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	February 12, 2025	É
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Jonathan Macena		
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Court File No.

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

G. DUPUIS

Plaintiff

AND

MAPLEBEAR INC.
MAPLEBEAR CANADA ULC
MAPLEBEAR DELIVERY CANADA ULC
MAPLEBEAR LOGISTICS CANADA ULC

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date February 12, 2025

Issued by Jonathan Macena

Registry Officer

Address of court office: 90 Sparks Street
Ottawa, Ontario
K1A 0H9

TO: **MAPLEBEAR INC.**
50 Beale Street, Suite 600
San Francisco, CA 94105

MAPLEBEAR CANADA ULC.
1300-1969 Upper Water Street
Purdy's Wharf Tower II
Halifax, Nova Scotia B3J 3R7

190 Liberty Street
Toronto, ON M6K 3L5

MAPLEBEAR DELIVERY CANADA ULC
595 Burrard Street, Suite 2600
Vancouver, BC V7X 1L3

MAPLEBEAR LOGISTICS CANADA ULC
595 Burrard Street, Suite 2600
Vancouver, BC V7X 1L3

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie confirmée À l'original déposé au dossier de la Cour fédérale.

Filing Date
Date de dépôt : 12-FEB-2025

Dated
Fait le : 13-FEB-2025

INTRODUCTION

A. OVERVIEW

1. The Plaintiff, G. Dupuis, seeks to institute a class action on behalf of the following class, of which she is a member, namely:

All residents of Canada – excluding Québec – who completed a consumer transaction on Defendants’ Instacart.ca website and/or Instacart mobile application and who paid a price higher than initially advertised or indicated, including but not limited to, delivery fees, service fees and/or any other fee(s);

2. The present class action concerns the Defendants (collectively referred to herein as “Maplebear”) engaging in conduct amounting to fraudulent or negligent misrepresentation, unjust enrichment, and violations of the *Competition Act*, R.S.C., 1985, c. C-34, by structuring the transaction process on their Instacart.ca website and mobile app to charge customers an amount higher than the price initially indicated.

3. Maplebear owns, designed, developed, operates, markets, advertises, maintains, administers, and updates a grocery technology website and mobile application named Instacart. Maplebear also does business under the name Instacart. The Instacart website (<https://www.instacart.ca>) and mobile application each and both provide customers with a platform to facilitate on-demand grocery and delivery services across Canada (and the United States through instacard.com) by connecting customers with personal shoppers.

4. The Instacart.ca website and mobile application have each and both been intentionally designed to involve a five-stage process for customers to place and pay for an order and to arrange for its delivery. Instead of displaying the all-in or total pricing of the order, the Instacart website and mobile app are purposefully designed to only display the all-in price at the fourth

stage of the transactional process, at which point the original price indicated at the third stage is updated to include delivery fees, service fees, and several other types of hidden fees, and taxes.

5. Instacart customers are therefore misled concerning the actual total cost of the transaction until the fourth stage of the transactional process. This practice can be characterized as “drip pricing” or as double ticketing under ss. 52, 54 and 74 of the federal *Competition Act*.

6. As a result of Maplebear’s violations of the *Competition Act*, the *Consumer Protection Act* and Other Consumer Protection Legislation and committing negligent and/or fraudulent misrepresentations, and/or predominant purpose or unlawful means conspiracy, Plaintiff and Class Members were required to incur unnecessary and unexpected fees.

7. There is also no juridical reason for Maplebear’s unjust enrichment at Plaintiff and Class Members’ expense.

8. Maplebear’s conduct was intentional, brazen, reckless, wanton, illegal, and in clear disregard for the rights of consumers, namely, Plaintiff and Class Members. Maplebear’s marketing and intentional targeting of customers in the age of seniority allowed it to take advantage of a vulnerable demographic. Punitive/exemplary damages are warranted.

9. The Defendants’ conduct is the direct and proximate cause of significant legally-cognizable compensable injuries incurred by the Plaintiff and Class Members, for which remedies are being sought in the present proposed class action.

10. The remedies sought are not limited to the payment of money in the form of compensatory and punitive damages, but extend to injunctive relief enjoining Maplebear to permanently cease and desist from continuing to make misleading and/or fraudulent misrepresentations and omissions in advertising, marketing, and other materials concerning the

all-in price of orders placed on the Instacart website and mobile app and the delivery fees, service fees, and/or any other fees charged to customers by Maplebear.

11. Note that the Plaintiff is a “consumer” within the meaning of the *Consumer Protection Act*, S.O. 2002, c. 30, and Other Consumer Protection Legislation.

