

1 THE TIDRICK LAW FIRM LLP  
2 STEVEN G. TIDRICK, SBN 224760  
3 JOEL B. YOUNG, SBN 236662  
1300 Clay Street, Suite 600  
Oakland, California 94612  
Telephone: (510) 788-5100  
4 Facsimile: (510) 291-3226  
E-mail: sgt@tidricklaw.com  
5 E-mail: jby@tidricklaw.com

6 Attorneys for Representative  
Plaintiff RAYMOND CHO

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA

9 UNLIMITED JURISDICTION

10 RAYMOND CHO,

11 Plaintiff,

12 v.

13 SHIPT, INC.; and DOES 1-100,

14 Defendants

Civil Case No. **R020083342**

PRIVATE ATTORNEYS GENERAL ACT  
REPRESENTATIVE ACTION

**COMPLAINT FOR CIVIL PENALTIES  
UNDER THE CALIFORNIA LABOR  
CODE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004 ("PAGA")**

**JURY TRIAL DEMANDED**

15 **NATURE OF THE CASE**

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17  
18  
19  
20 1. Plaintiff bring this case against Defendant Shipt, Inc. ("Defendant" or "Shipt").  
21 Plaintiff has worked for Defendant as a shopper. Plaintiff and similarly situated workers are  
22 variously referred to herein as the workers and/or shoppers. Defendant has misclassified such  
23 workers as independent contractors, and has failed to pay them the minimum wages, overtime  
24 wages, expense reimbursements, and other benefits to which they are entitled under California  
25 law. Defendant also has violated California Business and Professions Code § 17200 *et seq.*  
26 ("UCL").

27 2. Plaintiff seek an award for the amounts of the unpaid wages, unpaid overtime  
28 compensation, unpaid expenses, liquidated damages, interest, restitution, and attorneys' fees,

ENDORSED  
FILED  
ALAMEDA COUNTY  
DEC 08 2020  
CLERK OF THE SUPERIOR COURT  
By **NICOLE HALL** Deputy

1 costs, and expenses under California Labor Code §§ 218.5, 226(e), and 1194, California Code  
2 of Civil Procedure §§ 1021.5 and 1033.5, and/or other applicable law.

3 3. Plaintiff is also prosecuting this action on behalf of the State of California and  
4 other “aggrieved employees,” as defined herein, as a representative action against Defendant  
5 pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.*  
6 (“PAGA”). “The purpose of the PAGA is . . . to create a means of “deputizing” citizens as  
7 private attorneys general to enforce the Labor Code.” *Brown v. Ralphs Grocery Co.*, 197 Cal.  
8 App. 4th 489, 501 (2011). The PAGA Representative Plaintiff (specifically, Raymond Cho)  
9 seek an award of civil penalties pursuant to PAGA, and attorneys’ fees, costs, and expenses  
10 under California Labor Code §§ 218.5 and 226, California Code of Civil Procedure §§ 1021.5  
11 and 1033.5, PAGA, and/or other applicable law.

12 4. Plaintiff has a probability of success on the merits of their claims, as  
13 demonstrated by a recent ruling in a case presently pending in California Superior Court. The  
14 City Attorney of San Diego on behalf of the People of the State of California is prosecuting a  
15 case against Instacart in which the People allege, *inter alia*, that Instacart’ classification of its  
16 “shoppers” as independent contractors is unlawful. The court has ruled that “the People have  
17 demonstrated a probability of success on the merits of their claims.” The court has found that  
18 it is “more likely than not that the People will establish at trial that the ‘Drivers’ perform a  
19 core function of defendant’s business; that they are not free from defendant’s control; and that  
20 they are not engaged in an independently established trade, occupation or business.” The court  
21 has stated: “Establishing any one of these would be enough, and it must be remembered that  
22 although the People would have the burden of going forward with the evidence, the burden of  
23 establishing proper classification is on defendant.” Accordingly, the court has granted the  
24 People’s motion for a preliminary injunction against Instacart. *See People of the State of*  
25 *California v. Maplebear, Inc.*, Superior Court of California, County of San Diego, Case No.  
26 37-2019-00048731-CU-MC-CTL, Minute Order of February 18, 2020. Given that Shipt  
27 provides similar services the same ruling is appropriate here.

28 **JURISDICTION AND VENUE**

5. The Court has personal jurisdiction over Defendants pursuant to California Code of Civil Procedure § 410.10 because they are headquartered in California, are doing business in California, have committed acts and/or omissions in California with respect to a cause of action arising from these acts or omissions, and/or have caused effects in California with respect to a cause of action arising from these acts and/or omissions.

6. Venue is proper in Alameda County in accordance with California Code of Civil Procedure §§ 395 and 395.5 because alleged activities and injuries took place in this county.

## PARTIES

7. Plaintiff Raymond Cho has worked for Defendant Shipt, Inc. as a shopper.

8. Defendant Shipt, Inc. does business in California.

9. Each of the Defendants designated herein as DOES are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will amend this complaint to show their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each Defendant designated herein as a DOE defendant is legally responsible in some manner for the events and happenings herein alleged and in such manner proximately caused damages as herein alleged.

10. Plaintiff is informed and believes and thereon alleges that each of the Defendants was acting as the agent, employee, partner, or servant of each of the remaining Defendants and was acting within the course and scope of that relationship, and gave consent to, ratified, and authorized the acts alleged herein to each of the remaining Defendants.

### GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

11. Shipt is a shopping and delivery service, which engages shoppers across the state of California to shop for and deliver groceries and other merchandise to its customers at their homes and businesses. Shipt offers customers the ability to order groceries and other items via a mobile phone application or via its website, which Shipt shoppers then shop for and deliver to customers. Shipt holds itself out to the public as a shopping and delivery service. Shipt’s website homepage advertises that it offers customers “everything from

1 groceries to household essentials for delivery to your door.” Shipt’s website also advertises:

- 2 • “we deliver from local and national retailers people love.”
- 3 • “Delivery to your doorstep. Fresh produce, milk, eggs, and more. Our shoppers help
- 4 you get everything you need.”
- 5 • “Get up-to-the-minute updates with every order. Forget to add something to your list?
- 6 If we’re still in the aisle, you can still get it delivered.”
- 7 • “Our shoppers are produce perfectionists that keep an eye on your preferences.”
- 8 • “Think you know grocery delivery? Think again. Shipt is committed to providing you
- 9 with exceptional service, insanely fresh produce, and Shipt Shoppers you can trust.
- 10 Whatever you need – it’s in the bag.”

11 12. As described further below, Defendant has misclassified Plaintiff and other  
12 similarly situated shoppers as independent contractors and, in so doing, has violated multiple  
13 provisions of the California Labor Code, including without limitation: (1) Cal. Lab. Code  
14 §§ 2802 and 224 by requiring its shoppers to pay various expenses and equipment that should  
15 have been borne by the employer; (2) Cal. Lab. Code §§ 216, 558, 1197, 1197.1 and 1194 by  
16 failing to pay at least minimum wage for all hours worked; (3) Cal. Lab. Code §§ 1194, 1194,  
17 510, 558 and 554 by failing to pay overtime wages; (4) Cal. Lab. Code § 351 by charging a  
18 “service fee” that qualifies as a tip under California law and not distributing them in full to  
19 eligible shoppers; (5) Cal. Lab. Code §§ 226(a), 226.3 and 558 by failing to provide its  
20 shoppers with proper itemized wage statements that include hours worked and hourly wages  
21 and by failing to provide wage statements that are accessible except through the Defendant  
22 Application; (6) Cal. Lab. Code §§ 210 by failing to pay all wages twice each calendar month;  
23 (7) Cal. Lab. Code §§ 201, 202, and 203 by terminating shoppers without paying them the  
24 overtime wages they are due at the time of termination (or within 72 hours in the case of  
25 voluntary terminations); (8) Cal. Lab. Code §§ 226.7, 512, 558 and 1198 by failing to provide  
26 statutorily required meal and rest breaks; (9), Cal. Lab. Code § 226.8 for willfully  
27 misclassifying its workforce even after the California Supreme Court’s decision in *Dynamex*  
28 *Operations W. v. Superior Court* (2018) 4 Cal.5th 903, reh’g denied (June 20, 2018)

1 (“Dynamex”), which clearly establishes their status as employees under California law; and  
2 (10) Cal. Labor Code § 1174(d), by failing to maintain “payroll records showing the hours  
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
4 applicable piece rate paid to, employees employed” in California.

5 13. Defendant has implemented a large advertising campaign to support its shopping  
6 and delivery business. In its advertising campaign, Defendant has marketed itself to the public  
7 as a shopping and delivery company. For example, Defendant’s advertising depicts shoppers  
8 performing shopping services and/or delivering merchandise, in which the shoppers wear  
9 apparel that says “Shipt,” and the advertising touts Shipt’s slogan “Over-delivering delivery.”

10 14. Defendant has exercised control over the shoppers’ wages, hours, and working  
11 conditions in the following ways, among others:

- 12 • Shipt has required prospective shoppers to apply to work for Shipt. Shipt has  
13 required them to fill out an online application, engage in an interview  
14 conducted by Shipt staff, and to submit to and pass a background check.
- 15 • Shipt has required that shoppers “at Shipt’s sole discretion, periodically during  
16 the term of [the Independent Contractor Agreement] . . . submit to and pass  
17 additional background check(s).”
- 18 • Shipt has required shoppers to complete an online orientation.
- 19 • Shoppers are not customarily engaged in independently established trades,  
20 occupations or businesses.
- 21 • Shipt admits an expectation that the Shoppers it hires may have little or no  
22 experience independently performing the duties required by Shipt. It does so  
23 by insisting, in the “Independent Contractor Agreement,” that Shoppers  
24 “authorize [Shipt] during the course of Delivery Services, to communicate with  
25 [Shoppers], the User, and/or the applicable retailer to assist [Shoppers], to the  
26 extent [Shoppers] permit, in facilitating delivery to the User.”
- 27 • Shipt creates and provides online training material for Shoppers.
- 28 • Shipt outlines, in its “Terms of Service” what amounts to an “at-will”  
relationship with Shoppers stating, “We may terminate your use of the Site and  
the services offered on the Site **at any time, for any reason** and Shipt may  
prohibit your use of the Site and services offered on the Site **at any time in our  
sole discretion**. The terms of these Terms shall remain in effect at all times  
after the termination of your use of the Site and the services offered on the  
Site.” (emphasis added.) Because the Site is the sole manner by which a

Shopper can work for Shipt, termination and/or prohibition of use of the Site amounts to termination of employment.

