

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.:

**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 Maplear, 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.

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.

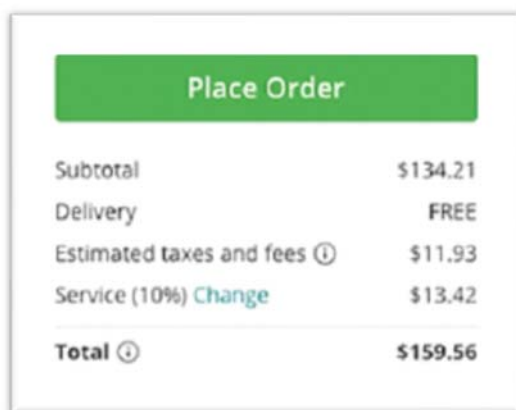
16. Around September 2016, Instacart replaced the shopper tip with a new line item: an optional and variable "service" fee ("service fee"). Like the shopper tip, the service fee defaulted to ten percent of the subtotal of the consumer's order. And, like the shopper tip, the service fee could be increased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

18. Approximately one month later, in response to an outcry from workers, Instacart reintroduced the ability to tip shoppers—but it omitted this option from consumers’ main check-out screen. In addition to obscuring the ability to tip, Instacart set the default shopper tip to zero.

19. Instacart again told the public that the service fee “will be used to guarantee a high commission for all shoppers to help smooth out variations in pay. Shoppers will no longer have to count on unpredictable tips for the majority of their compensation.” However, this service fee was not specifically earmarked or tracked for shopper pay.

20. An Instacart order placed after September 2016 therefore would have shown a default ten percent “service” amount and a separate delivery fee. As illustrated below, the main check-out screen did not display an option to tip the shopper.



| Place Order | |
|----------------------------|-----------------|
| Subtotal | \$134.21 |
| Delivery | FREE |
| Estimated taxes and fees ⓘ | \$11.93 |
| Service (10%) Change | \$13.42 |
| Total ⓘ | \$159.56 |

21. These various changes tended to mislead District consumers to believe—incorrectly—that the service fee was a tip (or tip equivalent, such as a tipping pool) to be paid to the shopper(s) who fulfilled a consumer’s order. In reality, the service fee was a voluntary contribution unsuspectingly made by consumers to Instacart’s coffers.

22. Instacart compounded its deceptive conduct by making misleading and contradictory statements throughout the Instacart App and website that the service fee would be used to pay shoppers. But this was not true. The service fee was used like any other revenue to

cover a broad range of Instacart's operating expenses, including customer support, background checks, and insurance.

23. The amount consumers were contributing for "service" did not directly increase shopper pay; rather, the service fee was simply another revenue source that Instacart used to cover its costs and generate profit.

C. Instacart's Misrepresentations and Omissions Regarding Its Service Fee

24. During all or part of the period of September 2016 through April 2018 (the "relevant time period"), Instacart made numerous misrepresentations, ambiguities, and omissions regarding its service fee that tended to mislead consumers about the fee's true nature and purpose.

1. Instacart Presented the Service Fee in a Deceptive Manner.

25. Instacart presented the service fee in a manner that tended to mislead consumers into believing that this amount represented a gratuity to the shopper(s) who fulfilled a consumer's order.

26. Specifically, by including on consumers' online bills a separate "service" amount that is based on a variable percentage of the subtotal of the consumer's order, Instacart took advantage of consumers' expectations that they would be able to leave a tip for the shopper(s) who performed the grocery delivery service.

27. A consumer viewing the main check-out screen would have understood the optional and variable 10% "service" amount to represent a tip (or tip equivalent, such as a tipping pool).

28. There are several reasons why consumers would have been misled by this presentation. First, consumers are accustomed to leaving an optional gratuity calculated as a variable percentage of their bill to a person who has provided a service. Because they had the

