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## **City Attorney Wins Key Battle with Instacart**

*Appeals court says case seeking to protect workers can proceed without arbitration*

San Diego City Attorney Mara W. Elliott announced today that the City Attorney's Office has prevailed in a hard-fought court battle with food delivery app Instacart.

The dispute was over whether the lawsuit, seeking in part to get restitution for wages denied Instacart's workers, would be sent to private arbitration. A three-member panel of the Fourth District Court of Appeal ruled unanimously on May 18 in the City Attorney's favor, and the litigation will continue in San Diego County Superior Court without further delay.

The San Diego City Attorney is empowered under state law to file actions like this on behalf of the People of the State of California to protect workers from unfair business practices, and cannot be coerced into arbitration based on unrelated, private agreements.

The City Attorney's Office filed suit against Mapbear, doing business as Instacart, in 2019, claiming the company misclassifies its workers as independent contractors when in fact they are employees. The lawsuit alleges that Instacart's workers are entitled to paid breaks, workers compensation, unemployment insurance, and a myriad of other protections afforded employees under state law.

The City Attorney's Office, in collaboration with the California Attorney General, Los Angeles City Attorney, and San Francisco City Attorney, has also sued so-called "ride sharing" companies Uber and Lyft on similar grounds, that their workers should be treated as employees.

**"This ruling from the Court of Appeal is binding across the state and deters companies like Instacart from using delay tactics to evade the law,"** City Attorney Mara W. Elliott said. **"Uber and Lyft have filed similar long-shot motions in response to our attempt to make employees whole. We hope this ruling will stymie those antics and allow the trial courts to move ahead and swiftly resolve these cases."**

Instacart is a San Francisco-based same-day grocery delivery service. Customers use the app to place grocery orders, which are then purchased and delivered by a "shopper" who drives the order directly to

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their home. The company has a strong presence in the City and County of San Diego, where it launched its service in mid-2016.

The Unfair Competition Law lawsuit was filed by the City Attorney's Affirmative Civil Enforcement Unit, on behalf of the People of the State of California, on Sept. 13, 2019. The City Attorney's Office contends that tens of thousands of "gig economy" workers in California are misclassified by their employers, and being exploited by being denied unpaid wages, overtime, and other expenses, thereby giving Instacart an unfair advantage over its competitors.

The lawsuit seeks 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 a judge.

In response to the complaint, Instacart brought a motion to compel arbitration of a portion of the lawsuit based on its agreements with the individuals it hires. Instacart argued that because it has an arbitration agreement with its shoppers, any suit over working conditions is automatically subject to arbitration.

However, the City Attorney's Office contended that the People's law enforcement action could not be compelled to arbitration based on Instacart's private agreements because the People never agreed to arbitrate, and the People's action is fundamentally distinct from a private action because it protects the public.

The trial court denied the motion by Instacart, and the Court of Appeal panel confirmed the denial.

**"We will continue to fight for the rights of employees statewide," Elliott said. "People who work hard for low wages deserve to be protected from being taken advantage of by large, greedy corporations."**

The case is being handled by Deputy City Attorney Kevin B. King, under the supervision of Chief Deputy City Attorney Mark Ankorn of the Affirmative Civil Enforcement (ACE) Unit of the City Attorney's Office.

The ACE Unit pursues public interest causes of action on behalf of the People of the State of California under the Unfair Competition Law, including consumer privacy, predatory lending, and unsafe and dangerous products. The ACE Unit enforces laws that protect consumers, employees, and the environment, and advocates for change when existing laws fall short. Through its own litigation and by collaborating with others inside and outside government, the ACE Unit protects public health and safety, restores environmental quality, and sustains economic vitality.

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