



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 20-Oct-2021
Délivré par voie électronique : 20-Oct-2021
Toronto

(Court Seal)

GARNET TAYLOR

Plaintiff

and

MAPLEBEAR CANADA INC., d.b.a. INSTACART and MAPLEBEAR, INC.,
d.b.a INSTACART

Defendants

Proceeding under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Maplebear Canada Inc.
PO Box 780
Halifax, Nova Scotia B3J 2V1

AND TO: Maplebear Canada Inc.
1300-1969 Upper Water Street
Purdy's Wharf Tower II
Halifax, NS B3J 3R7

AND TO: Maplebear, Inc. d/b/a Instacart
Legal Team
50 Beale Street, Suite 600
San Francisco, CA 94105

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CLAIM

1. The Plaintiff, on his own behalf and on behalf of all Class Members seeks:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
 - (b) \$200,000,000 in general damages for the Class or such other sum as this Honourable Court deems just;
 - (c) a declaration that all Class Members are or were employees of Instacart;
 - (d) a declaration that the provisions of the *ESA* and Equivalent Legislation are express or implied terms of the contracts of employment of the Class Members;
 - (e) a declaration that Instacart breached the terms of the *ESA* and Equivalent Legislation when it misclassified the employment relationship of Class Members as independent contractors and failed to:
 - (i) pay Class Members for all hours worked, including training;
 - (ii) pay Class Members wages equivalent to at least minimum wage;
 - (iii) pay Ontario Class Members three hour rule pay;
 - (iv) pay British Columbia Class Members minimum daily pay;
 - (v) pay Class Members overtime pay;

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- (vi) pay Class Members vacation pay;
 - (vii) pay Class Members public holiday pay;
 - (viii) pay Class Members premium pay;
 - (ix) pay Class Members termination pay; and,
 - (x) comply with the minimum standards in the *ESA* and Equivalent legislation including record keeping and notifying employees of their rights under the *ESA* and Equivalent Legislation;
- (f) an interim, interlocutory and final mandatory order directing that Instacart comply with the *ESA* and Equivalent Legislation and, in particular, accurately record all hours worked by Class Members and pay Class Members for all hours worked and pay overtime pay, wages equivalent to at least minimum wage, three hour rule pay, minimum daily pay, vacation pay, statutory holiday pay, premium pay, and termination pay, as applicable;
- (g) an order pursuant to section 23 of the *Class Proceedings Act, 1992*, SO 1992, c 6, admitting into evidence statistical information, including statistical information concerning hours of work performed by Class Members, and an order directing Instacart to preserve, and disclose to the Plaintiff all records relating to the hours of work performed by Class Members, including data stored in the Instacart Shopper App;

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- (h) a declaration that the independent contractor agreement, or any other agreement, that purports to exclude Class Members from the provisions and protections of the *ESA* and Equivalent Legislation is void and unenforceable;
- (i) a declaration that Instacart is liable and must reimburse Class Members for out-of-pocket expenses paid for gas, insurance, maintenance, parking fines and mobile phone data in connection to the use of personal vehicles and/or mobile phones used to perform work for Instacart;
- (j) a declaration that Instacart is liable for any damages resulting from the determination that Class Members are or were employees of Instacart and not independent contractors;
- (k) a declaration that Instacart is liable for any adverse income tax liability sustained by Class Members resulting from a determination that the Class Members are or were employees of Instacart and not independent contractors;
- (l) a declaration that Instacart is liable, and must reimburse Class Members for any Canada Pension Plan or Employment Insurance contributions which may have been paid or are owed resulting from a determination that Class Members are or were employees of Instacart and not independent contractors;
- (m) punitive, aggravated, and exemplary damages in the amount of \$50,000,000;

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- (n) pre-judgment and post-judgment interest on the amounts payable as set out above in equity or otherwise at common law, or alternatively pursuant to sections 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C.43, compounded annually;
- (o) costs of this action pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, or alternatively, on a full or substantial indemnity basis together with applicable HST thereon,
- (p) the costs of administration of a plan of distribution of the recovery in this action and notice pursuant to section 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6 plus applicable taxes; and,
- (q) such further and other relief as may be required by the *Class Proceedings Act, 1992*, SO 1992, c 6 or as this Honourable Court may deem just.