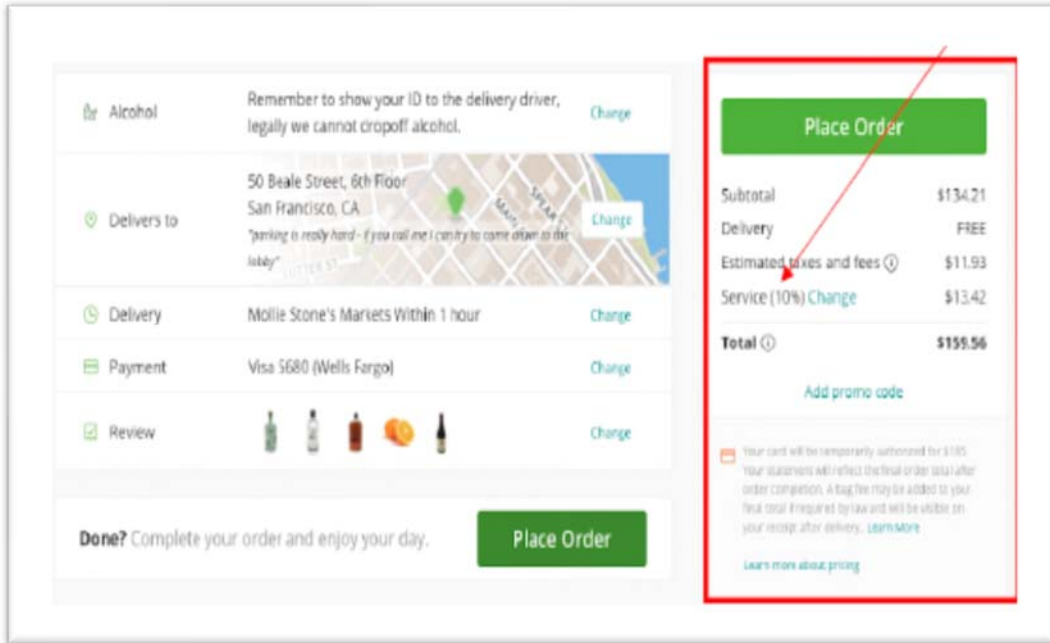
option to change the “service” fee, a consumer would have assumed the “service” fee represented a tip.

29. Second, by separating the service fee from the delivery fee, Instacart gave consumers the misimpression that the “delivery fee” would go to Instacart as the basic price of Instacart’s grocery delivery services, and the optional and variable service fee would go to the shoppers who fulfilled the order as a gratuity. In fact, both the “service” and “delivery” fees simply paid for Instacart’s grocery delivery services.

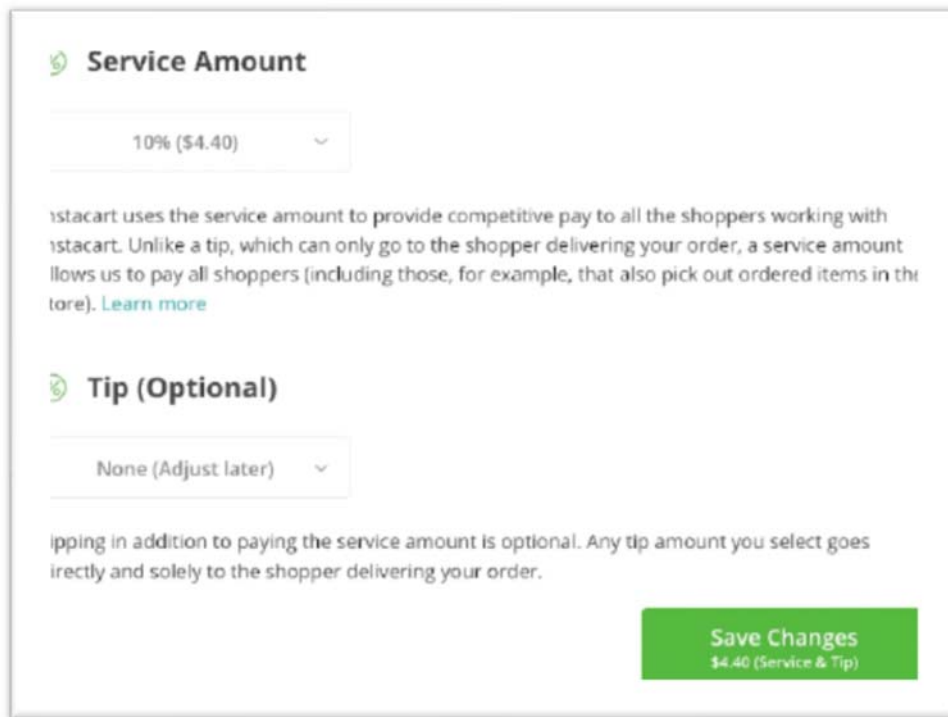
30. Critically, although Instacart’s main check-out screen allowed consumers to “Change” the service fee, it did not clearly and conspicuously state that the service fee was not a tip. Only consumers who clicked through to a separate pop-up window would encounter a disclosure making this distinction.

31. Instacart further reinforced consumers’ misimpression by removing the option to tip from the main check-out screen around September 2016.