- Shipt has required shoppers to retrieve requested retail items and deliver such items “in accordance with the parameters (including but not limited to delivery window) established and the end result requested by the User.” Although Shipt tries to disguise these parameters as being initiated by the User, Shipt has controlled the options for store selection, delivery window, and other parameters from which Users could select. In this way, Shipt has set boundaries upon the options available to Users and thereby has exerted control over the parameters within which shoppers have been required to operate.
- Once hired, Shipt has branded shoppers as “Shipt Shoppers” and identified them as such in online platforms and literature.
- In Shipt’s online literature and videos, Shipt projects employer control over Shipt Shoppers by referring to them variously as part of a “Shipt family,” as “our team,” and as “Our Shoppers.”
- Shipt further projects an employer relationship through its online platform by boasting about purported compliance with laws, ordinances, and initiatives specifically governing the hiring of employees by employers. On the bottom of a webpage devoted to the recruitment of Shipt Shoppers, Shipt states: “Pursuant to the San Francisco Fair Chance Ordinance, Shipt will consider for hire qualified applicants with arrest and conviction records.” Also: “Shipt will consider for hire all qualified Applicants with Criminal Histories in a manner consistent with applicable federal, state, and local laws, including the City of Los Angeles Fair Chance Initiative for Hiring Ordinance”
- Shipt developed a protocol and administered this protocol to shoppers through its Shipt Shopper Hub and through required online orientation.
- Shipt has controlled scheduling of orders, order options, and other aspects of the shopping protocol (particularly related to communications with Shipt and Users) performed by shoppers through its Shipt Shopper App. Shoppers have been told by Shipt, through the App, what items to purchase and where to purchase those items.
- Shipt has required shoppers to inform Users, through the Shipt App, when they accepted an order, when they arrived at the store, when they purchased the order, when they arrived at the User delivery point, and when they completed the order. Shipt has provided pre-written templated messages which Shoppers could select and send.
- The work performed by Shipt Shoppers is integral to the operation of Shipt’s business.

- Shipt has determined and controlled the timing, method, form, amount and disclosure of the amount of compensation provided to shoppers. Prior to the acceptance of an order by a Shopper, Shipt has provided only an estimated shopper pay range. Shipt has notified Shoppers of the exact payment that they would receive only after they completed delivery of the order.
- Shipt has provided no avenue by which shoppers could negotiate or set their own rates or could adjust their charge based on the addition of unforeseen work.
- Shipt has defined what it considered to be compensable work performed by shoppers.
- Shipt has required shoppers to use insulated cooling bags.
- Shipt has required shoppers to possess a valid driving license with a level of certification to operate a lawfully-possessed motor vehicle.
- Shipt has required Shoppers to be at least 18 years of age.
- Shipt has required Shoppers to carry automotive insurance.
- Shipt has not permitted Shoppers to choose their own form of transportation. Shoppers had to receive specific approval from Shipt to provide Delivery Services without a motor vehicle. They could not for example deliver by bicycle, by foot, or by using public transportation without prior approval from Shipt. Shipt's website does not appear to refer to alternative forms of transportation and instead states that Shipt Shoppers are required to drive automobiles with model years no older than 1997.
- Shipt has required Shoppers to be able to lift 40 lbs.
- Shipt has required Shoppers to possess iPhones (iOS 10 or newer) or Android (5.1 or newer) smartphones.
- Shipt has required Shipt Shoppers including Shoppers to operate alone. Shipt has prohibited Shipt Shoppers from bringing anyone with them, including other approved Shipt Shoppers, while they performed duties for Shipt, and they allowed only the approved Shipt Shopper who claimed the order to shop for and deliver to the Shipt member. In this regard, Shipt states on its website, "At this time, Shipt Shopping is a solo enterprise. Shipt Shoppers may not bring anyone with them, including another approved Shipt Shopper. Only the approved Shipt Shopper who has claimed the order is permitted to shop for and deliver to the member."
- Shipt has not permitted Shoppers to subcontract their services to other vendors. Rather Shipt required in its "Independent Contractor Agreement" that, "You

[Shipt Shoppers] agree that, for safety purposes, You will personally pick up and drop off all User-requested items accepted for delivery.”

- Among many other contradictory and/or deceptive claims, Shipt, in their Independent Contractor Agreement, claims that “Your provision of Delivery Services to Users creates a direct business relationship between You and the applicable User.” However, in the same document, Shipt prohibits Shipt Shoppers from “using User Information or other personal User data for any reason other than the purpose of fulfilling Delivery Services unless a User specifically consents.” Delivery Services are defined as those performed “via the Shipt Technology Services.” Furthermore, Shipt Shoppers, including Shoppers, could not be selected individually to perform work by Shipt Users and could not, as shown elsewhere, fully determine the manner by which they performed their duties.
- Shipt has treated Shoppers as employees and expected them to perform work in uniform ways and at standards universal to all Shipt Employees. In this regard, Shipt has stated on its website, “At this time, we do not offer the option for members to request a specific Shipt Shopper. The idea is that each Shipt Shopper will provide the same excellent experience to all of our members.”
- Shipt has controlled which opportunities, including, among possible other things, which delivery options, which promotions, and which referral programs, if any, to offer to Shipt Shoppers. In this way, it has not acted as an open conduit between Users and Shoppers, but rather, Shipt has directed and determined which shoppers would receive specific incentives and opportunities and which shoppers would be excluded from those incentives and opportunities.
- Shipt has controlled which orders to make available to which Shoppers based on User ratings.
- Shipt has determined the manner by which Shipt Shoppers paid for the products they delivered.
- Shipt maintained the power to and has terminated shoppers
- Shipt tracked and measured user satisfaction in the delivery services provided by shoppers and could and did terminate Shoppers’ employment based on these metrics.
- Shipt has controlled the amount of time within which Shipt Shoppers had to accept orders before the order was no longer available to them.
- Shipt has tracked the navigation and controlled the route of drivers between stores and Users.

