobarruviaz*, 143 F. Supp. 3d at 947; *Bynum v.*
4 *Maplebear Inc.*, No. 15-CV-6263, 2016 WL 552058, at *12 (E.D.N.Y. Feb. 12, 2016); *Moton v.*
5 *Maplebear Inc.*, No. 15 CIV. 8879 (CM), 2016 WL 616343, at *3 (S.D.N.Y. Feb. 9, 2016).

6 While Objectors argue that the settlement amounts to a "reverse auction," this argument
7 fails under even cursory examination. Objectors' class-action claims against Instacart were
8 dismissed before the *Sumerlin* litigation was even filed. At the time the proposed settlement was
9 reached, Objectors were in no position—much less a superior position—to strike a bargain with
10 Instacart on a class-wide basis. There was no auction here, much less a "reverse auction."

11 Objectors' argument that Instacart entered into the settlement in response to "extensive
12 discovery" and "momentum" in their individual arbitrations is similarly meritless. At the time the
13 *Sumerlin* litigation was filed, neither Mr. Golden nor Mr. Cobarruviaz had filed any individual
14 arbitration against Instacart. In fact, when this settlement was reached in March 2016, Mr.
15 Golden's arbitration had barely commenced, no scheduling order had yet been issued, and no
16 discovery had yet been taken. To date, Mr. Golden's counsel have taken only written discovery
17 limited to Mr. Golden's individual claims and two depositions, and Mr. Golden has agreed to stay
18 those proceedings. Mr. Cobarruviaz has never filed any individual arbitration against Instacart,
19 despite having been compelled to arbitration by the federal court nine months ago. For these
20 reasons and as discussed further below, Instacart respectfully requests that the Court deny
21 Objectors' request to intervene in this case and to prematurely object to the proposed settlement.

22 II. ARGUMENT

23 A. Objectors are barred from intervening in this action because they have been 24 ordered to arbitrate their claims individually against Instacart.

25 Objectors cannot intervene in this action, nor can they seek to represent any class of
26 "similarly situated employees," for all of the reasons stated in Instacart's opposition to their
27 Motion to Intervene, filed on July 28, 2016. As explained in that opposition, Objectors were each
28 ordered by Judge Edward M. Chen of the Northern District of California to resolve their claims

1 against Instacart via binding, *individual* arbitration before JAMS. *See Cobarruviaz*, 143 F. Supp.
2 3d at 947. In that order, the court dismissed Objectors' class-action claims, directed "[t]he parties
3 ... to initiate arbitration before JAMS[.]" and stayed the litigation "pending the outcome of the
4 arbitration[s]." *Id.* at 947, n.8. Objectors' attempt to join in this action as a party, and as
5 purported class representatives, is precluded by Judge Chen's order, and should be rejected.

6 **B. Settlement class members may only object to a proposed class settlement after**
7 **a provisional settlement class has been certified.**

8 Objectors' premature objections violate the California Rules of Court, which establish
9 clear procedures for provisional settlement class members to object to a proposed class
10 settlement. California Rule of Court 3.769 states that once a motion for preliminary approval of a
11 class settlement is filed with the Court, the Court is to evaluate the proposed settlement and
12 decide whether to approve certification of a provisional settlement class. Cal. R. Ct. 3.769(c), (d).
13 If the Court approves, it will then specify "the time, date, and place of the final approval hearing;
14 the notice to be given to the class; and any other matters deemed necessary for the proper conduct
15 of a settlement hearing." Cal. R. Ct. 3.769(e). A court-approved notice is then sent to all
16 settlement class members with "an explanation of the proposed settlement *and procedures for*
17 *class members to follow in filing written objections to it.*" Cal. R. Ct. 3.769(f) (emphasis added).
18 This orderly process ensures that all class members follow the same objection procedures and
19 have an equal voice, and that objections are considered in an orderly and efficient fashion.

20 There is no reason to elevate Objectors' objections above other potential class members
21 *before* preliminary approval by the Court, *before* a provisional settlement class has been certified,
22 and *before* all other class members have an opportunity to be heard. Cal. R. Ct. 3.769(d)–(g).
23 California law requires the Court to give notice of the settlement to class members, giving class
24 members an opportunity to opt out or object, and to consider objections as part of a final
25 settlement hearing. *See, e.g., Wershba*, 91 Cal. App. 4th at 235; *Dunk v. Ford Motor Co.*, 48 Cal.
26 App. 4th 1794, 1803 (1996). Indeed, since the Court has not yet certified a provisional settlement
27 class, Objectors do not have standing to object as members of any certified class. Objectors
28 should not be permitted to circumvent these rules to undermine a settlement for thousands of

1 other class members while they reserve the right to opt out of the settlement if their efforts fail.
2 Their objections should be stricken or held in abeyance until all objections are considered at the
3 final approval hearing.

4 Finally, Objectors' suggestion that they should be allowed to prematurely object to the
5 proposed settlement because the parties "failed to uphold their duty of candor owed to this
6 Court," *see* Opp. at 3, is false. To the contrary, the parties gave the Court notice of the
7 *Cobarruviaz* litigation as part of Plaintiffs' motion for preliminary approval and in advance of the
8 preliminary approval hearing. *See* Mem. ISO Mot. For Prelim. Approval at 5. Instacart also
9 notified the *Cobarruviaz* plaintiffs promptly following the filing of the motion for preliminary
10 approval. Neither the Northern District of California's Local Civil Rule 3-13 nor the California
11 Rules of Court required any other or earlier disclosure to Objectors. In fact, neither the Northern
12 District's Rules nor the California related-case rule applied because the *Cobarruviaz* class-action
13 claims had already been dismissed before the *Sumerlin* litigation was filed and because there are
14 significant differences between the two litigations. Whereas *Cobarruviaz* involved nationwide
15 and a majority of non-California claims and plaintiffs, *Sumerlin* involved only California claims.
16 Any suggestion that the parties failed to uphold their duty of candor to the Court is simply false.

17 **C. The proposed settlement is the result of arms-length settlement negotiations.**

18 Rehashing the same arguments in their Motion to Intervene, Objectors wrongly contend
19 that the proposed class settlement is collusive and the result of a "reverse auction" evidenced by
20 Plaintiffs' supposed lack of bargaining power. Opp. at 3–5. These assertions are baseless.

21 *First*, as explained in Instacart's opposition to the Motion to Intervene, the proposed
22 settlement is not the product of "collusion," and there is no evidence to suggest otherwise. Prior
23 to the filing of this lawsuit, Objectors, along with several non-California plaintiffs, brought (and
24 lost) a putative class action filed on behalf of an alleged *nationwide* class of Instacart
25 contractors.¹ Shortly after this lawsuit was filed on December 2, 2016, Instacart notified
26

27 ¹ *See* Declaration of Benjamin W. Berkowitz in Support of Instacart's Opposition to *Ex Parte*
28 Applications of Dominic Cobarruviaz and Arlin Golden for Leave to Intervene, dated July 28,
2016 ("Berkowitz Decl."), Ex. A (*Cobarruviaz* FAC) at ¶¶ 15, 140.