32. Tellingly, Instacart temporarily eliminated the tipping option *altogether* when it first began to collect a service fee. And even when the option to tip was reintroduced, nothing on the main check-out screen referred to tipping until November 2017, as illustrated below:



33. The option to tip one's shopper at check-out was only visible to consumers who first clicked an obscure link to change *the service fee*, which then yielded a pop-up window or a separate screen in which the option to tip was presented:



34. Instacart’s decision to bury the option to tip behind an unrelated link—rather than to display this option on the main check-out screen—concealed from the consumer that the service fee and the shopper tip were distinct. In this respect, Instacart’s checkout design compounded consumers’ tendency to confuse the service fee with a shopper tip.

35. Similarly, Instacart ensured that consumers would not see the tip on their bill by setting the default tip to zero. Again, this default setting tended to lead consumers to confuse the service fee for a tip by obscuring the fact that the service fee and tip would appear as separate line items on the consumer’s bill.

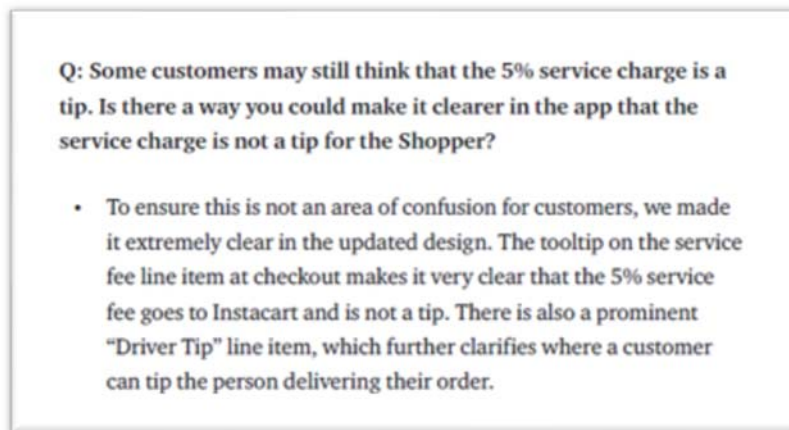
36. Instacart’s division of the service fee from the delivery fee also facilitated misleading “free delivery” promotions that reinforced the notion that the service fee was a tip.

37. While denominated differently, the delivery fee and service fee were each an amount collected by Instacart for providing grocery delivery services. Yet (as illustrated by the screenshots in paragraphs 20 and 32 above), when Instacart offered consumers “free delivery,” the Company only waived the delivery fee.

38. Consumers who are promised “free delivery” by a grocery delivery service reasonably expected that such an offer means that the company will waive all charges applied to a purchase to cover the added costs associated with having groceries delivered. In Instacart’s case, this included *both* the delivery fee and the service fee.

39. Furthermore, by applying a 10% service fee to “free delivery” orders, Instacart misleadingly caused its consumers to believe that the service fee was *not* a fee paid to Instacart for grocery delivery services, but rather a gratuity paid to shoppers. Instacart was able to pocket the service fees paid by unsuspecting consumers on “free delivery” orders as a result of this deceptive practice.

40. The tendency of Instacart’s misrepresentations and omissions to mislead consumers is confirmed by the Company’s own admissions. In April 2018, Instacart redesigned its main check-out page in connection with imposing a mandatory 5% service fee. As part of this redesign, Instacart acknowledged that consumers “*may still*” confuse the service fee with a tip:



2. *Instacart Described the Purpose of the Service Fee in a Deceptive Manner.*

41. Instacart’s disclosures about the purpose of the service fee also deceptively suggested that shopper compensation would be impacted by a consumer’s decision to pay the service fee.

42. For example, as alleged above, when announcing the service fee, Instacart told consumers 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.”

43. Consumers who attempted to change the service fee were also advised that the service fee “allow[ed]” the Company “to provide competitive pay to all shoppers” and “to pay all shoppers (including those, for example, that also pick out ordered items in the store).”

44. These disclosures were misleading because Instacart did not explain that it also used the service fee to pay other operating expenses and that an individual consumer’s decision to pay the service fee would not increase any shopper’s pay.

45. Even these confusing disclosures were only made to consumers who tried to alter the default 10% service fee. Instacart failed to clearly and conspicuously provide on the main check-out screen that the service fee was not a tip.

46. The Company's FAQ/Help Center pages addressing the service fee similarly misrepresented the fee, deceptively characterizing this amount as a contribution to shopper compensation.

47. As an initial matter, these FAQ/Help Center statements were located on webpages that consumers would be unlikely to see, entirely separate from the main check-out screen that consumers used to place their orders. It was thus not clear and conspicuous that the service fee was not a tip, especially considering a reasonable consumer's expectations that an optional and variable service fee would operate as a tip to the shopper and not a donation to the Company.

48. In at least one FAQ/Help page, the Company implied that the service fee reflected shopper performance, explaining that the service fee was not reduced when the cost of a consumer's order went down because "the same amount of time and care is taken by your shopper, even if a few items may be replaced, added, or refunded[.]"