A. DEFINED TERMS

2. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) **“Batch”** means an Instacart customer order submitted through the Instacart app;
- (b) **“CJA”** means the *Courts of Justice Act*, RSO 1990, c C.43;
- (c) **“Class”** or **“Class Members”** means all current and former full-service Instacart shoppers in Canada during the Class Period;

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- (d) “**Class Period**” means the period of time between July 2015 and the date on which the certification of this lawsuit as a class proceeding is finally determined;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6;
- (f) “**CPP**” means benefits or contributions under the *Canada Pension Plan*, RSC 1985 c C-8;
- (g) “**EI**” means benefits or contributions under the *Employment Insurance Act*, SC 1996, c 23;
- (h) “**Employment Standards Regulations**” means the Exemptions, Special Rules and Establishment of Minimum Wage, O Reg 285/01; Public Holiday Pay, O Reg 375/18; Termination and Severance of Employment, O Reg 288/01; the Labour Standards Regulations, CNLR 781/96; the General Labour Standards Code Regulations, NS Reg 298/901; the Minimum Wage Order (General), NS Reg 5/99, Sch A; the General Regulation, NB Reg 85-179; Minimum Wage, NB Reg 2019-2; the Employment Standards Act General Regulations, PEI Reg EC588/10; the Minimum Wage Order, PEI Reg EC572/98; the Regulation respecting labour standards, CQLR c N-1.1, r 3; the Regulation respecting a registration system or the keeping of a register, CQLR c N-1.1, r 6; the Employment Standards Regulation, Man Reg 6/2007; The Employment Standards Regulations, RRS c S-15.1 Reg 5; The Minimum Wage Regulations, 2014, RRS c s-15.1 Reg 3; the

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Employment Standards Regulation, Alta Reg 14/1997; and, the Employment Standards Regulation, BC Reg 396/95;

- (i) “**ESA**” means the *Employment Standards Act, 2000*, SO 2000, c 41;
- (j) “**Equivalent Legislation**” means, the *Labour Standards Act*, RSNL 1990, c L-2, the *Labour Standards Code*, RSNS 1989, c 246, the *Employment Standards Act*, SNB 1982, c E-7.2, *Employment Standards Act*, RSPEI 1988, c E-6.2, the *Act respecting labour standards*, CQLR c N-1.1; the *Civil Code of Québec*, CQLR c CCQ-1991, *The Employment Standards Code*, CCSM c E110, *The Saskatchewan Employment Act*, SS 2013, c S-15.1, the *Employment Standards Code*, RSA 2000, c E-9, and, the *Employment Standards Act*, RSBC 1996, c 113;
- (k) “**Full-service shopper**” means an individual who performs shopping and delivery services for Instacart via the Shopper App;
- (l) “**Instacart**” means the Defendants, Maplebear Canada Inc. and Maplebear, Inc.;
- (m) “**ITA**” means *Income Tax Act*, RSC, 1985, c 1 (5th Supp.);
- (n) “**Plaintiff**” means the plaintiff Garnet Taylor; and,
- (o) “**Shopper App**” means the Instacart app made available to Class Members who provide personal shopping and/or delivery services pursuant to an Independent Contractor Agreement with Instacart.

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B. THE DEFENDANTS

3. Instacart is one of the world's largest online grocery services. It provides same-day grocery delivery for several Canadian grocery retailers including Loblaws, Costco, and Walmart, among others. In addition, Instacart also provides same-day delivery service to non-grocery retailers including H&M, Indigo, and Staples.

4. The Defendant Maplebear Canada Inc. is a corporation organized and existing under the laws of Nova Scotia. Its registered office is located in Halifax, Nova Scotia.

5. The Defendant Maplebear, Inc. is a corporation organized and existing under the laws of California in the United States of America. Its registered office is located in San Francisco, California.

6. The business of each of Maplebear Canada Inc. and Maplebear, Inc. is inextricably woven with that of the other and each is the agent of the other for the purposes of the employment of Class Members, the Shopper App and providing Instacart services to Instacart customers in Canada. Maplebear Canada Inc. and Maplebear, Inc. are hereinafter referred to collectively as "Instacart".