1 Plaintiffs' counsel about the *Cobarruviaz* lawsuit and Judge Chen's arbitration order, and
2 informed Plaintiffs that Instacart would move to compel arbitration if and when the complaint
3 was served. Berkowitz Decl. at ¶8. Plaintiffs in turn told Instacart that they were amending their
4 complaint to add new claims, including PAGA claims, and would serve the amended complaint
5 once it was filed. Joint Stipulations & Orders dated April 25, 2016 and July 7, 2016. As part of
6 those discussions, the parties agreed to an early mediation before Mark Rudy on March 25, 2016,
7 with Instacart reserving all rights to move to compel arbitration if the settlement efforts failed. *Id.*

8 Meanwhile, despite being ordered by Judge Chen in November 2015 to submit their
9 claims to individual arbitration before JAMS, counsel for Objectors inexplicably waited until
10 December 31, 2015 to file a single arbitration solely on behalf of Mr. Golden. Berkowitz Decl. at
11 ¶3. The Arbitrator was not appointed until mid-February 2016, and the schedule for the
12 arbitration was set by the Arbitrator on March 28, 2016, three days *after* the parties in this case
13 reached an agreement in principle with mediator Mark Rudy. *Id.* Thus, when Plaintiffs and
14 Instacart negotiated the settlement now before this Court, counsel for Objectors had filed only a
15 single arbitration, had taken no discovery in that arbitration, and no scheduling order (or hearing
16 date) had been issued.² Nothing in this chain of events suggests collusion or impropriety.

17 *Second*, there is no evidence that the proposed class settlement is the result of a "reverse
18 auction." A reverse auction occurs when "the defendant in a series of class actions picks the most
19 ineffectual class lawyers to negotiate a settlement with in the hope that the district court will
20 approve a weak settlement that will preclude other claims against the defendant." *Negrete v.*
21 *Allianz Life Ins. Co.*, 523 F.3d 1091, 1099 (9th Cir. 2008) (quoting *Reynolds v. Beneficial Nat'l*
22 *Bank*, 288 F.3d 277, 282 (7th Cir. 2002)). In contrast, here, there is only one putative California
23 class action lawsuit pending against Instacart. As Judge Chen had dismissed all class claims in
24 *Cobarruviaz* before this case was even filed, the Arns Law Firm no longer served as class counsel

25
26 ² To date, only limited written discovery and two depositions have taken place in the Golden
27 arbitration, which covers only Mr. Golden's individual claims. No other depositions have been
28 permitted by the Arbitrator to date, and no third-party discovery has been obtained by the Arns
Law Firm. Berkowitz Decl. at ¶5. No discovery has been taken yet in any other individual
arbitration filed by the Arns Law Firm. *Id.* at ¶6.

1 for any putative class against Instacart, and the case was stayed indefinitely. The factual
 2 predicate of a reverse auction, multiple potential bidders, is therefore missing. Further,
 3 Blumenthal Norderhaug & Bhowmik is an experienced employment class action firm,³ in contrast
 4 to the Arns Law Firm, which appears to have minimal employment class action experience.

5 Moreover, the settlement of one class action during the pendency of an overlapping action
 6 is not a sufficient basis to conclude that a reverse auction took place. *Negrete*, 523 F.3d at 1099–
 7 1100 (noting that no “competing cases could settle without being accused by another of
 8 participating in a collusive reverse auction” if that were the rule). Instead, there must be
 9 “evidence of underhanded activity” or “some kind of collusion”—not merely attorney argument
 10 raising the “specter of a reverse auction.” *Id.* There is no evidence here of any underhanded
 11 activity or collusion between the parties. In fact, if Instacart’s goal had been to obtain a “reverse
 12 auction” settlement, it would have targeted the Arns Law Firm—not Plaintiffs’ counsel—to
 13 negotiate a class-wide settlement once this class-action lawsuit was filed. After Judge Chen
 14 dismissed the *Cobarruviaz* class claims, the Arns Law Firm would have been the prime target for
 15 such a reverse auction settlement under the case law they cite.

16 In sum, there is no factual or legal basis to apply “heightened scrutiny” to the proposed
 17 settlement, and there is no evidence of collusion or a “reverse auction.” The Court should
 18 consider the motion for preliminary approval on its merits, and as diligently as it would any other
 19 proposed class settlement, to determine whether the settlement is fair, reasonable, and adequate.

20 **D. The settlement is a good and fair settlement when viewed on the whole and in**
 21 **light of the significant risks that further litigation would present.**

22 **1. This settlement presents the best opportunity for Plaintiffs to be**
 23 **compensated on a class-wide basis.**

24 Objectors argue that the Court should reject the proposed settlement because the amount is
 25 “insufficient” or “inadequate,” based on a comparison of the “strength of the case relative to the
 26 risks of continued litigation.” *Opp.* at 5. But Objectors’ analysis of the risks of continued
 27 litigation is unrealistic. One key risk that Objectors completely ignore is the fact that it is highly

28 ³ See Declaration of Norman Blumenthal in Support of Motion for Preliminary Approval of Class Settlement (“Blumenthal Decl.”) dated July 5, 2016, at 13 ¶31

1 improbable that the case would proceed as a class action in court. As Instacart told Plaintiffs'
2 counsel, Instacart has every intention to move to compel arbitration in this case. Every court that
3 has considered the question of whether the arbitration provision in Plaintiffs' Independent
4 Contractor Agreement is enforceable has held that it is and has compelled arbitration. Indeed,
5 Objectors' previously-filed class action against Instacart was dismissed, and Objectors were
6 ordered to submit their claims to individual arbitration. *Cobarruviaz*, 143 F. Supp. 3d at 947.

7 In addition, two other federal courts have independently concluded that the arbitration
8 provision entered into by Instacart and the contractors is enforceable. In *Moton*, 2016 WL
9 616343, the court granted Instacart's motion to compel arbitration of claims of misclassification
10 and wage-and-hour violations. In *Bynum*, 2016 WL 552058, another federal court also enforced
11 the same arbitration provision to compel similar wage-and-hour claims to arbitration. Thus, given
12 these unanimous rulings, it is highly improbable that Plaintiffs would have been able to proceed
13 in court as a class action if they had not decided to settle their claims. Any evaluation of the
14 settlement amount, therefore, should take into consideration this significant risk.

15 In support of their arguments, Objectors cite to *Cotter v. Lyft*, --F. Supp. 3d--, 2016 WL
16 1394236 (N.D. Cal. 2016), and *O'Connor v. Uber Technologies, Inc.*, 2015 WL 5138097 (N.D.
17 Cal. 2015), and argue that in these cases, which Objectors say contain similar claims, the courts
18 certified plaintiffs' claims and denied summary judgment. But Objectors ignore a key difference
19 between this case and *Cotter* and *O'Connor*: this case involves an arbitration provision that has
20 been held enforceable. In fact, the same judge that denied Uber's motion to compel arbitration in
21 *O'Connor* granted Instacart's motion to compel arbitration. Moreover, Objectors are simply
22 wrong that the *Cotter* court expressed any relevant opinion about whether Lyft could compel
23 arbitration in that case. In *Cotter*, Lyft did not move to compel the named plaintiffs to arbitration
24 at the outset, and thus the *Cotter* court's 2016 questions about whether Lyft could compel
25 plaintiffs to arbitration focused on an entirely different scenario—whether Lyft could still compel
26 arbitration of unnamed class members at the class certification stage when Lyft had not
27 compelled arbitration of the named plaintiffs at the outset.⁴ See *Cotter*, 2016 WL 1394236, *10-

28 ⁴ Indeed, a different Northern District of California judge upheld Lyft's arbitration agreement in a

1 11. Thus, contrary to Objectors' argument, the risks of being compelled to arbitration here are
2 significantly greater than the risk of the same in *Cotter* or *O'Connor*, because courts have
3 unanimously found the arbitration provision here enforceable.

