

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MAPLEBEAR INC. D/B/A INSTACART</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.: 2020 CA 003777 B</p>
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CONSENT ORDER AND JUDGMENT

Plaintiff District of Columbia (the “District”), by and through its Office of the Attorney General (“OAG”), filed its Complaint in this matter, under the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.* (“CPPA”) and Sales Tax Law, D.C. Code § 47-2001, *et seq.* The District and Defendant Maplebear Inc. d/b/a Instacart (“Instacart”) (together, the “Parties”) stipulate to the entry of this Consent Order and Judgment (“Consent Order”) to resolve all matters in dispute in this action between them.

THE PARTIES

1. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General has authority

to enforce the District's consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

2. Defendant Mapbear Inc. d/b/a Instacart is a Delaware corporation with its headquarters and principal place of business at 50 Beale Street, Suite 600, San Francisco, CA 94105. Instacart states that it is a technology company that facilitates on-demand delivery services to consumers in Washington, D.C. through a website (www.instacart.com) and a mobile application (the "Instacart App").

DEFINITIONS

3. "**Effective Date**" shall be the date on which this Consent Order is entered by this Court.

4. "**Shopper**" means the workers contracted by Instacart to fulfill customer orders.

FACTS

5. This Court has jurisdiction over this matter.

6. The District's Complaint alleges that Instacart engaged in unlawful trade practices under the CPPA in violation of D.C. Code § 28-3904(f), (f-1), and (e) between September 2016 until April 24, 2018. In particular, Instacart (1) made misrepresentations to consumers regarding the nature and purpose of a default, variable service fee that Instacart added to consumers' orders; (2) omitted material facts to consumers regarding the nature and purpose of a default, variable service fee added to consumers' orders (including that this fee was not a Shopper tip); and (3) made ambiguous representations to consumers that failed to adequately disclose that paying this default, variable service fee did not directly increase what any Shopper was paid for fulfillment of a specific order.

7. The District's Complaint also alleges that Instacart failed to collect sales taxes due

on service fees and delivery fees that Instacart charged to District consumers beginning in January 2014 through August 31, 2020, in violation of D.C. Code § 47-2016. The District alleges that this failure lacked a reasonable basis and entitles the District to penalties under D.C. Code §§ 47-4211 and § 47-4213. Nothing contained in this Consent Judgment is or may be construed as an admission by the District that its claim are not well-founded.

8. Instacart denies all of the District's allegations and claims, including that it has violated any consumer protection laws, including the CPPA, or District sales tax law. Nothing contained in this Consent Judgment is or may be construed to be an admission by Instacart of any violation of law or regulation, of any other matter of fact or law, or of any liability or wrongdoing.

INJUNCTION

9. Instacart shall not engage in any act or practice that violates the CPPA.

10. Instacart shall not make any misrepresentation or material omission of fact that has the tendency or capacity to mislead consumers regarding the nature or purpose of any fee applied to consumers' orders by Instacart.

11. Instacart shall not file claim(s) for refund of sales taxes paid for the periods beginning in January 2014 through August 31, 2020, including all payments made under protest by Instacart on November 6, 2020. Instacart withdraws their protest as to the November 6, 2020 payment to the District.

12. As provided under D.C. Code § 47-2002(a), Instacart shall collect and remit District sales tax on the total amount of the sales price charged to consumers in the District, on all retail sales (including service fees and/or delivery fees), absent a change in law or authority.

13. Instacart agrees that it is a marketplace facilitator, as defined under D.C. Code § 47-2001(g-5), and, absent a change in law or other authority that allows Instacart to be excluded

as a marketplace facilitator under D.C. Code § 47–2001(g-5), that it shall collect and remit District sales tax on all sales it facilitates to customers in the District of Columbia, regardless of whether the marketplace seller for whom sales are facilitated would be required to collect District sales tax had the sale not been facilitated by Instacart.

MONETARY TERMS

14. Instacart shall pay the District a total of \$1,800,000.00 to resolve this litigation. Instacart shall make this payment within thirty (30) days of the Effective Date. Payment shall be made by wire payment and delivered to the Office of the Attorney General consistent with instructions from OAG. The District may use this payment for any lawful purposes, including, but not limited to, restitution, attorneys’ fees, and other costs of investigation and litigation, and/or this payment may be placed in, or applied to, the District’s restitution fund or litigation support fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney General for the District of Columbia. Defendant agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District’s payment under this paragraph.

RELEASES

15. This Consent Order finally disposes of all claims and issues by the parties that have been raised, or could have been raised, by either party based on the conduct and time period alleged in the Complaint in this lawsuit.