7. Instacart is the employer of the Class. It dictates when, where and how Class Members carry out their job duties. In particular, and without restricting the generality of the foregoing:

- (a) Instacart requires all Class Members to use the Shopper App. Class Members must follow the detailed instructions provided by the Shopper App in performing their job duties, which Instacart consistently monitors for compliance with its policies.

The Shopper App:

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- (i) requires Class Members to agree to and follow detailed Instacart policies and procedures which are outlined in “account access guidelines”;
- (ii) requires Class Members to login and indicate their availability to perform Instacart services from a pre-determined list of available slots in a geographic area, referred to as “delivery opportunities” for available customer batches;
- (iii) advises and directs Class Members to attend a specific grocery store or other retail store where Class Members must perform shopping duties;
- (iv) provides Class Members with an itinerary to follow in delivering Instacart customer orders, including turn-by-turn driving directions;
- (v) logs “active time” spent by Class Members performing services in the Shopper App, including shopping in-store and driving to an Instacart customer’s location;
- (vi) logs the number of batches completed by Class Members;
- (vii) logs the tips paid to Class Members by Instacart customers;
- (viii) logs Instacart payments and Instacart payment “adjustments” that correct reported errors in compensation;
- (ix) maintains a “star rating” system which acts as a *de facto* system of reward/discipline whereby a higher “star rating” corresponds with

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preferential treatment for Class Members, and a lower “star rating” corresponds with negative treatment of Class Members and the potential for termination of employment;

- (x) requires Class Members to correspond directly with Instacart customers via the Shopper App when items are unavailable and substitutions are required;
 - (xi) requires Class Members to report all technical or customer service related issues to “Customer Care” via the Shopper App, which in turn prompts Instacart to provide managerial direction and oversight to Class Members;
 - (xii) monitors Class Members’ movements through the use of GPS technology linked to the Shopper App and Class Members’ personal mobile devices, allowing Instacart to instruct Class Members to pick up the pace if it is noted that they have not yet arrived at a store location within a specified amount of time or performed at a below average speed;
- (b) Class Members perform services that are indispensable to Instacart’s business model;
- (c) Class Members are unable to accept batches directly from Instacart customers or develop direct commercial relationships with Instacart customers outside of the Shopper App; and,

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- (d) Class Members are required to use tools, such as insulated bags purchased from Instacart, in order to transport refrigerated items to Instacart customers, as per Instacart's requirements;

C. THE PLAINTIFF

8. The Plaintiff, Garnet Taylor, is an individual residing in Toronto, Ontario. He worked as a full-service shopper for Instacart between November 17, 2018 and June 21, 2020.

D. THE CLASS

9. All Class Members work as full-service Instacart shoppers in Canada.

10. Class Members perform the same work across the approximately 100 different geographic locations in Canada in which Instacart currently operates.

11. Class Members are required to carry out the following job duties for Instacart:

- (a) login to the Shopper App and indicate their availability and desire to accept a customer batch which has been placed by an Instacart customer through Instacart's app;
- (b) attend a grocery store or other retail store to shop for the items in the customer batch;
- (c) correspond with Instacart customers via the Shopper App where substitutions of items are required;
- (d) pay for the customer's items using an Instacart credit card; and,

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- (e) use their personal vehicle to deliver batches to Instacart customers based on an itinerary generated by the Shopper App.

- 12. Class Members must abide by and comply with Instacart's policies and procedures which are outlined in its account access guidelines.

- 13. Any violation or non-compliance with Instacart's account access guidelines can result in a Class Member's "star rating" decreasing, or, in some instances, termination of the Class Member's employment through unilateral deactivation of the Shopper App by Instacart. The "star rating" effectively serves as a disciplinary tool used by Instacart.

- 14. The performance of Class Members' work is continuously monitored, controlled and directed by Instacart through the Shopper App which provides Class Members with the store location to attend, the items to purchase, and an itinerary to follow in delivering batches to Instacart customers, including turn-by-turn driving directions.

- 15. Class Members are required to complete unpaid training to familiarize themselves with Instacart's policies and procedures for full-service shopping and are provided with and instructed to wear an Instacart lanyard and identify themselves as being representatives of Instacart while shopping or making deliveries to Instacart's customers.