4 Objectors also argue that Instacart "may be held to have waived its right to compel
5 arbitration as to the class now that they have been litigating a class action in state court." Opp. at
6 14. And Objectors claim that Instacart's settlement efforts are an "end run around Judge Chen's
7 order." *Id.* at 4, 14. Both arguments are meritless. Nothing in Judge Chen's order precludes
8 either side from trying to settle their disputes. But more fundamentally, "[p]ublic policy concerns
9 support the rule that parties must indeed be free to attempt to settle their disputes without losing
10 their arbitration right if settlement fails." *Aviation Data, Inc. v. American Express Travel Related*
11 *Servs. Co., Inc.*, 152 Cal. App. 4th 1522, 1540 (2007); *see also, e.g., Martin Marietta Aluminum,*
12 *Inc. v. General Elec. Co.*, 586 F.2d 143, 147 (9th Cir. 1978) ("We cannot agree, however, that
13 GE's participation in ... settlement negotiations precluded its later reliance on the contractual
14 arbitration."). Here, Instacart has repeatedly informed Plaintiffs and the Court that it was
15 reserving the right to compel arbitration if settlement efforts failed. *See* Joint Stipulations &
16 Orders dated April 25, 2016 and July 7, 2016. Merely requesting approval from the Court of a
17 negotiated class settlement is *not* a waiver of arbitration rights. Indeed, Objectors fails to cite any
18 case where a court has found a waiver of arbitration in circumstances similar to here. Nor has
19 Instacart found any such cases. There is simply no legal support for Objectors' claim of waiver.

20 In sum, the settlement should be evaluated against the significant risk that had Plaintiffs
21 elected to proceed in litigation instead of settling their claims, they would have been ordered to
22 submit their claims to arbitration. Contrary to Objectors' unsupported assertions, this settlement
23 provides the best opportunity for class members to obtain compensation on a class-wide basis.

24 **2. The Court should grant preliminary approval because the settlement**
25 **amount is fair and reasonable.**

26 Even setting aside the significant risk that Plaintiffs would be compelled to arbitration, the

27 different action and numerous other courts have also upheld Uber's arbitration agreement. *See*
28 *e.g., Loewen v. Lyft, Inc.*, 129 F.Supp.3d 945 (N.D.Cal. 2015); *Sena v. Uber Technologies, Inc.*,
2016 WL 1376445 (D. Ariz. Apr. 16, 2016).

1 settlement amount is fundamentally fair and reasonable, and in line with other similar wage-and-
 2 hour settlements. Courts typically find settlement amounts within the 25% to 35% range of
 3 estimated damages to be fair, reasonable, and adequate, and also frequently approve settlements
 4 in far lower ranges. In *Glass v. UBS Fin. Servs. Inc.*, 2007 WL 221862 (N.D. Cal. 2007), the
 5 court approved a settlement that constituted approximately 25% to 35% of the amount of
 6 damages plaintiffs could have hoped to get at trial.⁵ Similarly, in *Monterrubio v. Best Buy Stores,*
 7 *L.P.*, 291 F.R.D. 443, 454-55 (E.D. Cal. 2013), the court approved a settlement of \$400,000,
 8 which was approximately 30% of plaintiffs' estimated damages, finding the amount to be "fair,
 9 adequate and reasonable" given that "protracted litigation over class certification, discovery and
 10 the actual claims at issue would commence" should the settlement be rejected. Also, in *Litty v.*
 11 *Merrill Lynch & Co., Inc.*, 2015 WL 4698475 (C.D. Cal. 2015), the court approved a settlement
 12 of \$3.8 million, approximately 10% of the high end of the range of damages estimated by the
 13 named plaintiffs.⁶ Indeed, according to the Ninth Circuit, "[i]t is well-settled law that a cash
 14 settlement amounting to only a fraction of the potential recovery will not per se render the
 15 settlement inadequate or unfair." *Officers for Justice v. Civil Service Com'n of City and County*
 16 *of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). Here, Plaintiffs' assessment that the
 17 settlement constitutes approximately 32% of their estimated damages is well within the range of

18 ⁵ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
 19 800, 821 (1971) "It is well established that in the absence of relevant state precedents trial courts
 20 are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure
 for conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App. 3d 1491, 1499 (1986).

21 ⁶ See also *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509, LHK, 2015 WL
 22 5159441, at *4 (N.D. Cal. Sept. 2, 2015) (approving settlement valued at 14% of available
 23 damages); *In re Toys R Us-Del., Inc.-Fair & Accurate Credit Transactions Act (FACTA) Litig.*,
 24 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) (granting final approval of a settlement providing for
 25 consideration reflecting 3% of possible recovery (\$391.5 million settlement with exposure up to
 26 \$13.05 billion)); *Reed v. 1-800 Contacts, Inc.*, No. 12-CV-02359 JM BGS, 2014 WL 29011, at
 27 *6 (S.D. Cal. Jan. 2, 2014) (granting final approval where settlement represented 1.7% of possible
 28 recovery (net settlement fund of \$8,288,719.16, resolving claims worth potentially
 \$499,420,000)); *In re LDK Solar Sec. Litig.*, No. C 07-5182 WHA, 2010 WL 3001384, at *2
 (N.D. Cal. July 29, 2010) (granting final approval where settlement was 5% of estimated
 damages); *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) (approving
 settlement in which class received payments totaling 6% of potential damages); *In re Linerboard*
Antitrust Litig., 296 F. Supp. 2d 568, 581 & n.5 (E.D. Pa. 2003) (gathering cases where courts
 approved settlements achieving single-digit percentages of potential recoveries).

1 recovery from settlement by plaintiffs in similar cases. Moreover, the amount is reasonable
2 particularly given the significant risk that without a settlement, Plaintiffs would have had to
3 individually arbitrate their claims.

4 Objectors argue that Plaintiffs “improperly calculated the value of the claims,” and do not
5 provide estimates of other claims such as potential liquidated damages, “premium pay for missed
6 meal breaks,” or the “class’s portion of the PAGA penalties.” Opp. at 6. Objectors’ argument,
7 however, misstates both the law and the facts. In evaluating the adequacy of a settlement, “courts
8 primarily consider plaintiffs’ expected recovery balanced against the value of the settlement
9 offer.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). But
10 “expected recovery” does not mean the amount plaintiffs would want to recover if they won; it
11 means expected recovery in light of all the circumstances, including risks and practical realities.
12 *See Ebarle v. Lifelock, Inc.*, 2016 WL 234364 at *8 (N.D. Cal. Jan. 20, 2016); *see also Rodriguez*
13 *v. W. Publ’g Corp.*, 563 F.3d 948, 965-66 (9th Cir. 2009).⁷

14 Objectors’ arguments for higher expected damages lack merit. First, liquidated damages
15 under the FLSA are not automatic or mandatory, and are usually not awarded if the employer has
16 a good faith basis for their conduct. *See Local 246 Utility Workers Union of America v. Southern*
17 *California Edison Co.*, 83 F.3d 292, 297 (9th Cir. 1996). Here, given that there is a genuine
18 dispute regarding whether Instacart’s independent contractors—as with other “sharing economy”
19 contractors—could be considered employees under California law, it is highly unlikely that a
20 court would award Plaintiffs liquidated damages under the FLSA, even if Plaintiffs were to
21 prevail on their misclassification claim. *Id.*⁸ Second, meal-and-rest claims are notoriously
22 difficult to certify on a class-wide basis. This is because questions regarding when each class
23 member took a break, or whether they had an opportunity to take a break, almost always require
24 individualized, fact-specific investigations. Numerous courts have declined to certify a class for
25 the failure to provide meal or rest breaks on the ground that plaintiffs have failed to propose any

26 ⁷ *See also In re Oracle Sec. Litig.*, 829 F. Supp. 1176, 1182 (N.D. Cal. 1993) (“settlement
27 approval does not require aggregate damages to be determined with mathematical precision.”).

