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City Attorney Delivers for Instacart Workers *Settlement earmarks millions in restitution for grocery “shoppers”*

San Diego City Attorney Mara W. Elliott announced today that grocery delivery company Instacart has agreed to pay \$46.5 million to settle a lawsuit her Office filed in 2019 seeking restitution for California workers improperly classified as independent contractors instead of employees.

The proposed judgment against Instacart, which was filed with the San Diego Superior Court, covers approximately 308,000 individuals who worked for the grocery delivery service from September 2015 through December 2020. The restitution funds will be divided based on the number of hours each individual worked over that time period.

“We are pleased to get justice for these delivery workers, who, at the height of COVID-19, provided an invaluable service to California households,” City Attorney Mara W. Elliott said. **“My Office will continue our fight for the rights of workers statewide. We hope other gig-economy companies will also do right by their workers.”**

While employed by Instacart, workers were responsible for maintaining and fueling their personal vehicles, using their own telephones, and paying for other equipment, including personal protective equipment against COVID-19. The settlement covers those and other expenses that could be categorized and measured. For the most active workers, individual restitution payments will run into the thousands of dollars, though the exact amount will vary with the number of hours worked. Instacart has denied any wrongdoing and maintained throughout the litigation that it properly classified its workers at all times.

The City Attorney’s Office will contract with a fund administrator to create and publicize a website through which eligible Instacart workers can confirm their payment information for restitution payments.

The San Diego City Attorney is empowered under state law to file actions on behalf of the People of the State of California to protect workers from unfair business practices, and it filed suit against Instacart in

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September 2019. The settlement includes more than \$6 million in civil penalties, which will go into a Consumer Protection Trust Fund, to be used for the enforcement of consumer protection laws. The remainder of the settlement funds will be used for restitution and the costs of delivering that money to the workers.

Instacart is a San Francisco-based online platform offering same-day grocery delivery. Customers use the app 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 service in mid-2016.

The City Attorney’s enforcement action followed a California Supreme Court decision establishing a standard for determining whether an individual is an employee or an independent contractor under California law. It was the first lawsuit of its kind in the nation against a gig-economy company. Later, the standard set in *Dynamex v. Superior Court* was codified in Assembly Bill 5 by then-Assemblymember Lorena Gonzalez Fletcher.

A year after filing its lawsuit against Instacart, the City Attorney’s Office, in collaboration with the California Attorney General, Los Angeles City Attorney, and San Francisco City Attorney, sued so-called “ride sharing” companies Uber and Lyft on similar grounds, that their workers should be treated as employees.

In a pivotal decision handed down in July, an appellate court ruled that the City Attorney’s powers on behalf of the People of the State of California were not thwarted by the private arbitration agreements that Instacart entered into with its employees. That ruling is binding on companies like Uber and Lyft, which similarly require workers to sign arbitration agreements as a condition of employment and have tried to evade the law by arguing that those agreements supersede public prosecutor enforcement powers.

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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