- Although Shipt states in their Agreement with Shoppers that Shoppers were not required to use the suggested routes, the Shipt App would alert Shoppers that they were out of route when they deviated from the suggested course.
- Shipt has prohibited Shipt Shoppers from smoking while delivering groceries.
- Shipt has required Shoppers to undergo a probationary period during which it would not allow them to accept more than one delivery per hour.
- Shipt has required Shoppers to photograph the receipt they collected during the completion of their delivery and transmit it to Shipt via the Shipt App and prohibited Shoppers from providing the receipt or any photograph thereof to Users. Shipt also required shoppers to retain the receipt in their records in case of a return of goods.
- Shipt has controlled the amount of time within which Shoppers had to complete their shopping.
- Shipt has controlled the amount of time within which Shoppers had to travel from the store to the User location.
- Shipt has controlled the amount of time within which Shoppers had to provide the groceries to the User once at their address.
- Shipt shoppers are not reimbursed for mileage, vehicle wear and tear, data use, or any other reasonably necessary expenses incurred in the course of performing Shipt services.
- Shipt customers do not select their shoppers but rather place their orders through Shipt. The order is then placed in a queue and a shopper can “claim” or select an order to fulfill.
- Shipt Shoppers can claim an order to fulfill while on-shift or off-shift. Orders are first sent to shoppers on shift to claim; if no on-shift shopper picks-up the order, the order is sent into “Metro Open Orders” queue and an off-shift shopper in the metro area may claim the order.
- Shoppers are expected to be available and expected to accept orders while on-shift; shoppers are penalized for not signing up for shifts but claiming orders off-shift.
- Shipt collects payment per delivery from the customer and then pays its shoppers weekly via direct deposit, based on “piece rate earnings,” meaning total per delivery fees. Thus, shoppers sometimes receive little or no pay for a shift because they receive few (or low fee) deliveries or are compelled to travel great distances for relatively inexpensive orders. Thus, shoppers have not always received minimum wage for the hours they have worked, and overtime hours and pay is not available.

- When shopping for customers and delivering orders, Shipt shoppers wear the “hat” of Shipt. For example, Shipt instructs shoppers to wear a Shipt shirt while making customer deliveries.
- Shipt also requires its shoppers to abide by a litany of policies and rules designed to control and direct shoppers work performance in detail. Shipt regularly exercises this control over the shoppers’ work.
- Shipt determines shoppers’ pay. For example, shoppers cannot negotiate the amount that they will be paid per order with the customer and are instead paid according to Shipt’s formula (which is not clearly explained nor negotiated with the shoppers). Pay is not based on hours or time worked.
- Shipt monitors group chats between shoppers, to prevent “promo-pay” inflation, which refers to the increased per delivery pay rate of an order that goes into the “Metro Open Order,” which is the queue in which the order is placed if no on-shift shoppers accept the order.
- Shipt instructs shoppers on how to perform services and interact with customers. For example, Shipt instructs on its shopper website that “Shipt Shopping is intended to be a solo enterprise, and only the individual who has claimed the order should shop and/or deliver the order for the member.” Shoppers who violate this policy may be terminated.
- Shipt records and tracks customer ratings of Shipt shoppers as part of “Shopper Stats,” and then disciplines shoppers whose ratings fail below the minimum threshold of 4.7 (according to Shipt’s website) by either temporarily suspending shoppers until the shopper has completed a refresher (or orientation) course or by simply terminating the shopper. Whether the worker is given the opportunity to take a refresher course or is instead terminated is decided at Shipt’s discretion.
- Shipt records acceptance of delivery orders for on-shift shoppers and tracks shoppers’ “acceptance rate” as part of “Shopper Stats,” and then disciplines shoppers who do not accept deliveries while on schedule by either temporarily suspending shoppers until the shopper has completed a refresher (or orientation) course or by simply terminating the shopper. Whether the worker is given the opportunity to take a refresher course or is instead terminated is decided at Shipt’s discretion.
- Shipt records time of delivery and tracks “On Time %” as part of Shipt’s “Shopper Stats,” and then disciplines shoppers who submit late deliveries, either by temporarily suspending shoppers until the shopper has completed a refresher (or orientation) course or by simply terminating the shopper. Whether the worker is given the opportunity to take a refresher course or is instead terminated is decided at Shipt’s discretion.

1           15.     Shoppers have not always received an hourly wage. Instead, they have been  
2 paid based on a combination of fees per delivery and fees per item purchased. Sometimes  
3 shoppers are compelled to wait at a specified location for long periods without receiving any  
4 deliveries. Thus, shoppers sometimes receive little or no pay for a shift because they receive  
5 few deliveries or are compelled to travel great distances for a relatively inexpensive order.  
6 Thus, shoppers have not always received minimum wage for the hours they have worked.  
7 Furthermore, when shoppers work more than eight hours per day or more than forty hours per  
8 week, they do not receive time-and-a-half their regular rate of pay for their overtime hours.