28 ⁸ As discussed below, the PAGA amount is reasonable and in line with the percentage of
settlement normally attributed to such claims in similar cases.

1 means of proving this claim on a class-wide basis.⁹

2 Objectors' argument that Plaintiffs underestimated the maximum potential recovery,
3 because an analysis of Mr. Golden's data suggests that his reimbursement claim is estimated to be
4 more than \$8,000, is similarly flawed. Opp. at 6. Mr. Golden's damages claims are disputed by
5 Instacart and have not been proven in Mr. Golden's arbitration. Should he ultimately opt out of
6 this settlement and proceed with his arbitration, Instacart expects to prevail in that proceeding
7 and, should it not prevail, it expects that Mr. Golden's damages will be minimal. Moreover, even
8 if Mr. Golden were somehow able to recover as much as \$8,000 in his individual arbitration, there
9 is no basis to suggest that such a recovery would be typical or representative of the purported
10 class given the length and amount of Mr. Golden's work. Indeed, Objectors fail to acknowledge
11 that without this settlement, in order to recover any money from Instacart, Mr. Golden would
12 have to continue to arbitrate his claim, with no guarantee that he would recover anything at all in
13 arbitration. Finally, Objectors' perception of the strength of Mr. Golden's individual case should
14 not hold up the settlement, as Mr. Golden can choose to opt out to the extent he believes he would
15 be better off arbitrating his claims separately. Nothing prevents him from doing so.

16 In short, the amount of the settlement is fair, reasonable, and adequate in light of the
17 significant risks of continued litigation.

18 **3. Each of Objectors' remaining arguments similarly lacks merit.**

19 *First*, Objectors argue that the allocation plan is "unfair" because it does not give "credit
20 to non-productive hours." Opp. at 7-8. This is incorrect. "Compensable hours" as defined by the
21 settlement includes so-called "non-productive hours," such as hours between orders, hours
22 driving back to the store, etc. Indeed, the data provided to Plaintiffs for their damages analysis

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24 ⁹ See, e.g., *Brown v. Fed Ex. Corp.*, 249 F.R.D. 580, 586 (C.D. Cal. 2008)(holding "although
25 FedEx may have consistent policies that apply across job classifications, their impact on
26 employees' ability to take breaks necessarily depends on each individual's job duties."); *Flores v.*
27 *CVS Pharmacy, Inc.*, 2010 WL 3656807 * 4 (C.D. Cal. 2010) (refusing to certify class reasoning
28 that given the nature of employment within the pharmacies at issue, individualized factual
inquiries would dominate in the meal and rest break subclasses); *Dilts v. Penske Logistics, LLC*,
267 F.R.D. 625, 635 (S.D. Cal. 2010) ("Since Plaintiffs 'have offered no method of proving their
meal and rest break claims without the testimony of each absent class member,' it would be
improper to certify this class.").

1 included non-productive hours, which were considered in this settlement and will be accounted
2 for upon payout.

3 *Second*, Objectors attack the allocation of the PAGA payment arguing that the PAGA
4 claim is subject to the federal jurisdiction of Judge Chen (in *Cobarruviaz*), and that the settlement
5 allocates “a disproportionately small amount” to the claim. Opp. at 8. Neither argument has any
6 merit. Judge Chen does not have exclusive jurisdiction over the PAGA claim. In *O’Connor*,
7 Judge Chen recognized that PAGA claims are not exclusive and can proceed on parallel tracks.
8 See *O’Connor*, 13-cv-03826, Dkt. 474 at *3-4. Other courts have reached the same conclusion.
9 In *Tan v. GrubHub, Inc.*, --F. Supp. 3d --, 2016 WL 1110236, at *8 (N.D. Cal. 2016), the court
10 rejected the argument that plaintiff “cannot pursue a PAGA claim if the agency or another party is
11 pursuing the same PAGA claims against the same employer” and “declined to stay or dismiss
12 plaintiff’s PAGA claim due to earlier-filed, duplicative PAGA claims brought in other actions.”

13 Objectors are also wrong regarding the adequacy of the PAGA settlement. A settlement
14 that allocates approximately 1% of the total settlement value to resolve PAGA claims is typical
15 of wage-and-hour settlements. Indeed, courts typically approve PAGA settlement amounts in the
16 range of .27 to 1.7 percent of the total settlement.

- 17 • In *Garcia v. Gordon Trucking, Inc.*, 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.
18 Oct. 31, 2012), a wage-and-hour class action involving alleged FLSA and Labor Code
19 violations, the court approved a class settlement of \$3,700,000, with \$10,000 allocated to
20 the PAGA claim and 75 percent of that amount to be paid to the California Labor and
21 Workforce Development Agency (“LWDA”);
- 22 • In *McKenzie v. Federal Express Corp.*, 10-cv-2420 GAF (PLAx), Dkt. 139 & 141 (C.D.
23 Cal. Jul. 13, 2012), a class-action in which California FedEx drivers alleged violations of
24 various provisions of the Labor Code, the court approved a settlement in an amount of
25 \$8.25 million, with \$82,500 allotted to the PAGA claim;
- 26 • In *Adoma v. University of Phoenix*, 10-cv-0059LKK/GGH, Dkt. 147 (E.D. Cal. Dec. 20,
27 2012), a wage-and-hour case in which plaintiffs alleged various violations of the FLSA
28 and Labor Code, the court approved a class settlement of \$4 million, with \$50,000 to be
paid to the LWDA;
- In *DeStefan v Frito-Lay*, 8:10-cv-00112-DOC_MLG, Dkt. 139 (C.D. Cal. Oct. 31, 2012),
a wage-and-hour case in which plaintiffs claimed violations of overtime, itemized wage
statement, and other provisions of the California Labor Code, the court approved a class
settlement of \$2 million, with \$10,000 allocated to PAGA.
- In *Mintzas v. FamiliesFirst*, 1:12-cv-218231; Dkt. 17 (Santa Clara Sup. Ct. Sept. 28,
2012), a wage-and-hour case alleging failure to pay overtime, provide meal-and-rest

1 breaks, provide itemized wage statements and reimburse expenses, the court approved an
2 \$8,000,000 settlement that allocated \$10,000 to PAGA.¹⁰

3 Moreover, Objectors fail to recognize that pursuit of PAGA penalties is subject to unique risks.
4 Among other things, to obtain any recovery, Plaintiffs would need to prove that the PAGA claim
5 is manageable enough to be tried to a jury, and that the penalties do not constitute impermissible
6 double recovery.¹¹ In addition, it is well-established that courts have significant discretion to
7 reduce PAGA penalties pursuant to Cal. Lab. Code § 2699(c)(2) when the award would be
8 “unjust” or “oppressive.” Thus, here, the PAGA allocation is not only in line with similar cases
9 but it properly takes into consideration the unique difficulties in obtaining damages under PAGA.