- 16. Instacart directs and requires Class Members to work on a per batch basis which requires Class Members to complete work on Instacart's schedule. The time allotted by Instacart to complete batches is frequently far less than the amount of time it actually takes Class Members to

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complete batches. As a result, Class Members are routinely deprived of various employment standards concerning hours of work and unpaid breaks.

17. Although Instacart is aware or ought to be aware of the total number of hours Class Members work, Instacart has not or does not compensate Class Members for minimum statutory entitlements under the *ESA* and Equivalent Legislation including payment of wages equivalent to at least minimum wage, overtime pay, three hour rule pay, minimum daily pay, vacation pay, statutory holiday pay, premium pay, and termination pay, where applicable.

18. Class Members' contracts of employment contain express and/or implied terms which impose contractual duties and other common law duties on Instacart. As particularized below, these duties have been breached by Instacart, causing damages to the Class.

19. Class Members are responsible for paying for gas, insurance, maintenance, parking fines and mobile phone data in connection with the use of personal vehicles and/or mobile phones used to perform work for Instacart.

20. As a result of systemic misclassification by Instacart of Class Members as independent contractors, they receive no payment for overtime hours, wages equivalent to minimum wage, three hour rule pay, minimum daily pay, vacation pay, statutory holiday pay, premium pay, and termination pay, where applicable or any of the protections of the *ESA* or Equivalent Legislation. Further, Class Members receive no reimbursement for gas, insurance, maintenance, parking fines and mobile phone data used to perform work for Instacart.

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21. Class Members do not have EI and CPP or income tax deducted at source, nor do they receive EI and CPP contributions as part of their remuneration.

E. THE PLAINTIFF'S EMPLOYMENT HISTORY AS AN INSTACART SHOPPER

(i) *The Plaintiff's Recruitment and Onboarding*

22. In 2018, the Plaintiff learned about Instacart from a friend in the United States and applied to be an Instacart full-service shopper directly through the Shopper App.

23. The Plaintiff was required to complete an application form, submit a copy of his driver's licence, provide his Social Insurance Number, and submit to a background check. The Plaintiff was not required to attend a job interview.

24. On or about November 17, 2018, the Plaintiff was hired by Instacart as a full-service shopper following the successful completion of the application process and agreeing to be bound by Instacart's Independent Contract Agreement and account access guidelines.

25. The Plaintiff's orientation and training as a full-service shopper for Instacart consisted of watching a series of Instacart training videos and completion of a "demo order".

26. The training videos were created by Instacart for the purpose of training Instacart shoppers on how to perform their job duties in accordance with Instacart's policies. The Plaintiff watched these videos prior to completing his first batch.

27. "Demo orders" are completed by new Instacart shoppers on their own and are guided by the Instacart training videos on the Shopper App.

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28. Through the “demo order” process, the Plaintiff learned the process he must follow in order to provide full-service shopping services to Instacart customers, including how to select items and make deliveries to Instacart’s specifications.

29. The Plaintiff completed all required training and received no compensation for watching the Instacart training videos and completing the demo order.

(ii) The Plaintiff’s Job Duties and Hours of Work

30. During the course of his employment as an full-service shopper for Instacart, the Plaintiff typically worked five to seven days per week in the “Toronto West” area of Ontario. The Plaintiff’s hours of work fluctuated, but he routinely worked over 50 hours per week.

31. The Plaintiff’s experience, set out below, was similar to and representative of other Class Members.

32. Although the Plaintiff did not have scheduled “shifts”, until sometime in early 2020, the Plaintiff was required to indicate his availability to work as a full-service shopper for Instacart several days in advance. As part of this process, the Plaintiff indicated in the Shopper App the geographic zone in which he was willing to work and the hours he was willing to work.

33. If the Plaintiff indicated availability for a certain geographic zone and time and ultimately did not login to the Shopper App and perform services at that time, Instacart would decrease his “star rating” resulting in less profitable batches being offered to him, and/or, less desirable blocks of time in which to accept batches being offered to him in the future.

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34. The number of batches that Instacart offered varied according to Instacart customer demand.

35. The Plaintiff would learn of available batches in his geographic area by keeping the Shopper App open during the time slot he agreed to be available and monitoring the app closely. The Shopper App would display which batches were available at which store locations and the “batch earnings” and estimated tips, if any, associated with the available batches.

