

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Patricia Nieto

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on behalf of herself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JENISE DIXON, an individual, on behalf of)
herself and all other aggrieved employees)

Plaintiff,

vs.

MAPLEBEAR INC. WHICH WILL DO)
BUSINESS IN CALIFORNIA AS)
INSTACART, a Delaware corporation; JOHN)
DOE, an individual; and DOES 1 through 100,)
inclusive,)

Defendants.

Case No. 20STCV39633

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**

Violation of California Labor Code § 2698, et
seq. (California Labor Code Private Attorneys
General Act of 2004)

Plaintiff JENISE DIXON ("Representative Plaintiff" "Plaintiff" or "SHIPLEY") alleges as follows:

PARTIES

1. Representative Plaintiff is an individual who resides in California and was employed by Defendant MAPLEBEAR INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS INSTACART (hereinafter referred to as "Defendant," or "the Company") from on or about March 15, 2019 until on or about September 20, 2019.

1 2. Representative Plaintiff is informed and believes, and based on such information
2 and belief, alleges that at all times mentioned herein, Defendants is a Delaware Corporation,
3 licensed to do business and actually doing business in the State of California. Defendant is a
4 delivery and pick-up services operating throughout all 50 States and approximately 5,500 different
5 cities, including, but not limited to, the County of Los Angeles. Thus, Defendant is subject to the
6 applicable California laws as alleged in this action.

7 3. Upon information and belief, Defendant JOHN DOE (hereinafter, "DOE") is an
8 individual who resides in the State of California and the County of Los Angeles. Defendant DOE
9 was and is an agent of Defendant, and in that capacity was and is responsible for overseeing and
10 implementing Defendants timekeeping policies and procedures that Representative Plaintiff and the
11 other aggrieved employees were made to follow.

12 4. Representative Plaintiff is unaware of the true names and capacities, whether
13 corporate or individual, or otherwise, of defendants named as DOES 1 through 10, inclusive.
14 Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave
15 of court to amend this complaint to state said defendants' true names and capacities when the same
16 have been ascertained. Representative Plaintiff is informed and believes and based on such
17 information and belief alleges that said fictitiously-named defendants are responsible in some
18 manner for the injuries and damages to Representative Plaintiff, and other aggrieved employees as
19 further alleged herein.

20 5. This is only a Private Attorney General Action Complaint, pursuant to California
21 Labor Code section 2699 et seq., on behalf of ARIN SHIPLEY and all other persons similarly
22 situated who worked for Defendants in its California locations as non-exempt, hourly employees
23 (herein collectively identified as "other aggrieved employees") for:

- 24 (i) failure to pay overtime and double time in violation of Labor Code sections 510,
25 1198, and the applicable Wage Orders;
- 26 (ii) failure to pay minimum wage in violation of Labor Code 1182.12, 1194, 1197,
27 1197.1, 1198, and the applicable Wage Orders;
- 28 (iii) failure to provide rest and meal periods in violation of Labor Code sections 226.7,

- 1 512(a), 1198, and the applicable Wage Orders;
- 2 (iv) failure to keep accurate payroll records and provide itemized wage statements in
- 3 violation of Labor Code 226(a), 1174(d), 1198, and the applicable Wage Orders;
- 4 (v) failure to pay split shift pay in violation of Labor Code 1198 and California Code of
- 5 Regulations 11050(4)(C);
- 6 (vi) failure to pay all wages earned on time in violation of Labor Code sections 204;
- 7 (vii) failure to pay all wages earned upon discharge or resignation in violation of Labor
- 8 Code sections 201, 202, and 203;
- 9 (viii) failure to provide basic information at the time of hiring and when employment
- 10 changes occur in violation of Labor Code 2810.5(a)(1)(A)-(C) (Wage Theft
- 11 Prevention Act).
- 12 (ix) failure to reimburse necessary, business-related expenses in violation of Labor Code
- 13 sections 2800 and 2802;
- 14 (x) failure to provide notice of paid sick time and accrual in violation of Labor Code
- 15 246.