10 *Third*, contrary to Objectors’ argument, the proposed non-monetary relief provides
11 significant benefits to class members. Under the settlement, Instacart would only be able to
12 deactivate a shopper for “specifically delineated causes, and not at will.” Blumenthal Decl., Ex. 1
13 (Agrmt at § III.3(a)(a)). The proposed settlement also creates an appeal process whereby a
14 shopper who has been deactivated could require Instacart to provide reasons for deactivation and
15 seek reconsideration of the decision. *Id.* at § III.3(a)(b).¹² Together these non-monetary changes

16 ¹⁰ See also *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 7247065, *3 (N.D. Cal.
17 Dec. 19, 2014) (approving PAGA payment of \$10,000 to the LWDA out of \$1,750,000 common-
18 fund settlement); *Chu v. Wells Fargo Investments, LLC*, No. C05-4526, C06-7924 MHS, 2011
19 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of \$7,500 to the LWDA
20 out of \$6.9 million common-fund settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL
21 5941801, *13 (E.D. Cal. Nov. 27, 2012) (approving PAGA payment of \$7,500 to the LWDA out
22 of \$2.5 million common-fund settlement); *Schiller v. David's Bridal, Inc.*, 2012 WL 2117001,
23 *14 (E.D. Cal. June 11, 2012) (approving PAGA payment of \$7,500 to the LWDA out of
24 \$518,245 common-fund settlement); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D.
25 Cal. Apr. 3, 2009) (approving PAGA allocation that was .49% of \$408,420.32 gross settlement);
26 *Moore v. PetSmart, Inc.*, 2015 WL 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving PAGA
27 allocation that was .5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 297 F.R.D.
28 400, 407 (N.D. Cal. 2013) (approving PAGA allocation that was .67% of \$750,000 gross
settlement), *final approval granted*, *Lusby v. GameStop Inc.*, 2015 WL 1501095, *2 (N.D. Cal.
Mar. 31, 2015).

¹¹ See, e.g., *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, *16 (N.D. Cal. May 13, 2015)
(noting “concerns about manageability related to the numerous ‘aggrieved employees’ that the
plaintiff sought to represent.”); *Doe v. D.M. Camp & Sons*, 624 F. Supp. 2d 1153, 1174 (E.D. Cal.
2008) (recognizing that “[w]here state law provides for statutory damages, the trial court’s
discretion may be called upon to prevent double recovery”).

¹² Objectors also complain that “no information is provided” in the agreement regarding the new
interface or application to be created that will allow shoppers to obtain more detailed information

1 provide practical and on-going benefits to class members and constitute significant concessions
 2 by Instacart. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002) (“Incidental or
 3 non-monetary benefits conferred by the litigation are a relevant circumstance.”); *Singer v. Becton*
 4 *Dickinson & Co.*, 2010 WL 2196104, at *5 (S.D. Cal. June 1, 2010) (non-monetary benefits to
 5 class members weighed in favor of granting final approval of settlement).

6 *Fourth*, the proposed release is not improper; in fact, it is consistent with due process.
 7 Objectors are wrong that the release is overbroad because it requires Plaintiffs to release their
 8 wage-and-hour FLSA claim and their claim under Cal. Labor Code §226.7 (as well as “unknown
 9 claims, [and] future claims”). As provided in the settlement agreement, unnamed class members
 10 would only release claims that are “based on or reasonably related to the claims asserted in the
 11 Litigation and arising during the Class Period.” Blumenthal Decl. Ex. 1 (Agrmt. § III.18(a)).
 12 This is consistent with res judicata and the compulsory complaint statute, which require parties to
 13 litigate all claims between them that arise out of the same transaction in a single lawsuit. *See*
 14 *Flickinger v. Swedlow Engineering Co.*, 45 Cal. 2d 388, 393 (1955). To this end, section 426 of
 15 the California Code of Civil Procedure bars a second lawsuit between the same parties on a
 16 “related cause of action” that could have been pled in the first action. Cal. C. Civ. Proc. §
 17 426.30(a). The statute defines a “related cause of action” as one that “arises out of the same
 18 transaction, occurrence, or series of transactions or occurrences” as the causes of action alleged in
 19 the plaintiffs’ complaint. *Id.* §§426.30(a), 426.10. Moreover, California courts have interpreted
 20 the term “transaction” broadly to “encourage the joining of all claims arising from a series of acts
 21 or occurrences that are logically interrelated.” *Ranchers Bank v. Pressman*, 19 Cal. App. 3d 612,
 22 620 (1971) (citing cases). Thus, by requiring Plaintiffs to release claims that are based on or
 23 reasonably related to claims brought in the litigation and arose during the class period, the release
 24 is consistent with California law.¹³

25
 26 about their performance and compensation. Opp. at 10. Instacart submits that the information
 27 that shoppers will be able to obtain through the new platform will be in addition to the
 28 information available on the current platform.

¹³ The cases Objectors cite do not support their assertion. *Christensen v. Hillyard, Inc.*, No. 13-
 CV-04389 NC, 2014 WL 3749523, at *4 (N.D. Cal. July 30, 2014), is distinguishable because
 there the court held that the release attempted to encompass claims that are “wholly unrelated to

1 *Fifth*, Objectors argue that the fact that no discovery has taken place in the litigation
 2 “weighs against settlement approval.” Opp. at 12. Not only do Objectors fail to cite any case law
 3 to support their argument, the law suggests just the opposite. “In the context of class action
 4 settlements, formal discovery is not a necessary ticket to the bargaining table where the parties
 5 have sufficient information to make an informed decision about settlement.” *See In re Mego*
 6 *Financial Corp. Securities Litigation*, 213 F.3d 454, 459 (9th Cir. 2000). Here, prior to engaging
 7 in mediation, the parties exchanged information regarding the claims asserted in the case,
 8 including detailed damages information that Plaintiffs evaluated with the assistance of an outside
 9 expert. In addition, Plaintiffs’ counsel conducted their own independent investigation and due
 10 diligence prior to entering into the settlement. *See* Blumenthal Decl., ¶11. In light of the
 11 substantial information exchanged by the parties prior to the settlement, that no formal discovery
 12 took place in the case should not weigh against preliminary approval.

13 Lastly, Objectors argue the settlement impinges upon “their freedom of speech” because it
 14 enjoins them from “instigations of other litigation until after final approval is granted and any
 15 attempt to effect the opt-out of a group or subclass.” Opp. at 11. Contrary to Objectors’
 16 argument, the settlement does not enjoin instigation of all litigation, but only litigation involving
 17 the same or similar claims. Blumenthal Decl. Ex. 1 (Agrmt. at § III.8(b) & 9(b)). In addition,
 18 nothing in the agreement precludes Objectors or anyone else in the class from opting out of the
 19 settlement and preserving their claims. Accordingly, Objectors’ argument is simply mistaken.¹⁴

20 III. CONCLUSION

21 For the foregoing reasons, Instacart respectfully requests that the Court (1) deny any
 22 attempt by Objectors to intervene in the case; and (2) deny their premature objections to the
 23 proposed settlement agreement.

24 those at issue in the litigation.” Similarly, *Otey v. CrowdFlower, Inc.*, No. 12-CV-05524-JST,
 25 2014 WL 1477630, at *6-7 (N.D. Cal. Apr. 15, 2014), is inapplicable for the same reason: the
 26 court held that the release went “beyond the scope of the present litigation.”

27 ¹⁴ Objectors further argue that they are entitled to know the “opt-out threshold beyond which
 28 Instacart may void the settlement agreement.” Opp. at 11. However, Objectors have failed to cite
 any case law supporting the argument or any basis for why that term (which does not affect
 substantive rights of the proposed settlement class) should be unredacted.