B. RELIEF SOUGHT

12. The Plaintiff claims against Maplebear on her own behalf and on behalf of the Class, of which he is a member:

- a. an Order pursuant to Rules 334.16(1) of the *Federal Courts Rules* certifying this action as a class proceeding;
- b. an Order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) of the Rules appointing the Plaintiff as the Representative Plaintiff of the Class;
- c. a Declaration that Maplebear fraudulently or negligently misrepresented the purchase prices, delivery fees, service fees, and/or any other fee(s) applying to transactions completed on their Instacart.ca website and Instacart mobile application;
- d. a Declaration that Maplebear violated ss. 52 and 54 of the *Competition Act* in structuring the transaction process on the Instacart website and mobile app to charge customers an amount higher than the price initially indicated, in effect charging every Class Member a price higher than the lowest of two or more prices clearly expressed by Maplebear to each Class Member;
- e. an Order for damages under s. 36 of the *Competition Act*, along with the cost of the investigation undertaken in connection with Maplebear’s violation of ss. 52 and 54 of the *Competition Act*, on a full indemnity basis;
- f. an Order requiring Maplebear to pay restitution to Class Members in an amount equivalent to all fees charged and paid for that were not announced before the fourth stage of the transactional process on the Instacart website and mobile app;

- g. an Order pursuant to Rule 334.28(1) and (2) for the aggregate assessment of monetary relief and its distribution to the Plaintiff and Class members;
- h. Injunctive relief enjoining Maplebear to permanently cease and desist from continuing to make misleading and/or fraudulent misrepresentations and omissions in on the Instacart.ca website and mobile application concerning the all-in price of orders placed on the Instacart website and mobile app and the delivery fees, service fees, and/or any other fees charged to customers by Maplebear;
- i. special damages for out-of-pocket and inconvenience expenses incurred;
- j. punitive and exemplary damages;
- k. a reference to decide any issues not decided at the trial of the common issues;
- l. costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus the costs of distribution of an award;
- m. costs of administration and notice, plus taxes, associated with the distribution and the fees payable to a person administering the distribution;
- n. pre-judgment and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, R.S.C. 1985, c. F-7; and
- o. Such further and other relief as this Honourable Court deems just.

C. THE PARTIES

The Plaintiff

13. The Plaintiff, G. Dupuis, is a resident of the city of Ottawa, in the province of Ontario.

14. The Plaintiff has been a sporadic user of Instacart since at least April 2021.

15. On July 28, 2024, the Plaintiff used the Instacart website to order four cases of Peace Tea iced tea, containing twelve cans of 341 millilitres each, from the Real Canadian Superstore.

16. After the Plaintiff selected these four items and placed them in her personal cart, the price displayed on the Instacart website was \$31.96.

17. The website also featured a clickable banner inviting the Plaintiff to “Go to checkout”, with the price of \$31.96 displayed on it.

18. After clicking on “Go to checkout”, the Plaintiff was taken to the next step of the ordering and purchasing process on the Instacart website. The Plaintiff’s total price of her order was displayed as \$50.53 – or \$18.57 more expensive than the price initially advertised.

19. The webpage provided for the following itemization explaining how the price went from \$31.96 to \$50.53:

Item subtotal	\$31.96
Delivery fee	\$7.99
Service fee	\$3.00
Estimated taxes and fees	\$5.58
Delivery tip	\$2.00

20. Note that the Delivery tip was preselected to \$2.00. Note as well as the “fees” in the “Estimated taxes and fees” were not at all disclosed to the Plaintiff.

21. Overall, the difference between the item subtotal displayed at earlier stages of the order and purchasing process and the final price indicated was 58% higher.

The Defendants

22. Maplebear Inc. is a corporation constituted under the laws of Delaware, and is headquartered in San Francisco, California. Maplebear Inc. also does business as “Instacart.”

23. Defendant Maplebear Canada ULC is a legal person constituted under the laws of Nova Scotia. Maplebear Canada ULC’s registered or head office address is situated in Halifax, Nova Scotia, and also carries on business in Ontario from offices located in Toronto, Ontario.

Maplebear Canada ULC is a wholly-owned subsidiary of Maplebear Inc., and also carries on business from Maplebear Inc.'s headquarters in San Francisco, California.

24. Defendant Maplebear Logistics Canada Inc. is a Canadian corporation headquartered in Vancouver, British Columbia and constituted under the laws of Nova Scotia. Maplebear Logistics Canada ULC is a wholly-owned subsidiary of Maplebear Inc.

25. Defendant Maplebear Delivery Canada ULC is a legal person constituted under the laws of Nova Scotia. Maplebear Delivery Canada ULC's registered or head office address is situated in Halifax, Nova Scotia, and also carries on business in Ontario from offices located in Toronto, Ontario. Maplebear Delivery Canada ULC is a wholly-owned subsidiary of Maplebear Logistics Canada ULC.