16 **VENUE AND JURISDICTION**

17 6. Venue is proper under California Code of Civil Procedure section 395 and under

18 California Government Code section 12965(b), in that Representative Plaintiff's injuries were

19 incurred within the County of Los Angeles, the actions giving rise to Representative Plaintiff's

20 complaint arose within the County of Los Angeles, and Defendant is located in the County of Los

21 Angeles.

22 **STATEMENT OF FACTS**

23 7. Representative Plaintiff was hired by Defendants as a Instacart Personal Shopper on

24 or about March 20, 2020. Representative Plaintiff worked for Defendants up until March 30, 2020

25 when her employment terminated. Defendants are doing business in California as INSTACART.

26 8. While employed with the Company, Representative Plaintiff and the other

27 aggrieved employees that worker with her in the State of California were intentionally

28 misclassified as independent contractors. Employer at all times exerted control and direction over

1 Representative Plaintiff and other aggrieved employees, including, but not limited to, requiring
2 them to wear Personal Protective Equipment ("PPE") while performing their job duties, despite
3 failing to provide same.

4 9. Representative Plaintiff and the other aggrieved employees performed work that
5 was not outside the usual course of business for the Company. The Company is a grocery delivery
6 and pick-up service, and Representative Plaintiff and the other aggrieved employees deliver and
7 pick-up groceries for the Company. Representative Plaintiff and the other aggrieved employees
8 were not customarily engage in an independently established trade, occupation, or business of the
9 same nature as the work performed for the Company. At all times, the Company had the authority
10 to hire and terminate Representative Plaintiff and the other aggrieved employees' employment and
11 to supervise and monitor their daily activities.

12 10. At all times, Defendant DOE, for money and/or other valuable consideration,
13 knowingly advised the Company to treat Representative Plaintiff and the other aggrieved
14 employees as independent contractors to avoid employee status.

15 11. While employed with Defendants, Representative Plaintiff and other aggrieved
16 employees that worked with her at the Company's California locations, which include other
17 aggrieved employees that he seeks to represent in this action, working as non-exempt, hourly
18 employees (herein collectively identified as "other aggrieved employees") were regularly required
19 to work off-the-clock, and during their rest and meal periods.

20 12. Defendants failed to pay its aggrieved employees' overtime in accordance with
21 California law when they worked in excess of eight (8) hours in a day and/or 40 hours within a
22 workweek. Defendants also failed to pay its aggrieved employees' double time in accordance with
23 California law when they worked in excess of 12 hours in a workday.

24 13. Defendants failed to provide Representative Plaintiff and other aggrieved employees
25 with meal periods in accordance with Labor Code Sections 512(a) and 226.7, as aggrieved
26 employees were often not afforded an opportunity to take an off-duty meal period of at least 30
27 minutes within the first five (5) hours of their shift, because of work understaffing, inadequate
28 coverage, unreasonably high workload and expectations, and/or other actions, inactions, or

1 decisions made by and within the sole control and discretion of Defendants.

2 14. Additionally, when Representative Plaintiff and aggrieved employees worked in
3 excess of 10 hours in a day, they were not offered an opportunity to take a second meal period in
4 accordance with Labor Code section 512(a).

5 15. Defendants also failed to pay its aggrieved employees a premium pursuant to Labor
6 Code section 226.7 when it failed to provide its employees with legally adequate meal periods as
7 described above.

8 16. Defendants also failed to provide Representative Plaintiff and other aggrieved
9 employees with a 10-minute rest break for every four hours of work, or every major fraction
10 thereof, as employees were forced to work extended periods without rest breaks due to
11 understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other
12 actions, inactions, or decisions made by and within the sole control and discretion of Defendants.
13 Defendants also failed to provide its employees with a premium payment pursuant to Labor Code
14 section 226.7 when it failed to provide its employees with legally adequate rest breaks.