16. The District shall release Instacart from all claims that the Attorney General asserted or could have asserted under the D.C. Consumer Protection Procedures Act, D.C. Code §§ 28-3901 *et seq.*, (i) with respect to Instacart’s service or delivery fees or (ii) based on the facts alleged in the Complaint.

17. The District shall release Instacart from all claims that the Attorney General or the Office of Tax and Revenue asserted or could have asserted under the Sales Tax Law, D.C. Code § 47-2001, *et seq.* in connection with Instacart's sales taxes for the periods beginning in January 2014 through August 31, 2020.

18. Instacart shall release the District from all claims that Instacart raised, or could have raised, in this lawsuit.

GENERAL PROVISIONS

19. The Parties may apply to the Court to modify this Consent Order by agreement at any time. Any party may apply to the Court, without the other party's agreement, to modify this Consent Order for good cause shown based on a substantial change in law or fact occurring after the date this Consent Order is entered.

20. Unless otherwise set forth above, Instacart shall implement all changes required by this Consent Order within thirty (30) days of its entry by the Court.

21. The District reserves the right to take any legal action to enforce the terms of this Consent Order. However, prior to taking any such action, the District shall provide a fifteen (15) business day notice letter by email and first-class mail to Instacart upon a good faith belief that Instacart has violated the injunctive terms of this Consent Order. Instacart shall have fifteen (15) business days from the receipt of the notice to explain and correct any violation before the District shall take any legal action to enforce the terms of this Consent Order.

22. Instacart shall not cause or encourage third parties, or knowingly permit third parties acting on its behalf, to engage in practices from which Instacart is prohibited by this Consent Order.

23. This Consent Order represents the full and complete terms of the settlement entered

by the Parties. In any action undertaken by the Parties, neither prior versions of this Consent Order nor prior versions of any of its terms that were not entered by the Court in this Consent Order may be introduced for any purpose whatsoever.

24. In entering into this Consent Order, the parties are neither extinguishing any rights otherwise available to consumers, nor creating any right not otherwise available under the laws of the District of Columbia.

25. This Court retains jurisdiction of this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate. The Parties may agree in writing, through their counsel, to an extension of any time period in this Consent Order without a court order.

26. This Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

27. All notices sent pursuant to this Consent Order shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the Plaintiff District of Columbia:

Adam Teitelbaum, Director
Office of Consumer Protection
DC Office of the Attorney General
400 6th Street, NW
Washington, DC 20001

For the Defendant Maplebear, Inc. d/b/a Instacart:

Derek Knerr, Associate General
Counsel & Director of Litigation
Maplebear Inc d/b/a Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105
derek.knerr@instacart.com

28. Any failure by any party to this Consent Order to insist upon the strict performance by any other party of any of the provisions of this Consent Order shall not be deemed a waiver of

any of the provisions of this Consent Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Consent Order.

29. If any clause, provision or section of this Consent Order shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Consent Order and this Consent Order shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

30. Nothing in this Consent Order shall be construed as relieving Instacart of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Consent Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

31. Instacart shall ensure that all current and future personnel having final decision-making authority with respect to the subject matter of this Consent Order are informed of the requirements set forth in this Consent Order.

32. Instacart shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Consent Order or for any other purpose that would otherwise circumvent any part of this Consent Order or the spirit or purposes of this Consent Order.

CONSENTED TO FOR PLAINTIFF DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General for the District of Columbia

KATHLEEN M. KONOPKA
Deputy Attorney General, Public Advocacy Division



ADAM TEITELBAUM (D.C. Bar No. 1015715)
Director, Office of Consumer Protection

Date: 8/19/2022

s/ Jennifer Rimm

Jennifer Rimm (D.C. Bar No. 1019209)
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Assistant Attorneys General
Office of the Attorney General
440 Sixth Street, N.W., 10th Floor
Washington, D.C. 20001
Attorneys for the District of Columbia

Date: 8/19/2022

CONSENTED TO FOR DEFENDANT MAPLEBEAR, INC. D/B/A INSTACART

Derek Knerr

Derek Knerr
Associate General Counsel & Director of Litigation
Maplebear Inc d/b/a Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105

Date: 8/17/2022

Jonathan Drenfeld

Jonathan A. Drenfeld (D.C. Bar No. 989432)
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1152 15th Street, N.W.
Washington, DC 20005-1706
Attorneys for Defendant Maplebear Inc. dba Instacart

Date: 8/17/2022

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Date

Judge Hiram Puig-Lugo
Superior Court of the District of Columbia