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Dated: August 2, 2016

KEKER & VAN NEST LLP

By:


BENJAMIN W. BERKOWITZ

Attorneys for Defendant
MAPLEBEAR INC., d/b/a INSTACART,
a Corporation

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On August 2, 2016, I served the following document(s):

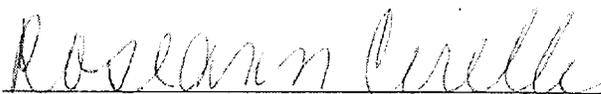
INSTACART'S RESPONSE TO OPPOSITION TO MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

by **COURIER**, by placing Copy in a sealed envelope addressed as shown below, and dispatching a messenger from First Legal Support Services, whose address is 1138 Howard Street, San Francisco, California 94103, with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving the package with the person whose name is shown or the person authorized to accept courier deliveries on behalf of the addressee.

Norman B. Blumenthal Kyle R. Nordrehaug A.J. Bhowmik Blumenthal, Nordrehaug & Bhowmik 2255 Calle Clara La Jolla, CA 92037 norm@bamlawlj.com kyle@bamlawca.com aj@bamlawlj.com	Jean-Claude Lapuyade JCL Law Firm 10200 Willow Creek Road, Suite 150 San Diego, CA 92131 jlapuyade@jcl-lawfirm.com
Robert S. Arns Jonathan E. Davis Kevin M. Osborne Julie C. Erickson THE ARNS LAW FIRM, PC 515 Folsom Street, 3rd Floor San Francisco, CA 94109 rsa@arnslaw.com jed@arnslaw.com kmo@arnslaw.com jce@arnslaw.com	

1 Executed on August 2, 2016, at San Francisco, California.

2 I declare under penalty of perjury under the laws of the State of California that the above is true
3 and correct.

4 
5 _____
6 ROSEANN CIRELLI

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Exhibit 3



633 Battery Street
San Francisco, CA 94111-1809
415 391 5400
kvn.com

Benjamin Berkowitz
(415) 773-6689
bberkowitz@kvn.com

March 17, 2016

VIA EMAIL ONLY

Hon. William J. Cahill (Ret.)
JAMS
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111

Re: *Golden v. Maplebear, Inc. d/b/a Instacart*, JAMS Ref No.: 1100083103

Dear Judge Cahill:

I write in advance of the conference scheduled in the above-captioned matter for March 17, 2016, at 4:00 p.m. This letter provides Instacart's positions on the issues raised in Plaintiff's counsel's letter dated February 29, 2016 and on the issues that Instacart understands will be raised for decision at the March 17, 2016 hearing.

I. Arbitration Hearing Date

Instacart proposes that the arbitration hearing date be set to start on October 3, 2016, or thereafter, subject to Your Honor's availability. Instacart believes that a hearing on this matter will take approximately 2–3 days to complete. Plaintiff has proposed a hearing date of mid-June 2016, lasting 3–5 days.

Instacart respectfully submits that Instacart's proposed early October hearing provides for a prompt arbitration hearing and timely adjudication of Mr. Golden's claims,¹ but also ensures sufficient time for the parties to brief dispositive motions, complete discovery, and prepare pre-hearing submissions. In contrast, Plaintiff's proposed mid-June 2016 hearing date does not provide sufficient time for the motion practice and discovery which needs to occur in this case. Indeed, Instacart will shortly file a motion to dismiss part of Plaintiff's arbitration demand (which Plaintiff has agreed can be filed via letter brief), and this motion will not be resolved

¹ Instacart's proposed early October date is only a little more than six months from the date of this scheduling conference. To the extent Plaintiff's counsel complain that an October hearing date would result in undue delay, Instacart notes that Judge Chen granted Instacart's motion to compel arbitration on November 3, 2015. Two days later, on November 5, 2015, Instacart asked JAMS to institute Mr. Golden's arbitration. Mr. Golden, however, instructed JAMS not to institute the arbitration requested by Instacart. Instead, he delayed participating in the JAMS arbitration process for two months, serving his demand on Instacart in January 2016.

Hon. William J. Cahill (Ret.)
March 17, 2016
Page 2

until early April. Further, to date, no discovery has occurred between the parties, except for very limited, arbitration-related discovery that occurred in federal court. Thus, the parties need an arbitration date that allows sufficient time to conduct reasonable fact discovery in this matter. They also need an arbitration date that allows sufficient time to develop the necessary expert testimony.² Instacart's proposed early October arbitration date should be adopted.³

2. Procedural Rules Governing This Arbitration

On October 11, 2013, Mr. Golden and Instacart entered into a pre-dispute agreement to arbitrate providing that any arbitration would be administered by JAMS "pursuant to its Employment Arbitration Rules and Procedures and subject to JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness" (collectively, "the JAMS Employment Rules"). See October 11, 2013 Agreement, ¶ 7.2. At no time has Instacart agreed to modify or waive the applicability of the JAMS Employment Rules. Indeed, one of the primary advantages of arbitration over federal or state court litigation is a more streamlined, informal, and less expensive litigation process. Plaintiff's proposal to introduce the procedural complexity of the Federal Rules of Civil Procedure or the California Code of Civil Procedure would directly undermine the parties' agreement to arbitrate and would impose costs and delays vastly disproportionate to the relatively small amount in dispute in this case.

Accordingly, Instacart respectfully requests that the Arbitrator refrain from modifying the parties' pre-dispute agreement regarding the applicability of the JAMS Employment Rules. There is no need to impose alternative rules that would result in additional procedural expense and burden disproportionate to the amount in controversy.⁴

3. Document Requests

As noted above, Mr. Golden and Instacart previously agreed that this arbitration would be governed by JAMS' "Employment Arbitration Rules and Procedures." Under JAMS' Employment Rule 17, the parties should exchange documents and information via an informal document exchange (rather than formal written discovery requests).

² Under Plaintiff's current proposal, experts would be disclosed (and initial reports exchanged) *before* fact discovery ends in order to make a June arbitration work. Additionally, the expert deposition period would not conclude until 3 weeks before the arbitration hearing, ending on the very same date that trial exhibits, witness lists and deposition excerpts need to be exchanged.

³ Plaintiff and Instacart have met and conferred on the Arbitrator's draft scheduling order. We have reached agreement on many issues and Instacart expects that the remaining open dates can be set once the parties know the arbitration date.

⁴ As Instacart has told Plaintiff, if there are any procedural ambiguities that Plaintiff wishes to resolve, Instacart is happy to meet and confer regarding those specific issues.

Hon. William J. Cahill (Ret.)
March 17, 2016
Page 3

In accordance with Rule 17, Instacart has previously proposed that the parties “cooperate in good faith in the voluntary and informal exchange of all relevant non-privileged documents.” Plaintiff’s counsel has refused to utilize this procedure. Instead, Plaintiff’s counsel first served Instacart with 113 formal requests for production of documents in this arbitration, many of which seek “all documents regarding” the designated topics or seek information relevant to class action issues, not an individual arbitration. After Instacart objected to these requests, Plaintiff reduced his requests to 60 document requests, but has refused to further reduce these requests. Furthermore, Plaintiff has refused to agree that 60 (or any number) is a cap on document requests, maintaining the right to serve an unstated, and unlimited, number of additional documents requests as he desires.

Plaintiff’s numerous, formal document requests are inappropriate and unnecessary here. JAMS’ Employment Rule 17 provides for an informal exchange of documents for good reason. While formal document requests made pursuant to the Federal Rules of Civil Procedure or the California Code of Civil Procedure might be suitable to large commercial disputes or class action proceedings, they make little sense for efficiently resolving a single-worker arbitration. Indeed, the attorneys’ fees that would be incurred in drafting responses and objections to Plaintiff’s 60 document requests (much less any others he may serve) would vastly dwarf any potential recovery that Mr. Golden could hope to achieve here. Instead, the parties should comply with JAMS’ Employment Rule 17 and informally exchange documents, as Instacart has proposed. Instacart is prepared to start this process promptly and believes that this would be more cost effective, and expeditious, than formal document requests.⁵ If disputes arise regarding the completeness of either party’s production, the parties can then meet and confer about such issues and, if necessary, bring any such disputes to Your Honor’s attention for efficient resolution.