36. At this stage in the process, the Shopper App would display a map showing how far away the Plaintiff’s current location was from the store location he was required to attend in order to complete the batch in question. However, Instacart would not display the distance in kilometres from the store location to the customer’s location until after he had accepted the batch.

37. Like all other members of the Class, the Plaintiff was responsible for accepting the batches he wanted to complete. If the Plaintiff failed to accept a certain number of batches, his “star rating” would decrease as a form of discipline.

38. Once the Plaintiff had accepted a batch, he was responsible for driving his personal vehicle from his current location to the specified store within a fifteen minute window. If the Plaintiff took more than fifteen minutes to arrive the store location, he would lose the batch and it would become available to other Instacart shoppers in the same geographic area. Instacart would decrease the Plaintiff’s “star rating” in such an event.

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39. Once at the store location, the Plaintiff would consult the Shopper App to determine which items the customer ordered as part of their batch. The Plaintiff would then navigate the store and shop for the customer's items.

40. If the Instacart customer wanted an item that was not available at the store location, the Plaintiff was responsible for contacting the customer directly via the Shopper App to identify alternatives as substitutions and obtain the customer's approval prior to making the substitute purchase on their behalf.

41. Once the Plaintiff had located and selected all items that the customer ordered, he paid for their items using an Instacart issued credit card.

42. Like all other Class Members, the Plaintiff was required to use insulated bags that he purchased from Instacart in order to transport customer items that required refrigeration.

43. Once the Instacart customer's batch was paid for and bagged, the Plaintiff was responsible for using his personal vehicle to transport the batch to the customer's location.

44. Once at the Instacart customer's location, the Plaintiff was responsible for unloading the customer's bags and carrying them to the customer's door. This would sometimes require the Plaintiff to carry multiple bags up flights of stairs or into apartment or condominium buildings.

45. Instacart expected Class Members to complete batches within a specified period of time, typically no more than one hour from the time the Instacart customer placed their order. When the

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Plaintiff was delayed in completing batches on Instacart's schedule, he would be penalized by having his "star rating" reduced.

46. Class Members are always paid on a per batch basis and never on an hourly basis. Although the Instacart "batch earnings" associated with each batch were supposed to take into account factors such as the weight of items, number and types of items, and the estimated distance and time between the specified store and customer's location, Class Members are routinely compensated with the same "batch earnings", regardless of these factors and any delays beyond their control that resulted their spending more time than that allotted by Instacart to complete the batches.

47. Instacart represents to Class Members that it has a system that generates "batch earnings" for particular batches but refuses to explain how the system works to Class Members.

48. Prior to the onset of the COVID-19 pandemic and associated lockdown measures, the Plaintiff would complete anywhere between seven and 40 batches in a given week. Following March 2020, the Plaintiff initially worked in excess of 70 hours per week and completed more than 40 batches in a given week to keep up with new Instacart customer demand.

49. Beginning in April 2020, Instacart began hiring a large number of full-service shoppers to meet the new demand created by the COVID-19 pandemic. As a result, far fewer batches became available to the Plaintiff as a result of the increased number of full-service Instacart shoppers competing for available Instacart customer batches in the Plaintiff's geographic area.

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50. The Plaintiff's experience is consistent with other Class Members who have worked throughout the COVID-19 pandemic and experienced a marked decrease in available batches and "batch earnings".

(iii) The Plaintiff's Expenses

51. The Plaintiff, like other Class Members, incurred a number of expenses in the performance of his job duties as a full-service Instacart shopper. These include:

- (a) gas expenses to operate his personal vehicle to make Instacart customer deliveries;
- (b) car insurance premiums to insure his personal vehicle to make Instacart customer deliveries;
- (c) routine car washes in order to meet Instacart's vehicle requirements;
- (d) mobile phone charges to include data on his plan so that he could connect to the Shopper App;
- (e) expenses for purchasing insulated bags for customer orders;
- (f) general vehicle maintenance expenses including, oil changes, brake and tire replacement, and other maintenance;
- (g) parking fines; and,

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(h) expenses associated with purchasing personal protective equipment such as masks and hand sanitizer in order to mitigate the risk of COVID-19 infection and transmission while providing services to Instacart and its customers.