9           16.     Although classified as independent contractors, Defendant's shoppers like  
10 Plaintiff are actually employees. Defendant is in the business of providing grocery delivery  
11 services to customers, and this is the very service its shoppers provide. The shoppers' services  
12 are fully integrated into Defendant's business, and without the shoppers, Defendant's business  
13 would not exist. On April 30, 2018, the California Supreme Court issued its decision in  
14 *Dynamex*, which makes clear that Defendant shoppers should be classified as employees  
15 rather than as independent contractors under California law for purposes of wage-and-hour  
16 statutes like the ones at issue here. Under the "ABC" test adopted in *Dynamex*, in order to  
17 justify classifying the shoppers as independent contractors, Defendant would have to prove  
18 that its shoppers perform services outside its usual course of business, which it cannot do.  
19 Notwithstanding this decision, Defendant has willfully continued to misclassify its shoppers  
20 as independent contractors.

21           17.     Based on their misclassification as independent contractors, Defendant has  
22 required Plaintiff and other shoppers to bear many of the expenses of their employment,  
23 including expenses for their vehicles, gas, smartphone, phone data, and other expenses.  
24 Moreover, because Plaintiff and other shoppers are paid by the delivery and do not receive an  
25 hourly rate their pay rates have often fallen below California's minimum wage. Many  
26 Defendant shoppers have regularly worked more than eight (8) and even twelve (12) hours per  
27 day and forty (40) hours per week, but Defendant has not paid overtime wages for these  
28 hours.

1           18.     Although Defendant has classified Plaintiff and others in the same job position  
2 as “independent contractors,” they are actually employees. The shoppers are not free from the  
3 control and direction of Defendant in the performance of their work. Rather, Defendant  
4 control and direct their work. Moreover, the workers perform work that is within the usual  
5 course of the Defendant’ business. Defendant is in the business of providing delivery services.  
6 The shoppers are not customarily engaged in an independently established trade, occupation,  
7 or business. The shoppers incur no opportunity for “profit” or “loss”; rather, Defendant  
8 manages the business operation, attracts investors and customers, advertises, and obtains  
9 customers. The shoppers’ investment is minor when compared to Defendant’ investments.  
10 The shoppers have made no capital investment in Defendant’ facilities, advertising,  
11 maintenance, staffing, or electronic systems. Defendant provides investment and risk capital.  
12 The shoppers do not. But for Defendant’ investments, the shoppers would earn little or  
13 nothing from their relatively minor expenditures. The shoppers do no exercise the skills and  
14 initiative of persons in business for themselves. The shoppers do not exercise business sills  
15 and initiative necessary to elevate their status to that of independent contractors. The shoppers  
16 own no enterprise. They exercise no business management skills. They maintain no separate  
17 business structures or facilities. The shoppers do not hire or subcontract other individuals to  
18 provide additional services to customers and increase their revenues, as independent  
19 contractors in business for themselves would.

20           19.     Indeed, in connection with the delivery work described herein, Plaintiff did not  
21 exercise the skills and initiative of persons in business for themselves; Plaintiff did not  
22 exercise business management skills; Plaintiff made no investments of any significance;  
23 Plaintiff did not engage in an independently established trade, occupation, or business;  
24 Plaintiff did not maintain any separate business structures or facilities; Plaintiff did not incur  
25 any opportunity for “profit” or “loss”; and Plaintiff did not hire assistants or subcontract  
26 anyone to provide additional services, as independent contractors in business for themselves  
27 would in order to increase their revenues.

28           20.     Plaintiff do not own delivery enterprises. Throughout the time when Plaintiff

1 have worked for Defendant as shoppers, Plaintiff have not taken any steps to establish or  
2 promote an independent delivery business, such as: (1) incorporating a delivery business  
3 entity; (2) obtaining any business license for a delivery business entity; (3) advertising to the  
4 general public regarding delivery services; and/or (4) making offerings to provide services of  
5 the independent business to the public or to a number of potential customers. Moreover,  
6 Plaintiff have never had any of their own customers or clients for delivery services.

7 21. Defendant's policy, pattern, and practice of misclassifying Plaintiff and others  
8 in the same job position as "independent contractors" has resulted in numerous violations of  
9 law, including without limitation the violation of sick day requirements, the failure to secure  
10 shoppers' compensation, the failure to pay minimum wages, the failure to pay for all hours  
11 worked, the failure to pay overtime, the failure to reimburse expenses, the failure to furnish  
12 timely, accurate, itemized wage statements, the failure to pay compensation that was due and  
13 owing upon resignation or discharge, and the failure to pay all wages owed every pay period.

14 22. Defendant has not compensated Plaintiff and the other aggrieved employees  
15 for all hours worked, including without limitation for: (1) time spent performing services for  
16 customers; (2) time spent maintaining and preparing vehicles, equipment, and supplies for job  
17 assignments; (3) time spent driving to and from stores and customer locations; and/or (4) time  
18 spent performing various other pre- and post-service activities. Moreover, the shoppers have  
19 routinely worked over eight (8) hours per day and/or forty (40) hours per week but Defendant  
20 has not paid them one and one-half their regular rate of pay for overtime work. Defendant has  
21 failed to pay the shoppers all minimum wages earned each pay period, and all overtime wages  
22 owed for all overtime hours worked each pay period.

23 23. Defendant has failed to provide the shoppers with timely, accurate wage  
24 statements showing: (1) gross wages earned; (2) total hours worked; (3) the number of piece-  
25 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;  
26 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the  
27 employee is paid; (7) the name of the employee and only the last four digits of his or her  
28 social security number or an employee identification number other than a social security

1 number; (8) the name and address of the legal entity that is the employer; and (9) all  
2 applicable hourly rates in effect during the pay period and the corresponding number of hours  
3 worked at each hourly rate by the employee.