4. Interrogatories & Requests for Admission

At the outset of this arbitration, Plaintiff also served Instacart with 267 requests for admission and 25 special interrogatories. When Instacart objected that these types of formal discovery requests were improper, Plaintiff put these requests on hold. Plaintiff’s counsel has, however, continued to insist on the right to serve Instacart with unspecified numbers of both requests for admission and interrogatories.

⁵ If the Arbitrator believes that some formal document requests are appropriate, the number and scope of such requests should be highly limited at the outset unless good cause is shown to obtain more. At the most, each party should obtain no more than 25 document requests and be instructed that any such requests need to be narrowly tailored and not seek “all documents”. To try and resolve this issue, Instacart previously asked Plaintiff to identity the 25 pending document requests that he cares most about, and to limit these requests in a way that does not seek “all documents”, but Plaintiff has refused to do so.

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March 17, 2016
Page 4

Plaintiff's request to utilize requests for admission and interrogatories in this case must be denied. None of these requests are authorized by JAMS Employment Rule 17. Moreover, although Plaintiff claims that using these requests could "significantly reduce the extent of other discovery", this is clearly wrong. Indeed, when Plaintiff first raised this issue to Instacart during a meet and confer, Instacart asked whether Plaintiff would agree to reduce the number of depositions (or other discovery) if Instacart might consider agreeing to some limited number of interrogatories or requests for admission. Plaintiff refused, demonstrating that any such requests will not decrease discovery here but instead increase it.

Plaintiff's proposed use of requests for admission and interrogatories should also be denied because Plaintiff clearly intends to use such discovery to try and impose significant, and burdensome, discovery costs on Instacart. Indeed, even with a few such requests (much less the hundreds that Plaintiff previously served), the attorneys' fees that would be incurred in drafting responses and objections to such discovery requests would vastly dwarf any potential recovery that Mr. Golden could hope to achieve.

Instead of interrogatories and requests for admissions, Plaintiff can, and should, seek any information necessary for this arbitration via the informal document exchange and deposition process. If disputes arise regarding the need for certain additional information, the parties can bring such disputes to Your Honor's attention for efficient resolution. This is consistent with both JAMS' governing Employment Arbitration Rules and with the purposes and nature of arbitration.

5. Deposition limits

As noted above, Mr. Golden and Instacart previously agreed that this arbitration would be governed by JAMS' "Employment Arbitration Rules and Procedures". Under JAMS' Employment Rule 17(b), "[e]ach Party may take at least one deposition of an opposing Party or an individual under the control of the opposing Party." Any request for "additional depositions" shall be "based upon the reasonable need for the requested information, the availability of other discovery and the burdensomeness of the request on the opposing Parties and witness." *See* JAMS Employment Rule 17(b).

Despite Rule 17(b)'s clear standards, Plaintiff's counsel is demanding the right to take 10 fact depositions (presumably of Instacart and its personnel), in addition to other expert depositions. When Instacart asked Plaintiff's counsel to identify why they needed so many depositions, and who would be deposed, Plaintiff's counsel has repeatedly refused to provide that information.

Instacart respectfully requests that Your Honor deny Plaintiff's unsupported request for additional depositions and instead require the parties to comply with JAMS' Rule 17(b). There is no need for Plaintiff's counsel to seek 10 depositions in this arbitration. That is especially true where, as here, the cost of even a single deposition will almost certainly exceed the amount

Hon. William J. Cahill (Ret.)
March 17, 2016
Page 5

in controversy in this matter and Plaintiff's counsel cannot establish any reasonable need for these additional depositions.

6. Expert Witnesses

There is no need to have the parties' expert disclosures governed by the Federal Rules of Civil Procedure or the California Code of Civil Procedure. The parties have already agreed that expert reports will be limited to 10 pages. The parties have also discussed deadlines for the exchange of expert information and reports and for the completion of expert deadlines. If there are any further issues, the parties can resolve these issues informally or raise them for resolution as needed.

7. Applicability of Discovery in *Golden* to Other Cases.

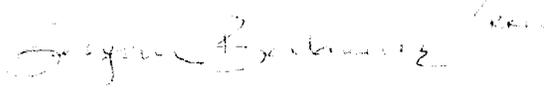
Mr. Golden originally sought to litigate his claims against Instacart as a class action. However, Instacart moved to compel individual arbitration and to dismiss Mr. Golden's class claims. Judge Chen's November 3, 2015 Order Granting Instacart's Motion to Compel Arbitration dismissed Mr. Golden's class action claims and ordered him to submit his demand to JAMS "on an individual basis only." 11/3/15 Order at 17–18 ("there is no evidence that the parties contemplated or agreed to class-wide arbitration."). Judge Chen also ordered Plaintiff's counsel to submit any other arbitration demands on an individual basis and, to date, they have filed *one* such demand—on behalf of Mr. Golden.

Despite Judge Chen's Order, Plaintiff's counsel has repeatedly asked to have discovery taken in Mr. Golden's arbitration automatically apply to other, potential and as yet unfiled arbitration demands. Instacart has properly refused to agree to this, as it is well within its right to do. Instacart thus opposes Plaintiff's counsel's request that the Arbitrator rule on this issue and respectfully submits that Your Honor should refrain from making rulings regarding the use or admissibility of evidence in hypothetical litigation by unnamed persons that have not yet been filed and are not before Your Honor.⁶ Mr. Golden simply has no standing to litigate on behalf of other Instacart contractors or to take discovery regarding cases other than his own.

⁶ It seems clear that Plaintiff's counsel hopes that, by obtaining this type of order, they can circumvent the narrow scope of discovery appropriate in this individual arbitration and instead seek class-wide discovery. Indeed, when Plaintiff's counsel first raised this request to Instacart, Instacart asked whether Plaintiff would make a related agreement that discovery taken in the *Golden* case would be limited to the scope of the *Golden* case and that the scope of discovery here would not expand into broader, class type discovery. Plaintiff's counsel would not make that agreement, citing their alleged plan to file 1000s of arbitrations and their desire to use this case to gain discovery for all such arbitrations.

Hon. William J. Cahill (Ret.)
March 17, 2016
Page 6

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Benjamin Berkowitz".

Benjamin Berkowitz

cc: The Arns Law Firm
Robert S. Arns
Jonathan E. Davis
Kevin M. Osborne
Julie C. Erickson

Exhibit 4

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JONATHAN HUSTING, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

Defendants.

No.

**WRITTEN CONSENT TO JOIN
ACTION PURSUANT TO 29 U.S.C. §
216(b)**

CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT (FLSA)

I work or worked for Maplear, Inc., dba Instacart at some point between November 30, 2012 through the date of this document, while classified as exempt, as a Personal Shopper (the job title "Personal Shopper" includes full-service shoppers, in-store shoppers, and delivery-drivers). During my dates of employment, there were / have been occasions when I worked more than forty hours per workweek and was not / have not been compensated at the rate of one and one half times my regular rate of pay for such hours. During my dates of employment, there were / have been occasions when I was not / have not been compensated at the minimum wage for the hours I worked.