52. Neither the Plaintiff, nor other Class Members were reimbursed for any of these expenses, notwithstanding that they were all essential to perform the job.

53. When the failure to reimburse the Plaintiff for expenses is factored into the “batch earnings” received from Instacart, his effective rate of pay frequently fell below minimum wage.

(iv) The Plaintiff's Agreement and Remuneration

54. The Plaintiff was employed as an independent contractor of Instacart between November 17, 2018 and June 21, 2020 pursuant to the terms of an Independent Contractor Agreement (the “Agreement”).

55. The Plaintiff, like all other Class Members, was paid on a per batch, or piecemeal basis.

56. The Plaintiff's “Total Earnings” on a batch were comprised of customer tips (if any), plus an “Instacart Payment” which included a guaranteed minimum payment for delivering a batch. An “Instacart Payment” was inclusive of a delivery distance payment calculated at \$0.40 per kilometre in Canada. The delivery distance payment was paid based on the route identified as an itinerary in the Shopper App, which Class Members were required to follow. If the Plaintiff, or any Class Member, deviated from the route shown in the Shopper App, Instacart reserved the right to terminate their employment through deactivation from the Instacart app.

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57. Instacart's Agreement did not provide that Class Members were entitled to take breaks. On many occasions, it was not possible for the Plaintiff to take a break as a result of his job duties.

58. Neither the Plaintiff, nor other Class Members received any benefits as part of their employment with Instacart.

59. Instacart did not deduct income tax at source, nor did it deduct or make EI and CPP contributions from Class Members' pay.

60. Class Members, further:

- (a) did not receive vacation pay;
- (b) were never paid overtime pay or statutory holiday pay or premium pay despite working overtime hours and working on statutory holidays; and
- (c) were not provided with minimum pay pursuant to the "three hour rule" in Ontario or the "two hour rule" in British Columbia.

61. Notwithstanding Instacart's representations to the contrary, the Plaintiff, and other members of the Class, were employees and not independent contractors. It was, therefore, an implied term in Class Members' Agreements that the minimum standards set out in the *ESA*, and equivalent employment legislation, formed part of their contracts of employment.

62. Even though Instacart tracks "active time" in the Shopper App and is capable of determining the total number of hours Class Members work, it did not have a system or policy in

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place to monitor or record the Plaintiff's total hours of work, including any overtime hours, although it was aware, or ought to have been aware of Class Members' hours of work through data it obtained and kept from the Shopper App.

(v) Termination of the Plaintiff's Employment

63. On or about Sunday June 21, 2020, the Plaintiff was performing services for Instacart.

64. Three batches were available in the Plaintiff's geographic area, all of which involved the same grocery store location, followed by three different customer addresses to which the batches were to be delivered. The Plaintiff accepted all three batches and completed them.

65. There was an error in respect of the delivery address provided for one of the three batches. This resulted in the Plaintiff immediately contacting Instacart's Customer Care to obtain information about the correct address for the batch in question. After some time, the Plaintiff was provided with the correct address for the customer in question and delivered the customer's order.

66. Following the delivery of all three batches, the Plaintiff received a message from Customer Care that advised him that one of the three customers had not received their grocery delivery. The Plaintiff immediately contacted Customer Care and provided Customer Care with receipts and information associated with the three orders to establish that he had, in fact, delivered all three customer batches correctly.

67. Customer Care did not accept the Plaintiff's version of events and maintained that he had not delivered one of the three batches. Customer Care then alleged that a customer had complained that the Plaintiff had used profanity, which the Plaintiff emphatically denied.

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68. On June 22, 2020, the Plaintiff received an email from Instacart advising him that his account had been suspended due to violation of Instacart's policies.

69. The Plaintiff tried escalating the issue through Customer Care but was unable to speak with anyone at Instacart either in Canada or the United States to explain his version of events and corroborating documentation. The Plaintiff then tried to reach Instacart through its general Facebook page but received no response.

70. The Plaintiff's last day of work as a full-service Instacart shopper was June 21, 2020, following which his Shopper App account was unilaterally deactivated by Instacart.