4 24. Defendant has not had policies and procedures for the shoppers to accrue and  
5 take paid sick days. Moreover, Defendant has not secured workers' compensation for the  
6 shoppers.

7 25. Defendant has failed to pay Plaintiff and/or other aggrieved individuals  
8 compensation that was due and owing (including minimum wages and overtime) upon  
9 discharge and/or within seventy-two (72) hours of the worker's termination of employment by  
10 resignation.

11 26. Defendant has failed to maintain a policy that provides the shoppers with off-  
12 duty rest periods as required by California law. The shoppers regularly work in excess of four  
13 hours or major fraction thereof during work days without being provided at least a ten-minute  
14 rest period during which they are relieved of all duties. Defendant has failed to provide the  
15 shoppers any compensation for these missed rest periods.

16 27. Given the frequency and duration of job assignments, and the requirement that  
17 shoppers be in or very near their vehicles at all time during their shifts, the workers cannot  
18 and do not engage in personal non-work activities during their shifts.

19 28. Based on their misclassification as independent contractors, Defendant has  
20 required the workers to bear many of their work expenses, including for vehicles, gas,  
21 parking, phone usage, vehicle wear and tear, vehicle insurance, bags, and containers.

22 29. Because the workers are paid by the delivery and do not receive an hourly rate  
23 and have been required to bear many of the expenses of their employment, their pay rates  
24 have often fallen below California's minimum wage.

25 30. Many shoppers have regularly worked more than eight (8) and even twelve  
26 (12) hours per day and forty (40) hours per week, but Defendant has not paid overtime wages  
27 for these hours.

28 31. The workers are important for—and indeed, integral and essential to—

1 Defendant's business.

2 32. The violations described above and herein are and have been part of an  
3 unlawful policy, pattern, and practice of Defendant. Plaintiff's claims are typical of the claims  
4 of the others whom Plaintiff seeks to represent. Defendant's common course of conduct in  
5 violation of law as alleged herein has caused Plaintiff and the other aggrieved individuals to  
6 sustain the same or similar injuries and damages. Plaintiff's claims are representative of and  
7 co-extensive with the claims of the other aggrieved individuals.

### 8 **FIRST CAUSE OF ACTION**

#### 9 **PAGA Claims, California Labor Code § 2698 *et seq.***

10 33. The PAGA Representative Plaintiff incorporate by reference all paragraphs  
11 above as if fully set forth herein.

12 34. The PAGA Representative Plaintiff also prosecute this case pursuant to PAGA,  
13 on behalf of themselves and the following individuals whom they seek to represent (referred  
14 to herein as the "aggrieved employees" under PAGA), to recover civil penalties for  
15 Defendant's violations of the California Labor Code.

16 35. The PAGA Representative Plaintiff bring this action under PAGA as a  
17 representative suit on behalf of all "aggrieved employees" pursuant to the procedures in  
18 PAGA, and seek to the recover the PAGA civil penalties on a representative basis.

19 36. PAGA also provides: "Any employee who prevails in any action shall be  
20 entitled to an award of reasonable attorney's fees and costs." California Labor Code  
21 § 2699(g)(1).

22 37. As private attorneys general acting as representatives of the people of the State  
23 of California, the PAGA Representative Plaintiff seek recovery from Defendant of any and all  
24 penalties and other monies capable of being collected by the Labor Commission and/or the  
25 Department of Labor Standards Enforcement (DLSE) for Defendant's violations of law,  
26 including without limitation any and all penalties specified herein.

27 38. Pursuant to PAGA, the PAGA Representative Plaintiff seek to recover from  
28 Defendant, on behalf of themselves and the other aggrieved employees, civil penalties

1 pursuant to PAGA, plus reasonable attorneys' fees, costs, and expenses, and any further relief  
2 that the Court deems appropriate.

3 39. The PAGA Representative Plaintiff satisfied the pre-filing notice and  
4 exhaustion of administrative remedies requirement under PAGA, by letter dated September 3,  
5 2020, which was sent by certified mail to Defendant and filed with the LWDA on that date.

6 40. Defendant has, through the policies and practices described herein, violated  
7 several provisions of the California Labor Code for which Plaintiff seek recovery of civil  
8 penalties, as specified herein.

### 9 VIOLATIONS OF THE CALIFORNIA LABOR CODE

#### 10 Willful Misclassification

11 41. Plaintiff incorporate by reference all paragraphs above as if fully set forth  
12 herein.

13 42. California Labor Code 226.8(a) provides: "It is unlawful for any person or  
14 employer to engage in any of the following activities: (1) Willful misclassification of an  
15 individual as an independent contractor. (2) Charging an individual who has been willfully  
16 misclassified as an independent contractor a fee, or making any deductions from  
17 compensation, for any purpose, including for goods, materials, space rental, services,  
18 government licenses, repairs, equipment maintenance, or fines arising from the individual's  
19 employment where any of the acts described in this paragraph would have violated the law if  
20 the individual had not been misclassified."

21 43. California Labor Code 226.8(b) provides that if the "court issues a  
22 determination that a person or employer has engaged in any of the enumerated violations of  
23 subdivision (a), the person or employer shall be subject to a civil penalty of not less than five  
24 thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each  
25 violation, in addition to any other penalties or fines permitted by law."