49. Other pages emphasized that Instacart used the service fee "to provide high guaranteed commissions to the shoppers on the platform," and that the Company collected a service fee because "multiple shoppers may have been involved in a single order" and the "service amount is used to pay *this* entire set of shoppers" (emphasis added). The Company further stated that because the service amount would be used to pay shoppers a commission, an "additional tip" was "not necessary."

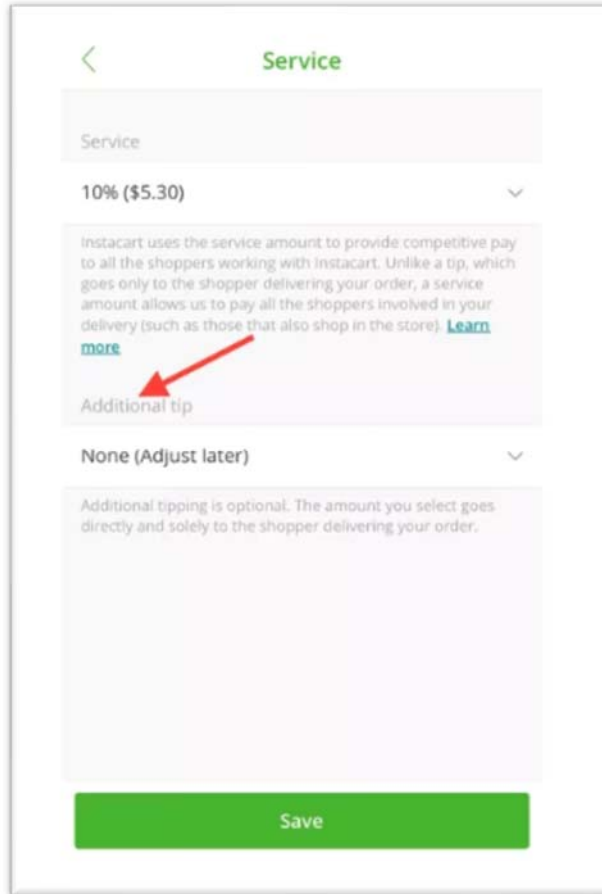
50. These statements misrepresented the service fee as compensation for the set of shoppers who assisted the consumer in obtaining her order. This would be familiar to consumers

in that it would be similar to the tip pooling mechanism used by restaurants to distribute tips earned by wait staff to the kitchen and/or host staff.

51. Instacart's characterization of the service fee was confusing and misleading because the explanation omitted that the shopper(s) who fulfill a consumer's order made the same pay whether or not a consumer paid the recommended service fee. Customers who understood this fee could be waived were thus misled that paying and/or increasing the service fee would benefit shoppers in the form of higher compensation, when that was not the case.

52. Furthermore, Instacart mischaracterized the service fee as funds that would be used specifically to pay shoppers. In fact, Instacart never tracked how service fee payments were expended or earmarked these funds to pay shopper commissions. Only in November 2017, after settling a lawsuit brought by shoppers, did Instacart revise its description of the service fee to remove misleading references to shoppers and more accurately disclose the purpose of the service fee, explaining that the charge simply "helps us operate Instacart and provide you with the best service possible."

53. Instacart also relied on cues in its disclosures to conflate the service fee with a shopper tip. For example, certain versions of the window that consumers opened to "Change" the service fee described the tip option as an "additional tip." This language tended to mislead consumers to conclude that the service fee is effectively a tip.