15 17. Additionally, Plaintiff and other aggrieved employees were not provided a premium
16 wage pursuant to Labor Code section 226.7 for their legally inadequate meal and rest periods, as
17 they were not relieved of all duties and responsibilities for the respective time periods as required
18 by the law. Defendants' failure to properly pay Plaintiff and other aggrieved employees for all
19 hours worked in these instances violates Labor Code sections 226.7, 512(a), 1198 and the
20 applicable Wage Orders.

21 18. Representative Plaintiff and other aggrieved employees were often required to work
22 off-the-clock before their shifts started, after their shifts were completed, and during their meal and
23 rest periods. During this off-the-clock time and these so-called "working lunches", employees were
24 required by Defendants to finish work tasks that they did not have time to finish during their shift
25 because of understaffing, inadequate coverage, unreasonably high workload and expectations,
26 and/or other actions, inactions, or decisions made by and within the sole control and discretion of
27 Defendants'.

28 19. Defendants, being aware of these occurrences, still deducted 30 minutes from their

1 pay on these days that they were required to continue working without a legal meal period. The
2 Companies altered and adjusted time-sheets and time-cards in order to obfuscate this fact.

3 20. Defendants required Plaintiff and other aggrieved employees to work without
4 appropriate compensation, including the payment of at least minimum wage, for such work time as
5 described above in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198, and
6 the applicable Wage Orders.

7 21. California Labor Code section 226(a) provides that every employer shall furnish to
8 each of its employees an accurate, itemized wage statement in writing, showing, among other
9 things, all applicable hourly rates in effect during the pay period and the corresponding correct
10 number of hours worked at each hourly rate by the employee. Defendants' wage statements fail to
11 comply with this section of the Labor Code as they list the incorrect rates of pay and the incorrect
12 number of hours worked at each rate of pay. The number of hours that the employees actually spent
13 working for the Companies, which are listed on the pay stubs, is incorrect because of, among other
14 things, the Companies' failure to properly compensate its employees for all of the time that they
15 spent working under their employer's control.

16 22. Defendants wage statements listed the incorrect rates of pay and earnings. Thus, the
17 total earnings and the overtime hours listed on the employee's pay stubs are incorrect. The number
18 of hours that the employees actually spent working for the Companies that is listed on the wage
19 statement is also incorrect because of the Companies' failure to record and compensate its
20 employees for all of the time that they are under its control, including, but not limited to, time that
21 they spend complying with the Companies' required "working lunches" and off-the-clock work,
22 and when Defendants deducted 30-minutes for meal periods that were not legally adequate.

23 23. Defendants regularly scheduled and required Representative Plaintiff and the other
24 aggrieved employees to work "split shifts". California Code of Regulations 11050(4)(C) requires
25 employer to furnish to employees one (1) hour's pay at the minimum wage in addition to the wages
26 for that work day for any day in which an employee works a "split shift". However, despite
27 regularly scheduling Representative Plaintiff and the other aggrieved employees for "split shifts",
28 Defendants failed to pay Representative Plaintiff and the other aggrieved employees one (1) hour's

1 pay at the minimum wage in addition to the wages for that work day as required by law.

2 24. Representative Plaintiff and all aggrieved employees who worked for Defendants
3 did not receive all wages earned on time as defined by California Labor Code section 204. As a
4 consequence of Defendants failures as described above, Representative Plaintiff and other
5 aggrieved employees did not receive, among other things, their straight time, overtime, or double
6 time pay, minimum wages for off-the-clock work, rest period premium wages, meal period
7 premium wages.

8 25. Representative Plaintiff and all aggrieved employees who were separated from their
9 employment with Defendants, to whom Defendants willfully failed to pay for all hours worked as
10 described herein, are also entitled to up to thirty days of wages pursuant to California Labor Code
11 sections 201, 202, and 203.