71. The Plaintiff was provided with no notice of termination of his employment or pay in lieu thereof.

F. MISCLASSIFICATION OF CLASS MEMBERS

72. All Class Members are in an employment relationship with Instacart.

73. The employment relationship of Class Members has been misclassified. Class Members should be classified as employees and not independent contractors because:

- (a) Class Members must choose from predetermined time slots made available on the Shopper App and do not determine the days or times they perform their work;
- (b) Class Members must meet strict timelines, attend at specified store locations and follow an itinerary generated by Instacart in the performance of their job duties;

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- (c) Class Members are disciplined through the use of the “star rating” system in place for any violations of Instacart’s policies or in relation to Instacart customer complaints, even if such complaints are unfounded;
- (d) Class Members are required to use the Shopper App and follow its direction and have no ability to direct the time, location or manner of their work;
- (e) The Shopper App, which is owned and controlled exclusively by Instacart, is the central and most important tool that Class Members use, without which the performance of their job duties would be impossible;
- (f) Class Members are paid on a piecemeal or per “batch” basis for performing services for Instacart and have no ability to negotiate their rate of pay; and,
- (g) Class Members do not invoice Instacart for their services and instead are paid on a weekly basis via direct deposit.

G. LEGAL DUTIES OWED TO THE PLAINTIFF AND CLASS MEMBERS

74. Instacart owes the Plaintiff and Class Members statutory duties under the *ESA* and Equivalent Legislation, and contractual and other duties at common law.

75. Instacart has breached these duties causing the Plaintiff and Class Members to suffer damages for which Instacart is liable.

(i) Breach of Contract and the *ESA* and Equivalent Legislation

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76. The *ESA* and Equivalent Legislation form either an express or implied term of the contracts of employment of the Plaintiff and Class Members.

77. As the employer of the Plaintiff and the Class, Instacart has a duty to provide Class Members with minimum statutory entitlements under the *ESA* and Equivalent Legislation, including:

- (a) Overtime pay;
- (b) Minimum wage;
- (c) three hour rule pay;
- (d) minimum daily pay;
- (e) Vacation pay;
- (f) Statutory holiday pay;
- (g) Premium pay;
- (h) Notice of termination or pay in lieu thereof; and,
- (i) Severance pay.

78. Instacart has further statutory obligations under the *ESA* and Equivalent Legislation including but not limited to the requirement to:

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- (a) Provide information about employees' rights and entitlements under the *ESA* and Equivalent Legislation;
- (b) Record and retain records in respect of each employee including but not limited to the dates and times that the employee worked, and the number of the hours the employee worked in each day and each week; and,
- (c) Provide job protected leaves as prescribed by the *ESA* and Equivalent Legislation.

79. Instacart breached its duties under the *ESA* and Equivalent Legislation owed to the Plaintiff and Class Members by its failing to provide all of the entitlements above and failing to comply with minimum employment standards including recording and retaining accurate records concerning the Plaintiff and Class Members' hours of work.

(ii) Breach of Duty of Good Faith

80. As employees, the Plaintiff and Class Members are in a position of vulnerability in relation to Instacart. As a result, Instacart owes the Plaintiff and Class Members a duty to act in good faith and to honour its statutory and contractual obligations.

81. Instacart breached its duty of good faith by, *inter alia*:

- (a) failing to advise Class Members of their entitlements under the *ESA* and Equivalent Legislation;
- (b) creating a work environment and circumstances in which Class Members were directed, required or permitted to work hours in excess of the applicable overtime

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threshold under the *ESA*, Employment Standards Regulations and Equivalent Legislation;

- (c) failing to pay Class Members overtime pay for hours worked in excess of the applicable overtime threshold under the *ESA*, Employment Standards Regulations and Equivalent Legislation,
- (d) failing to pay Class Members wages equivalent to at least minimum wage under the *ESA* and Equivalent Legislation;
- (e) failing to pay Class Members vacation pay under the *ESA* and Equivalent Legislation;
- (f) Failing to pay Class Members public holiday pay and premium pay under the *ESA* and Equivalent Legislation;
- (g) failing to provide notice of termination of employment or pay in lieu thereof at common law or under the *ESA* and Equivalent Legislation;
- (h) failing to ensure that Class Members do not work through their unpaid breaks;
- (i) failing to record and retain records of Class Members' hours of work, including the dates and times worked, and the number of the hours worked in each day and each week;
- (j) failing to pay Class Members for all work performed while actively shopping or making deliveries;