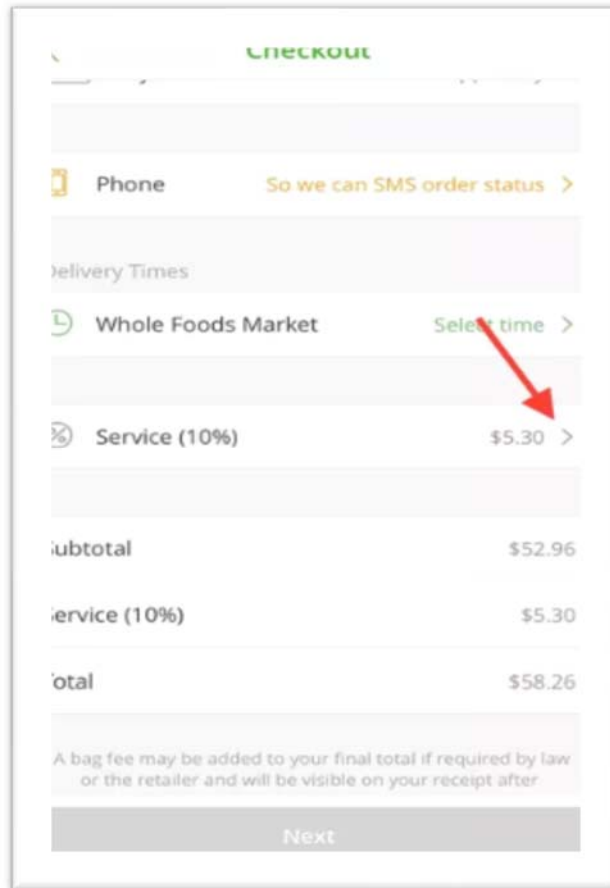


54. By explicitly conflating the service fee with the option to tip, Instacart confused and misled consumers into believing the service fee would go directly to shoppers and any further tip would only be in addition to that payment.

3. *Instacart Concealed and Failed to Clearly State the Fact the Customers Could Chose Not to Pay the “Service Amount.”*

55. Finally, Instacart failed to adequately and clearly tell consumers that the service fee could be waived in full. These omissions and failures to clearly state material facts tended to mislead consumers regarding the fully optional nature of this payment.

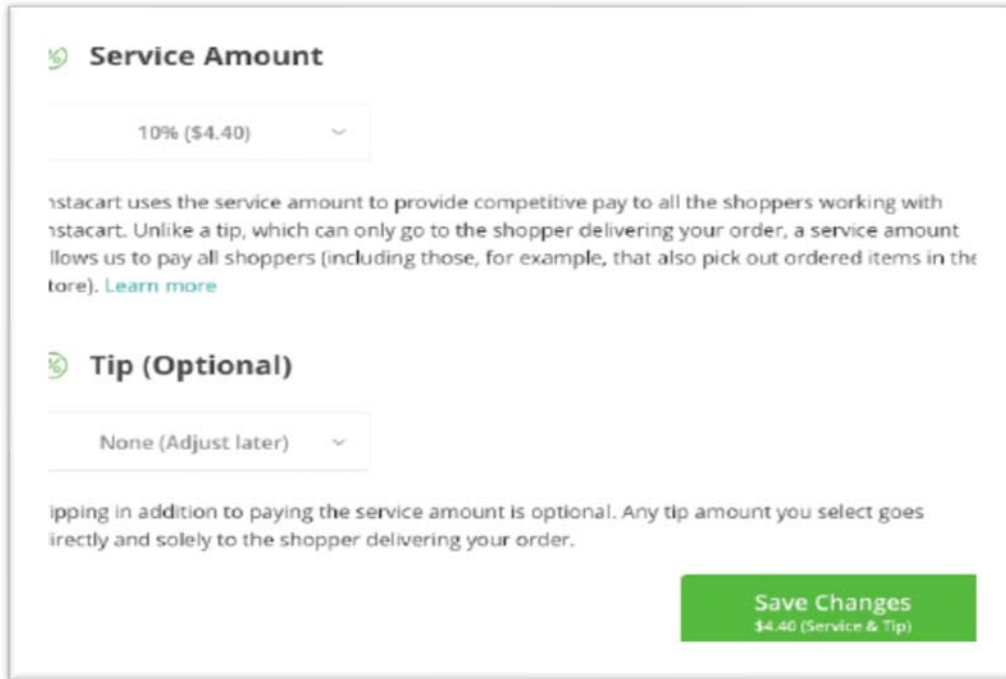
56. Certain versions of the Instacart check-out screen did not even include a “Change” link to edit the default service fee.



57. Critically, even those versions of Instacart’s main check-out screen that did provide consumers a “Change” link to edit the default service fee did not make clear to consumers that they could elect not to pay it at all. Only consumers who clicked through to a separate pop-up window would uncover this option.

58. Further, for at least some of the relevant time period, even this obscure link did not take consumers directly to a disclosure that the default service fee could be waived. Only by navigating through the drop-down menu available on this screen would a consumer learn that the service fee could be waived in its entirety.

59. By contrast, for at least some of the relevant time period, the tipping option that consumers saw when they sought to change the service fee is clearly marked as “optional.” This juxtaposition created in consumers the false impression that the service fee was *not* optional.



60. In addition, Instacart’s free delivery promotions were deceptive in that free delivery orders included a default service fee amount that was paid directly to Instacart for delivery services.

61. On information and belief, Instacart used free delivery promotions to attract customers. However, it did not set the default service fee to zero for these orders.

62. Because Instacart did not clearly disclose that the service fee was optional, some consumers who were promised free delivery by Instacart, and spent time preparing an Instacart order, paid the default service fee out of a mistaken belief that they had no alternative. Consumers who were asked to pay and paid a “service” fee for a delivery service did not receive the “free delivery” promised by the Company.