12 26. Defendants failed to provide Representative Plaintiff and the other aggrieved
13 employees with basic information at the time of hiring and when changes occurred to their
14 employment, including, rate of pay (including overtime), whether employee would be paid hourly,
15 salary, piece rate, or by shift, day, week, commission, or otherwise, and information regarding
16 allowances, such as for as meals and lodging, and information regarding the right to accrue and use
17 paid sick leave and the legal protections for employee when so doing.

18 27. Defendants directed Representative Plaintiff and other aggrieved employees to incur
19 personal expenses on behalf of Defendants while performing their respective job duties. Such
20 personal expenses include, but are not limited to: use of personal cell phone, travel expenses, and
21 parking expenses. Without incurring these expenses, Representative Plaintiff and other aggrieved
22 employees would not be able to accomplish their job duties. Defendants failed to indemnify
23 Representative Plaintiff and other aggrieved for all of these necessary expenditures.

24 28. Defendants failed to provide to Representative Plaintiff and other aggrieved
25 employees who worked for them for more than 30 days with written notice setting the amount of
26 sick leave available, or paid time off in lieu thereof, on either their itemized wage statements or in a
27 separate writing accompanying such statements.

1 29. Defendant DOE, acting on behalf of the Company, violated and/or caused to be
2 violated the sections of the labor code as outlined throughout this Complaint in violation of
3 California Labor Code 558(a).

4 **FIRST CAUSE OF ACTION**

5 **(VIOLATION OF LABOR CODE § 2698, ET SEQ.)**

6 **(By Plaintiff Against Defendants and Does 1 through 10, inclusive)**

7 30. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
8 21, and each and every part thereof with the same force and effect as though fully set forth herein.

9 31. PAGA expressly establishes that any provisions of the California Labor Code which
10 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
11 divisions, commissions, boards, agencies or employees for a violation of the California Labor
12 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
13 himself or herself, and other current or former employees.

14 32. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
15 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
16 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
17 penalty.

18 33. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved
19 employees” within the meaning of California Labor Code section 2699(c) as they are all current or
20 former employees of Defendants, and one or more of the alleged violations was committed against
21 them.

22 **Willful Misclassification of Employees as Independent Contractors**

23 34. Defendants’ willful misclassification of Representative Plaintiff and the other
24 aggrieved employees as independent contractors constitutes unlawful or unfair activity prohibited
25 by California Labor Code 226.8, 2753, and Assembly Bill 5 (“AB5”).

26 **Failure to Pay Overtime**

27 35. Defendants’ failure to pay legally required overtime wages to Plaintiff and the other
28 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity

1 prohibited by California Labor Code sections 510 and 1198.

2 **Failure to Provide Meal Periods**

3 36. Defendants' failure to provide legally required meal periods to Plaintiff and the
4 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
5 activity prohibited by California Labor Code sections 226.7, 512(a), 1198, and the applicable Wage
6 Orders.

7 **Failure to Provide Rest Periods**

8 37. Defendants' failure to provide legally required rest periods to Plaintiff and the other
9 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
10 prohibited by California Labor Code section 226.7.

11 **Failure to Pay Minimum Wages**

12 38. Defendants' failure to pay legally required minimum wages to Plaintiff and the
13 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
14 activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

15 **Failure to Keep Accurate and Provide Itemized Wage Statements**

16 39. Defendants' failure to keep accurate, and provide itemized wage statements to
17 Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a),
18 1174(d), and 1198 constitutes unlawful and/or unfair activity prohibited by California Labor Code
19 section 226(a), 1174(d), and 1198.

20 **Failure to Pay "Split Shift" Premiums**

21 40. Defendants' failure to pay Representative Plaintiff and the other aggrieved
22 employees one (1) hour's pay at the minimum wage in addition to the wages for that workday for
23 any workday in which Representative Plaintiff and the other aggrieved employees were scheduled
24 for and required to work a "split shift" constitutes unlawful or unfair activity prohibited by
25 California Labor Code 1198 and California Code of Regulations 11050(4)(C).