26 44. California Labor Code 226.8(c) provides that if the "court issues a  
27 determination that a person or employer has engaged in any of the enumerated violations of  
28 subdivision (a) and the person or employer has engaged in or is engaging in a pattern or

1 practice of these violations, the person or employer shall be subject to a civil penalty of not  
2 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars  
3 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

4 45. Defendant’s misclassification of the workers as independent contractors,  
5 despite the decision of the Labor Commissioner of the State of California in *Berwick v. Uber*  
6 *Technologies* (June 3, 2015), the California Unemployment Insurance Appeals Board ruling  
7 (No.: 5371509 – June, 1, 2015) that an Uber driver is an employee eligible to obtain  
8 unemployment benefits, the California Supreme Court’s decision in *Dynamex Operations*  
9 *West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction  
10 issued against Instacart in *People of the State of California v. Maplebear, Inc., Superior Court*  
11 *of California*, County of San Diego, Case No. 37-2019-00048731-CU-MC-CTL, other  
12 changes in common law and state law, and other complaints, claims, and lawsuits against  
13 Instacart and other industry players, constitutes willful misclassification in violation of  
14 California Labor Code § 226.8. Therefore, Plaintiff seek recovery of any and all penalties  
15 available, including without limitation the penalties specified herein in the amounts specified  
16 in California Labor Code § 226.8 and/or PAGA, for each aggrieved employee.

17 **Violations of Paid Sick Day Requirements, Labor Code §§ 245-249**

18 46. Plaintiff incorporate by reference all paragraphs above as if fully set forth  
19 herein.

20 47. Defendant violated Labor Code § 246 by not having policies and procedures  
21 for the workers to accrue and take paid sick days. Because of Defendant’s violations of the  
22 paid sick day requirements, Defendant is liable for civil penalties under California Labor  
23 Code §§ 248.5, 558, and PAGA. Therefore, Plaintiff seek recovery of any and all penalties  
24 available, including without limitation the penalties specified herein in the amounts specified  
25 in California Labor Code §§ 248.5, 558, and/or PAGA, for each aggrieved employee.

26 **Failure to Secure Compensation in Violation of Labor Code § 3700 et seq.**

27 48. Plaintiff incorporate by reference all paragraphs above as if fully set forth  
28 herein.

1           49. Defendant did not secure workers' compensation for the workers, in violation  
2 of Labor Code §§ 3700, 3700.5, 3712, 3715. Because of Defendant's violations of those  
3 statutes, Defendant is subject to the penalties and fines per Labor Code § 3700.5 and PAGA  
4 for each aggrieved employee per pay period. Therefore, Plaintiff seek recovery of any and all  
5 penalties available, including without limitation the penalties specified herein in the amounts  
6 specified in California Labor Code § 3700.5 and/or PAGA, for each aggrieved employee.

7                   **Failure to Pay Minimum Wages as Required by State Law**

8           50. Plaintiff incorporate by reference all paragraphs above as if fully set forth  
9 herein.

10           51. At all relevant times, Defendant has been required to pay the workers  
11 minimum wages under California law, including without limitation pursuant to the Wage  
12 Orders. Nevertheless, Defendant has failed to ensure that the workers receive the applicable  
13 state minimum wage for all hours worked. Accordingly, Defendant has violated California  
14 Labor Code §§ 558, 1194, 1197, 1198, and 1197.1.

15           52. Therefore, Plaintiff seek recovery of any and all penalties available, including  
16 without limitation the penalties specified herein in the amounts specified in California Labor  
17 Code §§ 1194, 1197, 1197.1, 1198, 558, and/or PAGA, for each aggrieved employee.

18                   **Unlawful Failure to Pay Overtime**

19           53. Plaintiff incorporate by reference all paragraphs above as if fully set forth  
20 herein.

21           54. Defendant has failed to maintain a policy that compensates the workers for all  
22 hours worked, including overtime. The workers routinely work over eight (8) hours per day  
23 and/or forty (40) hours per week but are not paid one and one-half their regular rate of pay for  
24 overtime work, in violation of California Labor Code §§ 510, 1194, 1198, and the Wage  
25 Orders. Therefore, Plaintiff seek recovery of any and all penalties available, including without  
26 limitation the penalties specified herein in the amounts specified in California Labor Code §§  
27 510, 1194, 1198, 558, and/or PAGA, for each aggrieved employee.

28                   **Unlawful Failure to Reimburse Expenses**

1           55.     Plaintiff incorporate by reference all paragraphs above as if fully set forth  
2 herein.

3           56.     Defendants have required the workers to bear many of the expenses of their  
4 employment, including without limitation expenses for vehicles, gas, mileage, parking,  
5 parking tickets, phone usage, vehicle wear and tear, and vehicle insurance. Defendants have  
6 failed to indemnify the workers for all necessary expenditures or losses incurred by the  
7 workers, in violation of the Wage Orders and California Labor Code § 2802, which require  
8 the employer to indemnify employees for all necessary expenditures or losses incurred by  
9 employees in direct discharge of their duties, and accordingly, Defendants are liable for civil  
10 penalties pursuant to California Labor Code §§ 558, 1197.1, 2802, and/or PAGA. Therefore,  
11 Plaintiff seek recovery of any and all penalties available, including without limitation the  
12 penalties specified herein in the amounts specified in California Labor Code §§ 558, 2802,  
13 1197.1, and/or PAGA, for each aggrieved employee.

14                   **Unlawful Failure to Furnish Timely, Accurate, Itemized Wage Statements**

15           57.     Plaintiff incorporate by reference all paragraphs above as if fully set forth  
16 herein.