D. Changes in Tipping Patterns Demonstrate that Consumers Were Misled.

63. Changes in consumers' tipping practices confirm that consumers were misled regarding the purpose of the service fee and believed that the service fee operated as a tip.

64. In the three months prior to introduction of the service fee in September 2016, Instacart consumers in the District of Columbia tipped on almost all orders (approximately 90%). From October 2016 to November 2017, after the misleading service fee was introduced, the tip rate dropped precipitously, with District consumers tipping on only approximately one-third of orders overall during this time period.

65. Furthermore, total shopper tips were equal to approximately 10% of the total revenue on orders placed in the months prior to September 2016, consistent with the default tip amount. After the service fee was introduced, from October 2016 to November 2017, total shopper tips fell to only approximately 3.5% of the total revenue on orders.

66. These numbers demonstrate that the service fee operated to allow Instacart to capture money for itself that consumers previously paid in tips, based on consumers' misunderstanding of the nature and purpose of the service fee. This cost-shifting was significant. Over the course of the relevant time period Instacart had this policy in place, District consumers paid millions of dollars in service fees.

67. Had Instacart adequately disclosed to consumers that the service fee was not a tip, that the service fee could be waived in full, and that electing to pay or increase the service fee had no impact on shoppers' pay, this understanding would have significantly affected consumers' decisions.

E. Instacart’s Sales Tax Violations

68. Instacart also has failed to collect sales taxes owed to the District in connection with the Company’s provision of services in this jurisdiction. Under District law, Instacart is and was responsible for collecting sales tax on the Company’s delivery services as well as certain grocery sales. Instacart violated and continues to violate District law by failing to collect sales taxes for its services, including all sales taxes owed on all service fees and delivery fees it has charged its District consumers.

69. When providing delivery services in the District to website consumers, Instacart is required to collect District sales taxes “for the privilege of selling . . . services” that are included within the statutory definition of “retail sale” and “sale at retail.” D.C. Code § 47-2002(a) and § 47-2001(n)(1). This statutory definition includes “[t]he sale of or charge for any delivery in the District for which a separate charge is made. . . .” D.C. Code § 47-2001(n)(1)(Q).

70. Because Instacart rendered taxable services to consumers in the District, Instacart is a vendor under the District Sales Tax Code and is responsible for collecting and remitting all applicable sales taxes to the District. D.C. Code § 47-2001(w); D.C. Code § 47-2003(a).

71. District law imposes sales taxes totaling 5.75% on “gross receipts” from a vendor’s “retail sale” or “sale at retail” before October 1, 2013. After that date, District law imposes a 6% sales tax on a vendor’s “gross receipts” from a vendor’s “retail sale” or “sale at retail.” D.C. Code § 47-2002(a).

72. Under the District Sales Tax Code, “gross receipts” of the vendor’s retail sale are the total price paid for goods or services “*without any deduction*” for, among other things, labor or service cost or “any other expenses . . . [or] services that are part of the sale” D.C. Code Ann. §§ 47-2001(g-3), (p)(1), 47-2002(a) (emphasis added).

73. Amounts paid by Instacart's customers in delivery fees and service fees are consideration for the retail sale of Instacart's delivery services and, as such, they are included in the "sales price" and "gross receipts" for the "retail sale" of Instacart's delivery service. Accordingly, both amounts are taxable.

74. Instacart has not reported or paid tax on any of these sales.

75. Further, Instacart is a marketplace facilitator since it provides an electronic platform where a retail sale occurs, and it collects payments from customers. D.C. Code §§ 47-2001(g-4) and (g-5).

76. As of April 1, 2019, marketplace facilitators are required to collect and remit sales tax on all sales the marketplace facilitator makes on its own behalf and all sales the marketplace facilitator facilitates on behalf of marketplace sellers to consumers in the District of Columbia. D.C. Code § 47-2002.01a.

77. As a marketplace facilitator, Instacart was required to collect and remit sales tax on the total amounts paid by Instacart's customers as delivery fees and service fees. Again, Instacart has not made any payments to the District to cover these sales taxes. In addition, under this law, Instacart continues to be responsible for collecting sales tax on certain grocery sales.

78. At a minimum, Instacart owes the District hundreds of thousands of dollars, plus penalty and interest, for unpaid sales taxes since 2014.

Count I: Violations of the Consumer Protection Procedures Act

79. The District incorporates the allegations of paragraphs 1 through 78 into this Count.

80. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

81. The services that Instacart provides consumers are for personal, household, or family purposes and, therefore, are consumer goods and services.