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- (k) misclassifying the employment relationship of Class Members;
- (l) misleading or misrepresenting to Class Members that they are independent contractors and consequently have no minimum statutory entitlements under the *ESA* or Equivalent Legislation or at common law, or entitlement to reimbursement for gas, insurance, maintenance, parking fines and mobile phone data used to perform work for Instacart; and,
- (m) failing to deduct and remit income tax and EI and CPP contributions on behalf of Class Members.

H. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

82. The Plaintiff pleads that Instacart's conduct as pleaded above is unlawful, high-handed and carried out in bad faith.

83. Instacart's conduct constitutes a disregard for the rights and interests of Class Members who were and are vulnerable to the actions, decisions and power of Instacart.

84. Instacart's conduct in failing to pay Class Members for all hours worked and failing to pay overtime pay, wages equivalent to at least minimum wage, three hour rule pay, daily minimum pay, vacation pay, statutory holiday pay, premium pay, paid breaks and termination pay where applicable, and by misclassifying the employment relationship of Class Members warrants awards of aggravated, exemplary and punitive damages.

I. LEGISLATION RELIED UPON

85. The Plaintiff pleads and relies upon the following statutes:

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- (a) *Act respecting labour standards*, CQLR c N-1.1;
- (b) *Civil Code of Québec*, CQLR c CCQ-1991;
- (c) *Class Proceedings Act*, 1992, SO 1992, c 6;
- (d) *Courts of Justice Act*, RSO 1990, c C.43;
- (e) *Employment Standards Act*, RSBC 1996, c 113;
- (f) *Employment Standards Act*, RSPEI 1988, c E-6.2;
- (g) *Employment Standards Act*, SNB 1982, c E-7.2;
- (h) *Employment Standards Act*, 2000, SO 2000, c 41;
- (i) *Employment Standards Code*, RSA 2000, c E-9;
- (j) *Labour Standards Act*, RSNL 1990, c L-2;
- (k) *Labour Standards Code*, RSNS 1989, c 246;
- (l) *The Employment Standards Code*, CCSM c E110; and,
- (m) *The Saskatchewan Employment Act*, SS 2013, c S-15.1.

86. The Plaintiff pleads and relies upon the following regulations:

- (a) Employment Standards Regulation, Alta Reg 14/1997;

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- (b) Employment Standards Regulation, BC Reg 396/95;
- (c) Employment Standards Regulation, Man Reg 6/2007;
- (d) Employment Standards Act General Regulations, PEI Reg EC588/10;
- (e) Exemptions, Special Rules and Establishment of Minimum Wage, O Reg 285/01;
- (f) General Labour Standards Code Regulations, NS Reg 298/901;
- (g) General Regulation, NB Reg 85-179;
- (h) Labour Standards Regulations, CNLR 781/96;
- (i) Minimum Wage Order (General), NS Reg 5/99, Sch A;
- (j) Minimum Wage Order, PEI Reg EC572/98;
- (k) Minimum Wage, NB Reg 2019-2;
- (l) Public Holiday Pay, O Reg 375/18;
- (m) Regulation respecting a registration system or the keeping of a register, CQLR c N-1.1, r 6;
- (n) Regulation respecting labour standards, CQLR c N-1.1, r 3;
- (o) Termination and Severance of Employment, O Reg 288/01;
- (p) The Employment Standards Regulations, RRS c S-15.1 Reg 5;

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- (q) The Minimum Wage Regulations, 2014, RRS c s-15.1 Reg 3

J. SERVICE

87. This originating process may be served without court order outside Ontario because the claim is:

- (a) in respect of real or personal property in Ontario (Rule 17.02(a) of the *Rules of Civil Procedure*);
- (b) in respect of a tort committed in Ontario (Rule 17.02(g) of the *Rules of Civil Procedure*); and,
- (c) brought against a person ordinarily resident or carrying on business in Ontario (Rule 17.02 (p) of the *Rules of Civil Procedure*).

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October 20, 2021

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Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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