Pursuant to 29 U.S.C. § 216, I consent to join in the FLSA collective action titled *Husting, et al. v. Maplear, Inc. dba Instacart*, pending in the United States District Court for the Northern District of California, to recover unpaid overtime pay and unpaid minimum wages under the federal Fair Labor Standards Act ("FLSA"), 29. U.S.C. § 216(b), and other relief under state and federal law.

I choose to be represented in this matter by counsel The Arns Law Firm in this action.

DATED: 12/1/2016

Belleuve, WA
City State

Sarah Lester

Printed Name

DocuSigned by:

Signature 6333482

JONATHAN HUSTING, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

Defendants.

No.

**WRITTEN CONSENT TO JOIN
ACTION PURSUANT TO 29 U.S.C. §
216(b)**

CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT (FLSA)

I work or worked for Maplebear, Inc., dba Instacart at some point between November 30, 2012 through the date of this document, while classified as exempt, as a Personal Shopper (the job title "Personal Shopper" includes full-service shoppers, in-store shoppers, and delivery-drivers). During my dates of employment, there were / have been occasions when I worked more than forty hours per workweek and was not / have not been compensated at the rate of one and one half times my regular rate of pay for such hours. During my dates of employment, there were / have been occasions when I was not / have not been compensated at the minimum wage for the hours I worked.

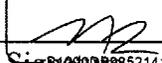
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I choose to be represented in this matter by counsel The Arns Law Firm in this action.

DATED: 12/1/2016

Indianapolis, Indiana
City State

Nathan Raines
Printed Name

DocuSigned by:

Signature

1 JONATHAN HUSTING, Individually
2 and On Behalf of All Others Similarly
3 Situated,

4 Plaintiffs,

5 vs.

6 MAPLEBEAR, INC., dba INSTACART;
7 AND DOES 1 THROUGH 100, inclusive,

8 Defendants.

No.

**WRITTEN CONSENT TO JOIN
ACTION PURSUANT TO 29 U.S.C. §
216(b)**

CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT (FLSA)

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12 job title "Personal Shopper" includes full-service shoppers, in-store shoppers, and delivery-
13 drivers). During my dates of employment, there were / have been occasions when I worked
14 more than forty hours per workweek and was not / have not been compensated at the rate of one
15 and one half times my regular rate of pay for such hours. During my dates of employment, there
16 were / have been occasions when I was not / have not been compensated at the minimum wage
17 for the hours I worked.

18 Pursuant to 29 U.S.C. § 216, I consent to join in the FLSA collective action titled
19 *Husting, et al. v. Mapbear, Inc. dba Instacart*, pending in the United States District Court for
20 the Northern District of California, to recover unpaid overtime pay and unpaid minimum wages
21 under the federal Fair Labor Standards Act ("FLSA"), 29. U.S.C. § 216(b), and other relief under
22 state and federal law.

23 I choose to be represented in this matter by counsel The Arns Law Firm in this action.

24 DATED: 11/30/2016

25 Boulder, Colorado
26 City State

Margaret "Maggie" Connolly

Printed Name

DocuSigned by:

Signature

JONATHAN HUSTING, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

Defendants.

No.

**WRITTEN CONSENT TO JOIN
ACTION PURSUANT TO 29 U.S.C. §
216(b)**

CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT (FLSA)

I work or worked for Maplebear, Inc., dba Instacart at some point between November 30, 2012 through the date of this document, while classified as exempt, as a Personal Shopper (the job title "Personal Shopper" includes full-service shoppers, in-store shoppers, and delivery-drivers). During my dates of employment, there were / have been occasions when I worked more than forty hours per workweek and was not / have not been compensated at the rate of one and one half times my regular rate of pay for such hours. During my dates of employment, there were / have been occasions when I was not / have not been compensated at the minimum wage for the hours I worked.

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I choose to be represented in this matter by counsel The Arns Law Firm in this action.

DATED: 11/30/2016

Marietta, Georgia
City State

Amy Nosek

Printed Name

DocuSigned by:

Amy Nosek

Signature

1 JONATHAN HUSTING, Individually
2 and On Behalf of All Others Similarly
3 Situated,

4 Plaintiffs,

5 vs.

6 MAPLEBEAR, INC., dba INSTACART;
7 AND DOES 1 THROUGH 100, inclusive,

8 Defendants.

No.

**WRITTEN CONSENT TO JOIN
ACTION PURSUANT TO 29 U.S.C. §
216(b)**

CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT (FLSA)

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21 under the federal Fair Labor Standards Act ("FLSA"), 29. U.S.C. § 216(b), and other relief under
22 state and federal law.

23 I choose to be represented in this matter by counsel The Arns Law Firm in this action.

24 DATED: 11/30/2016

25 BROOKLYN NEW YORK
26 City State

LaDia Armstrong

Printed Name

DocuSigned by:

LaDia Armstrong

Signature EE97865BA4A3...

JONATHAN HUSTING, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

Defendants.

No.

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I choose to be represented in this matter by counsel The Arns Law Firm in this action.

DATED: 11/30/2016

Hinsdale, IL
City State

Matthew Parsons
Printed Name

DocuSigned by:
Matthew Parsons
Signature ID: 8344AE...

JONATHAN HUSTING, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

Defendants.

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I choose to be represented in this matter by counsel The Arms Law Firm in this action.

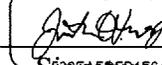
DATED: 11/30/2016

Fremont, California
City State

Jonathan Husting

Printed Name

DocuSigned by:



Signature

JONATHAN HUSTING, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

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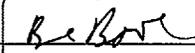
DATED: 11/30/2016

Houston, Texas

City State

Ben Boven

Printed Name

DocuSigned by:

Signature E6A44F...

JONATHAN HUSTING, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

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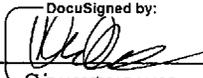
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I choose to be represented in this matter by counsel The Arns Law Firm in this action.

DATED: 11/30/2016

Sherman oaks, Ca
City State

Matthew Clayton
Printed Name

DocuSigned by:

Signature

JS-CAND 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Husting, Jonathan, et. al</p> <p>(b) County of Residence of First Listed Plaintiff <u>Alameda</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> The Arns Law Firm, 515 Folsom St. San Francisco, CA 94105 (415) 495-7800</p>	<p>DEFENDANTS Maplebear, Inc. dba Instacart</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys <i>(If Known)</i> Keker & Van Nest LLP, 633 Battery St San Francisco, CA 94111 (415) 391-5400</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC § 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC § 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input checked="" type="checkbox"/> 950 Constitutionality of State Statutes</p>	
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities-Employment</p> <p><input checked="" type="checkbox"/> 446 Amer. w/Disabilities-Other</p> <p><input type="checkbox"/> 448 Education</p>	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p>Other:</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee-Conditions of Confinement</p>			

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District *(specify)*

6 Multidistrict Litigation-Transfer

8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
Fair Labor Standards Act 29 U.S.C. §§ 201 et seq.

Brief description of cause:
Minimum wage and overtime violations; employee misclassification

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$ 30,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions):*

JUDGE Hon. Edward M. Chen

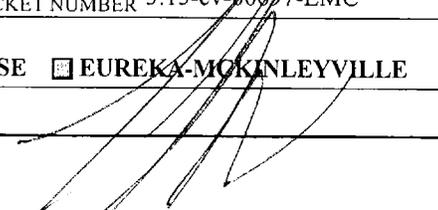
DOCKET NUMBER 3:15-cv-00697-EMC

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 12/01/2016

SIGNATURE OF ATTORNEY OF RECORD: 

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Lawsuit Filed by Instacart Independent Contractors](#)