82. Instacart, in the ordinary course of business, supplies consumer goods and services and, therefore, is a merchant under the CPPA.

83. Instacart users receive consumer goods and services in the form of groceries and grocery delivery services from Instacart and are therefore consumers under the CPPA.

84. The CPPA prohibits unfair and deceptive trade practices in connection with the offer, sale, and supply of consumer goods and services.

85. During the relevant time period, Instacart's misrepresentations and omissions regarding its service fee constituted deceptive and unfair trade practices that violated D.C. Code § 28-3904.

86. Instacart's failure to clearly and adequately disclose to consumers that its variable service fee was not a tip to the consumer's shopper(s) was a failure to state material facts that had the tendency to mislead and was an unfair and deceptive trade practice in violation of D.C. Code § 28-3904(f).

87. Instacart's failure to adequately explain to consumers that the consumer's decision to pay the service fee did not change shopper pay was a failure to state material facts and/or ambiguity that had the tendency to mislead and was an unfair and deceptive trade practice in violation of D.C. Code §§ 28-3904(f)-(f-1).

88. During the relevant time period, Instacart made affirmative misrepresentations to consumers that the Company was offering "free delivery" while listing a service fee on consumers' bills; this misrepresentation had the tendency to mislead and was an unfair and deceptive trade practices in violation of D.C. Code § 28-3904(e).

89. During the relevant time period, Instacart made affirmative misrepresentations to consumers that the Company used the service fee “to provide high guaranteed commissions to the shoppers on the platform” and “to guarantee a high commission for all shoppers to help smooth out variations in pay;” 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;” that the Company collected a service fee because “multiple shoppers may have been involved in a single order” and the “service amount is used to pay this entire set of shoppers;” and that the service fee “allow[ed] [the Company] to pay all shoppers (including those, for example, that also pick out ordered items in the store)” and “to provide competitive pay to all shoppers.” These misrepresentations had the tendency to mislead and were unfair and deceptive trade practices in violation of D.C. Code § 28-3904(e).

90. Instacart’s failure to clearly and adequately disclose to consumers that its variable service fee was used to pay the Company’s general operating expenses was a failure to state material facts that had the tendency to mislead and was an unfair and deceptive trade practice in violation of D.C. Code § 28-3904(f).

91. During the relevant time period, Instacart’s representations, both express and implied, that a consumer’s payment of the service fee would impact shopper pay were misrepresentations concerning material facts that had a tendency to mislead and were unfair and deceptive trade practices in violation of § 28-3904(e).

92. Instacart’s failure to disclose to consumers, on the main check-out screen, that the default service fee amount was optional and/or could be fully waived was a failure to state a material facts that had the tendency to mislead and was an unfair and deceptive trade practice in violation of D.C. Code § 28-3904(f)-(f-1).

Count II: Failure to Pay Sales Taxes Due

93. The District repeats and realleges Paragraphs 1 through 92 as if set forth fully in this paragraph.

94. Instacart has failed to collect sales taxes due, in violation of D.C. Code § 47-2016.

Count III: Tax Penalties

95. The District repeats and realleges Paragraphs 1 through 94 as if set forth fully in this paragraph.

96. Instacart has failed to make reasonable attempts to comply with the District's sales tax law. By failing to collect and remit sales taxes owed, Instacart has failed to pay an amount that was required to be shown on a tax return but was not shown. D.C. Code § 47-4213(a)(3).

97. Instacart's failures to collect sales taxes due have been attributable either to negligence, as defined by D.C. Code § 47-4211(a), or to fraud, as defined by D.C. Code § 47-4212(d), depending on whether fraud "is indicated" within the meaning of D.C. Code § 47-4212(d).

Prayer for Relief

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendant Instacart as follows:

(a) Permanently enjoin Defendant, pursuant to D.C. Code § 28-3909(a), from violating the CPPA;

(b) Award such relief as the Court finds necessary to redress injury resulting from Defendant's violations of the CPPA, including disgorging monies from Defendant based on their unlawful conduct and/or requiring Defendant to pay damages and restitution;

(c) Award civil penalties in an amount to be proven at trial and as authorized per violation of the CPPA pursuant to D.C. Code § 28-3909(b);

(d) Order Defendant to produce all books, records, or other data needed to determine unpaid sales tax liability;

(e) Order Defendant to make a full accounting of (i) its gross receipts from sales of grocery delivery services in the District of Columbia and (ii) its payments of sales tax charges;

(f) Declare that Defendant is required by District law to collect and remit sales taxes based on the retail prices that the Defendant charges website consumers for taxable groceries and grocery delivery services in the District of Columbia;

(g) Enter judgment for the District and against Defendant in amounts equal to Defendant unpaid sales tax liability to the District, plus (i) amounts to be added pursuant to D.C. Official Code §§ 47-4211, 47-4212, and 47-4213 based on Defendant's negligence or fraud, and (ii) interest on Defendant's underpayments pursuant D.C. Code § 47-4201.

