

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division

**DISTRICT OF COLUMBIA**

a municipal corporation  
400 6th Street, N.W.  
Washington, D.C. 20001,

Plaintiff,

v.

**MAPLEBEAR, INC. D/B/A  
INSTACART**

50 Beale St., Suite 600  
San Francisco, CA 94105

*Serve on:*

**COGENCY GLOBAL, INC.**

**Registered Agent**

1025 Vermont Ave. N.W.

Suite 1130

Washington, D.C. 20005

Defendant.

Case No.: **2020 CA 003777 B**

**COMPLAINT FOR VIOLATIONS OF THE CONSUMER PROTECTION  
PROCEDURES ACT AND SALES TAX LAW**

Plaintiff the District of Columbia (“District”), through the Office of the Attorney General, brings this consumer protection and sale tax enforcement action against Defendant Maplebear, Inc. d/b/a Instacart (“Instacart” or the “Company”) for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*, and Sales Tax Law, D.C. Code § 47-2001, *et seq.* In support of its claims, the District states as follows:

**INTRODUCTION**

1. Instacart is an online platform that allows consumers to place orders for groceries with shoppers who select and deliver groceries to the consumer. To use Instacart’s services,

consumers must place delivery orders through Instacart’s mobile application or website. After the consumer places their order, he or she enters a check-out screenflow, where the consumer receives an order subtotal for the cost of selected groceries, as well as a number of fees imposed by Instacart in connection with delivery. In some versions of the check-out screenflow, consumers can also tip the shopper who completes their order.

2. Instacart’s violations of District consumer and sales tax laws arise out of the various fees it has charged District consumers. From September 2016 until at least April 2018, Instacart charged its District consumers a default ten percent “service” fee in connection with the sale of its grocery delivery services. To a reasonable consumer, this service fee looked like a tip: the amount was set as a default percentage of the order total, and consumers had the option to increase or decrease the percentage or waive the amount entirely. But unlike a tip, the service fee went to Instacart and did not change the wages or commissions that the Company paid its shoppers. District consumers’ confusion about the true nature of the service fee was compounded by Instacart’s ambiguous, confusing, and shifting explanations of the service fee.

3. Around November 2017, only after settling a lawsuit brought by Instacart shoppers, the Company made obscure changes to its website related to the service fee. Still, Instacart continued to apply a default service fee to consumers’ orders. And it did not disclose to consumers on the main check-out screen that this fee was entirely optional, banking on the prospect that many consumers would not discover that the service fee could be waived or would continue to confuse the purpose of this fee and a tip.

4. On April 23, 2018, following reporting on this unfair and deceptive practice by multiple media outlets and after being contacted by the District, Instacart changed its practices by

implementing a mandatory service fee. Even after this change was made, Instacart refused to refund consumers who had been misled by Instacart's prior deceptive practices.

5. Additionally, Instacart has failed to collect District sales tax on the revenue it received from its service and delivery fees. Instacart has failed to collect sales tax on either of these fees during the entire time it has transacted business in the District.

6. The District brings this case to stop Instacart from engaging in unfair and deceptive trade practices in violation of the CPPA, obtain appropriate restitution and other relief from the Company, and secure payment of all sales taxes owed on Instacart's business in the District.

### **JURISDICTION**

7. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921, 28-3909, and 47-4301.

8. This Court has personal jurisdiction over Defendant Instacart pursuant to D.C. Code § 13-423(a) based on Defendant's sales of groceries and grocery delivery services in the District of Columbia.

### **PARTIES**

9. Plaintiff the District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government for the United States. The District brings this action 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 District has authority to commence a proceeding in court for the collection of tax, without assessment, when a taxpayer has failed to file a required return or when the taxpayer omits from the return an amount of tax properly

includible on the return that exceeds 25% of the amount of the tax reported on the return. D.C. Code §§ 47-4301(d)(1) and (3). In addition, the Attorney General is specifically authorized to enforce the District's consumer protection laws, including the CPPA.

10. Defendant Mapbear, Inc. is a Delaware corporation with its headquarters and principal place of business at 50 Beale Street, Suite 600, San Francisco, CA 94105. Defendant operates in the District of Columbia under the trade name "Instacart" and provides grocery delivery through the Instacart mobile application (the "Instacart App") and through the website [www.instacart.com](http://www.instacart.com).

## FACTS

### **A. Instacart's Business**

11. Instacart is a grocery delivery company that sells groceries and grocery delivery services in the District of Columbia. Instacart offers consumers the ability to purchase groceries from specified stores on a mobile phone application or website and have them delivered by personal shoppers within hours.

12. In order to use Instacart's services, a consumer first registers for an Instacart account through the Instacart App or website, providing the Company with their email address, a unique password, and their zip code. Once their account is created, a consumer can use the Instacart App or website to place delivery orders from various grocery stores in the District of Columbia and surrounding areas. To confirm their orders, consumers provide Instacart with payment information (i.e., credit or debit card number), a preferred delivery time, and the delivery address.

13. Instacart employs "full-service shoppers" who both shop for and deliver groceries to consumers. Instacart also employs "in-store shoppers" who shop and stage orders at one store but do not deliver groceries (collectively with full-service shoppers, "shoppers"). Full-service

shoppers are classified by Instacart as independent contractors, whereas in-store shoppers are classified as part-time employees.

14. Instacart has operated the District of Columbia since at least 2014. The Company currently maintains a consumer and shopper base operating in the District of Columbia that numbers well into the tens of thousands. On a weekly basis, Instacart receives and fulfills thousands of delivery orders in the District of Columbia.

**B. Instacart's Service Fee**

15. Prior to September 2016, an Instacart consumer would have seen at least four separate line items on their bill for an online grocery order: (1) the total cost of the items ordered (subtotal), (2) a delivery fee, (3) applicable "taxes and fees," and (4) an optional tip that went directly to the shopper who delivered the consumer's order. This shopper tip was set by default to ten percent of the subtotal of the consumer's order. The tip could be increased or decreased at the consumer's discretion, including a decrease to zero.

16. Around September 2016, Instacart replaced the shopper tip with a new line item: an optional and variable "service" fee ("service fee"). Like the shopper tip, the service fee defaulted to ten percent of the subtotal of the consumer's order. And, like the shopper tip, the service fee could be increased or decreased at the consumer's discretion, including a decrease to zero.

17. At the time, Instacart assured consumers that shoppers would receive higher delivery commissions and that "100% of the variable service amount is used to pay all shoppers more consistently for each and every delivery, not just the last shopper to touch the order." In fact, Instacart never earmarked or set aside the amounts collected as service fees to pay its shoppers.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.