17           58.     Defendant has failed and continues to fail to provide timely, accurate itemized  
18 wage statements to the workers in violation of California Labor Code § 226(a)-(e) and the  
19 Wage Orders. Defendants' failure to provide timely, accurate, itemized wage statements in  
20 accordance with the California Labor Code has been knowing and intentional. Accordingly,  
21 Defendant is liable for damages, penalties, and attorneys' fees and costs under Labor Code  
22 § 226(e), as well as for penalties under 226.3, 558, and/or PAGA for each aggrieved employee  
23 per pay period.

24           59.     Therefore, Plaintiff seek recovery of any and all penalties available, including  
25 without limitation the penalties specified herein in the amounts specified in California Labor  
26 Code §§ 226, 226.3, 558, and/or PAGA, for each aggrieved employee.

27                   **Waiting Time Penalties**

28           60.     Plaintiff incorporate by reference all paragraphs above as if fully set forth

1 herein.

2 61. Defendant has not paid full compensation, including without limitation  
3 minimum wages and overtime, as alleged above, and as a result many workers have not been  
4 paid compensation that was due and owing upon discharge and/or within seventy-two (72)  
5 hours of termination by resignation. Thus, Defendant has failed and refused, and continues to  
6 willfully fail and refuse, to timely pay compensation and wages and compensation in violation  
7 of California Labor Code §§ 201, 202, and 203. Defendant is liable for up to thirty (30) days  
8 of waiting time penalties pursuant to California Labor Code § 203, together with interest  
9 thereon.

10 62. Because of Defendant's violations of California Labor Code §§ 201, 202, and  
11 203, 256, and 1197.1, Defendant is liable for civil penalties under PAGA for each aggrieved  
12 employee per pay period. Therefore, Plaintiff seek recovery of any and all penalties available,  
13 including without limitation the penalties specified herein in the amounts specified in  
14 California Labor Code §§ 201, 202, 203, 256, 1197.1, and/or PAGA, for each aggrieved  
15 employee.

16 **Penalties for Failure to Pay All Wages Owed Every Pay Period**

17 63. Plaintiff incorporate by reference all paragraphs above as if fully set forth  
18 herein.

19 64. At all times relevant during the liability period, Plaintiff and the other  
20 aggrieved individuals were employees of Defendants covered by Labor Code § 204.

21 65. Pursuant to Labor Code § 204, Plaintiff and the other aggrieved individuals  
22 were entitled to receive on regular paydays all wages earned for the pay period corresponding  
23 to the payday.

24 66. Defendant has failed to pay Plaintiff and the other aggrieved individuals all  
25 wages earned each pay period, including without limitation minimum wages and overtime.  
26 That violates Labor Code § 204.

27 67. As a result of Defendant's unlawful conduct, Plaintiff and the other aggrieved  
28 individuals have suffered damages to the extent they were not paid all wages each pay period.

1           68.     Because of Defendant's violations of Labor Code § 204, Defendant is liable for  
2 civil penalties under PAGA for each aggrieved employee per pay period, and under Labor  
3 Code § 210 for each aggrieved employee per pay period.

4           69.     Therefore, Plaintiff seek recovery of any and all penalties available, including  
5 without limitation the penalties specified herein in the amounts specified in California Labor  
6 Code §§ 204, 210, and/or PAGA, for each aggrieved employee.

7                   **Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods**

8           70.     Plaintiff incorporate by reference all paragraphs above as if fully set forth  
9 herein.

10          71.     Defendant has failed to maintain a policy that provides the workers with off-  
11 duty rest periods as required by California law. The workers regularly work in excess of four  
12 hours or major fraction thereof during work days without being provided at least a ten minute  
13 rest period during which they are relieved of all duties, as required by California Labor Code  
14 § 226.7 and the Wage Orders. Defendant has failed to provide the workers the premium  
15 compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Because of  
16 Defendant's violations of Labor Code § 226.7 and the Wage Orders, Defendant is liable for  
17 civil penalties pursuant to California Labor Code §§ 558 and PAGA.

18                   **PRAYER FOR RELIEF**

19          WHEREFORE, the PAGA Representative Plaintiff prays for relief against Defendant  
20 as follows:

- 21          a) For civil penalties and all other sums of money owed pursuant to PAGA;  
22          b) For an award of reasonable attorneys' fees, expenses, and costs as specified under  
23             California Labor Code §§ 218.5 and 226, California Code of Civil Procedure  
24             §§ 1021.5 and 1033.5, PAGA, and/or other applicable law;  
25          c) For pre-judgment and post-judgment interest; and  
26          d) For such other and further relief as the Court deems just and proper.

27          In accordance with the relief requested herein, Plaintiff respectfully request that judgment  
28 be entered against Defendant, and in favor of Plaintiff and the aggrieved employees, in the

1 amount of at least \$200,000,000.00 (*i.e.*, two hundred million U.S. dollars).

2 DATED: December 8, 2020

Respectfully submitted,

3 THE TIDRICK LAW FIRM LLP

4  
5 By:



6 STEVEN G. TIDRICK, SBN 224760  
7 JOEL B. YOUNG, SBN 236662  
8 1300 Clay Street, Suite 600  
9 Oakland, California 94612  
10 Telephone: (510) 788-5100  
11 Facsimile: (510) 291-3226  
12 E-mail: sgt@tidricklaw.com  
13 E-mail: jby@tidricklaw.com

14 Attorneys for Representative  
15 Plaintiff Raymond Cho  
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24  
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