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City Attorney Sues for Unpaid Wages, Overtime, Expenses for Misclassified ‘Gig Economy’ Workers

Lawsuit filed against Instacart to protect tens of thousands of exploited workers in California

City Attorney Mara W. Elliott today filed a lawsuit on behalf of the People of the State of California against Instacart, alleging the company misclassified employees as independent contractors to evade long-established worker protections under California law.

Instacart is a same-day grocery delivery service that operates nationally and is based in San Francisco, CA. Its app allows customers to place grocery orders, which are then purchased and delivered by a “Shopper” who drives the order directly to their home.

The company has a strong presence in the City and County of San Diego, where it launched its services in mid-2016 and expanded to offer services to cover more than one million households about a year later.

Instacart Shoppers do not qualify as independent contractors under a 2018 decision by the California Supreme Court that clarified the law in this state.

“Companies like Instacart cannot deprive their employees of the basic job protections guaranteed under State law by calling them independent contractors,” City Attorney Mara W. Elliott said. **“We are seeking restitution for the workers who’ve been exploited in the past, and we are also demanding that Instacart start legally classifying its workers.”**

To be classified as an independent contractor, an employer must prove that it meets each of the following three criteria, as detailed by the California Supreme Court in last year’s *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018):

- A. the worker is free from the control and direction of the employer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. the worker performs work that is outside the usual course of the employer’s business; and
- C. the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the employer.

Instacart Shoppers meet none of the three criteria:

- Instacart exercises complete control over the work done by its Shoppers. Shoppers are required to use the Instacart app on their personal smart phones to complete transactions. The app then tracks their arrival at a

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store, routes the Shopper through the aisles to retrieve each item, and sends driving directions to the Shopper for delivery to the customer's home. Instacart utilizes a ratings system based on how closely the Shopper conformed to the delivery targets set unilaterally by Instacart. Deviation even in small ways can lead to dismissal.

- Shoppers perform work that is directly within the course of Instacart's business model, including "Groceries delivered in as little as 1 hour." Shoppers are essential to providing the core service the company offers.
- Gathering groceries is not a distinct trade that requires any special skill or licensing, so Shoppers are also not customarily engaged in an independently established trade or business of the same nature as the work performed for Instacart.

Shoppers illegally misclassified as independent contractors did not receive all the compensation to which they are entitled. This includes minimum wages, overtime pay, meal breaks, paid rest breaks, and reimbursement for expenses required to do the job such as gas mileage, vehicle wear and tear, and cell phone data. Instacart also illegally evaded paying for workers compensation and unemployment insurance, and failed to pay associated state and federal payroll taxes.

This lawsuit is filed on behalf of the People of the State of California, under the City Attorney's statewide enforcement authority as public prosecutor conferred by the Unfair Competition Law. The City Attorney is seeking restitution for lost wages and an injunction that would require Instacart to classify Shoppers as employees. The lawsuit also asks for civil penalties for multiple violations of the Business and Professions Code, in an amount to be determined by the judge.

Chief Deputy City Attorney Mark Ankcorn, Deputy City Attorney Kevin King, and Deputy City Attorney Marni Von Wilpert represent the People of the State of California.

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