(h) Award the District the costs of this action and reasonable attorney's fees pursuant to D.C. Code § 28-3909(b); and grant such further relief as the Court deems just and proper.

Jury Demand

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Dated: August 27, 2020

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

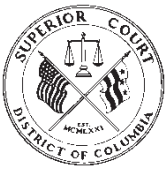
/s/ Kathleen Konopka
KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

/s/ Jimmy R. Rock
JIMMY R. ROCK [493521]
Assistant Deputy Attorney General
Public Advocacy Division

/s/ Benjamin M. Wiseman
BENJAMIN M. WISEMAN [1005442]
Director, Office of Consumer Protection

/s/ Jennifer M. Rimm
JENNIFER M. RIMM [1019209]
Assistant Attorney General
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
(202) 741-5226 (Phone)
(202) 741-8949 (Fax)
benjamin.wiseman@dc.gov
jennifer.rimm@dc.gov

Attorneys for the District of Columbia



Superior Court of the District of Columbia
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
Telephone: (202) 879-1133 Website: www.dccourts.gov

_____ Plaintiff

vs.

Case Number _____

_____ Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

 Name of Plaintiff's Attorney

By _____
 Deputy Clerk

 Address

Date _____

 Telephone

如需翻译,请打电话 (202) 879-4828 Veuillez appeler au (202) 879-4828 pour une traduction Để có một bản dịch, hãy gọi (202) 879-4828
 번역을 원하시면, (202) 879-4828로 전화하십시오. የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation
 Veá al dorso la traducción al español



TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA
DIVISIÓN CIVIL
Sección de Acciones Civiles
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Teléfono: (202) 879-1133 Sitio web: www.dccourts.gov

_____ Demandante
 contra

Número de Caso: _____

_____ Demandado

CITATORIO

Al susodicho Demandado:

Por la presente se le cita a comparecer y se le requiere entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veintiún (21) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días, contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le requiere presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que usted le entregue al demandante una copia de la Contestación o en el plazo de siete (7) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga efectivo el desagravio que se busca en la demanda.

SECRETARIO DEL TRIBUNAL

Nombre del abogado del Demandante _____

Por: _____
 Subsecretario

Dirección _____

Fecha _____

Teléfono _____

如需翻译, 请打电话 (202) 879-4828 Veuillez appeler au (202) 879-4828 pour une traduction Để có một bản dịch, hãy gọi (202) 879-4828
 반언어를 원하시면 (202) 879-4828 로 전화하십시오 የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍA RETENÉRSELE SUS INGRESOS, O PODRÍA TOMÁRSELE SUS BIENES PERSONALES O BIENES RAÍCES Y SER VENDIDOS PARA PAGAR EL FALLO. SI USTED PRETENDE OPONERSE A ESTA ACCIÓN, NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO.

Si desea conversar con un abogado y le parece que no puede pagarle a uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-279-5100) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse sobre otros lugares donde puede pedir ayuda al respecto.

Vea al dorso el original en inglés
 See reverse side for English original

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

District of Columbia

Case Number: _____

vs

Date: August 27, 2020

Maplebear, Inc. d/b/a Instacart One of the defendants is being sued
in their official capacity.

| | |
|---|--|
| Name: <i>(Please Print)</i> Jennifer M. Rimm | Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) <input type="checkbox"/> Other: _____ |
| Firm Name: Office of the Attorney General for the District of Columbia | |
| Telephone No.: 202-724-9854 | Six digit Unified Bar No.: 1019209 |

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
Demand: \$ Restitution and civil penalties Other: Injunctive relief

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

COLLECTION CASES

- | | | |
|---|---|---|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation | <input type="checkbox"/> 26 Insurance/Subrogation |
| <input type="checkbox"/> 07 Personal Property | Over \$25,000 Pltf. Grants Consent | Over \$25,000 Consent Denied |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation | <input type="checkbox"/> 34 Insurance/Subrogation |
| <input type="checkbox"/> 15 Special Education Fees | Under \$25,000 Pltf. Grants Consent | Under \$25,000 Consent Denied |
| | <input type="checkbox"/> 28 Motion to Confirm Arbitration | |
| | Award (Collection Cases Only) | |

B. PROPERTY TORTS

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|---|--|--|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants (DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify, Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena [Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1) (Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |

/s/ Jennifer Rimm

Attorney's Signature

August 27, 2020

Date