26 **Failure to Timely Pay Wages During Employment**

27 41. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
28 employees during employment in accordance with Labor Code section 204 constitutes unlawful

1 and/or unfair activity prohibited by California Labor Code section 204.

2 **Failure to Timely Pay Wages Upon Termination**

3 42. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
4 employees upon termination in accordance with Labor Code sections 201, 202, and 203 constitutes
5 unlawful and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

6 **Failure to Provide Basic Information upon Hiring / When Conditions of Employment Change**

7 43. Defendants' failure to provide basic information to Plaintiff and the other aggrieved
8 employees related to the conditions of their pay and their rights regarding sick leave in accordance
9 with California Labor Code section 2810.5(a)(1)(A)-(C) constitutes unlawful and/or unfair activity
10 prohibited by California Labor Code section 2810.5(a)(1)(A)-(C).

11 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

12 44. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for
13 necessary business-related expenses and costs in accordance with California Labor Code sections
14 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
15 sections 2800 and 2802.

16 **Failure to Provide Notice of Paid Sick Time and Accrual**

17 45. Defendants' failure to provide Plaintiff and the other aggrieved employees that
18 works for the same employer for more than 30 days with written notice setting the amount of sick
19 leave available (or paid time off in lieu thereof) for use in their itemized wage statements or in a
20 separate writing accompanying such statements in accordance with Labor Code 246 constitutes
21 unlawful and/or unfair activity prohibited by California Labor Code section 246.

22 **Civil Penalties**

23 46. Defendant DOE's actions, as outlined above, on behalf of the Company that
24 violated, or caused to be violated, the above-mentioned labor codes constitute unfair and/or
25 unlawful activity in violation of California Labor Code section 558(c). California Labor Code
26 section 558(c) specifically clarifies that penalties in this section are in addition to any other civil
27 penalty.

28 47. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on

1 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of
2 them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
3 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory
4 penalties against Defendants, and each of them, including but not limited to:

5 a. Penalties under California Labor Code section 2699 in the amount of a
6 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation,
7 and two hundred dollars (\$200) for each aggrieved employee per pay period for each
8 subsequent violation;

9 b. Penalties under California Code of Regulations Title 8 section 11010, et seq.
10 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the
11 initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay
12 period for each subsequent violation;

13 c. Penalties under California Labor Code section 210 in addition to, and
14 entirely independent and apart from, any other penalties provided in the California Labor
15 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay
16 period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
17 per pay period for each subsequent violation; and

18 d. Any and all additional penalties and sums as provided by the California
19 Labor Code and/or other statutes, including, but not limited to, penalties pursuant to
20 California Labor Code 558(a).

21 48. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
22 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
23 Workforce Development Agency for the enforcement of labor laws and education of employers
24 and employees about their rights and responsibilities and twenty-five percent (25%) to the
25 aggrieved employees.

26 49. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
27 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

28 THEREFORE, Representative Plaintiff and the individuals he seeks to represent request

1 relief as described below:

2 **PRAYER**

3 THEREFORE, Representative Plaintiff prays for judgment against Defendants, and Does 1
4 through 10, and each of them, as follows:

5 1. Statutory attorneys' fees and costs under PAGA and California Code of Civil
6 Procedure Section 1021.5;

7 2. Statutory penalties under PAGA;

8 3. Costs of suit; and

9 4. Such further relief as the Court deems just and proper.

10 Dated: October 8, 2020

11 **HAIG B. KAZANDJIAN LAWYERS, APC.**

12 By: 

13 Haig B. Kazandjian, Esq.,
14 Cathy Gonzalez, Esq.,
15 Kevin Crough, Esq.,
16 Attorneys for Plaintiff JENISE DIXON
17 on behalf of herself and all others similarly
18 situated
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