26. The Defendants operate as corporate alter egos that are neither separate nor independent.

27. Maplebear derives substantial revenue from the delivery services offered and purchased in Canada on the Instacart.ca website and web application.

28. In light of the foregoing, the Maplebear Defendants are jointly and severally liable for the acts and omissions of the other.

D. FACTS

Maplebear and Instacart

29. Maplebear owns, designed, developed, operates, markets, advertises, maintains, administers, and updates a grocery technology website and mobile application named Instacart. Maplebear also does business under the name Instacart. The Instacart website (<https://www.instacart.ca>) and mobile application each and both provide customers with a

platform to facilitate on-demand grocery and delivery services across Canada by connecting customers with personal shoppers.

30. The personal shoppers are individuals who have downloaded the Instacart application for shoppers, through which they are dispatched orders that they then fulfill by physically going to the retail store in respect of which the customer has placed an order and picking up all available items that are part of the order. The personal shoppers then deliver the order to the address specified by the customer.

31. Importantly, Instacart provides delivery services in respect of retailers who do not otherwise offer their own delivery services to customers. On information and belief, Instacart has been operating in Canada since at least June 15, 2021.

32. Instacart is not itself a retailer.

33. The process of completing transactions on the Instacart website and application consists of five stages.

34. The first involves the consumer selecting the retailer from which they wish to arrange a delivery. The second consists of the consumer selecting the items they wish to have delivered from that retailer. The third stage displays a list of all items selected by the consumer and the total price consisting of the addition of the price of each item.

35. The fourth stage involves the consumer providing delivery instructions, including their address and their payment information. At this stage, the total price is updated to include applicable taxes, namely, the HST or the GST and PST, depending on the province or territory.

36. Instacart delivery fees and Instacart service fees are also displayed for the first time at the fourth stage. Other fees include bagging fees, heavy order fees, priority fees, alcohol service fees, long-distance fees, special handling fees, and direct-to-consumer shipping fees.

37. At the fifth stage, consumers can add an optional tip amount for the delivery person and can then submit the order.

Maplebear's Unlawful Practice

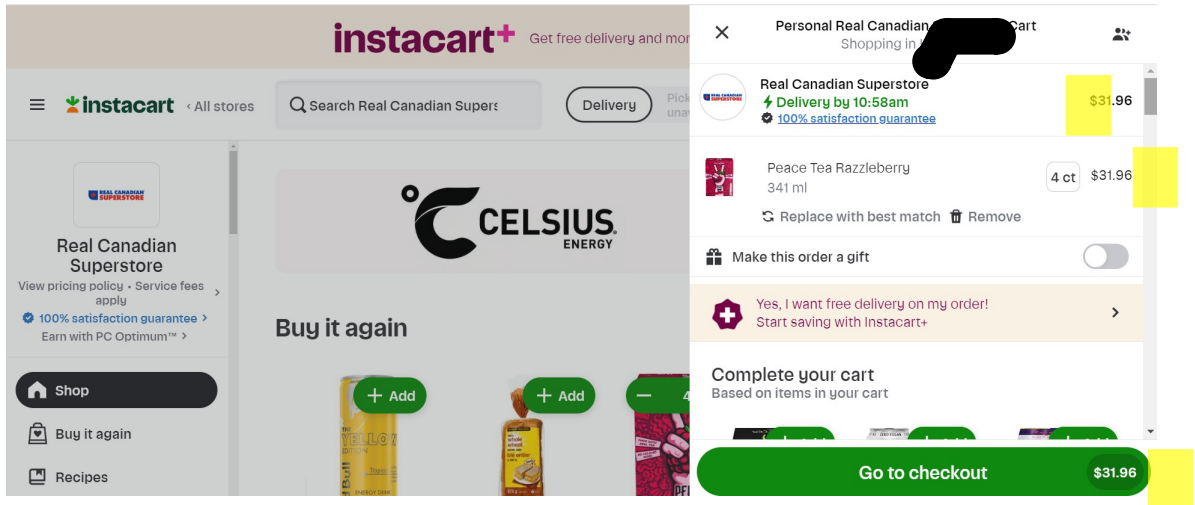
38. The present class action centers around the unlawful practice engaged in by Maplebear in designing, developing, operating, marketing, advertising, maintaining, administering, updating, and processing transactions on the Instacart.ca website and Instacart mobile app, namely: Structuring the transaction process on the Instacart website and mobile app to charge customers an amount higher than the price initially indicated.

39. As discussed in the following paragraphs, this unlawful practice arises in the first of the five stages of the transaction process on the Instacart.ca website and mobile app.

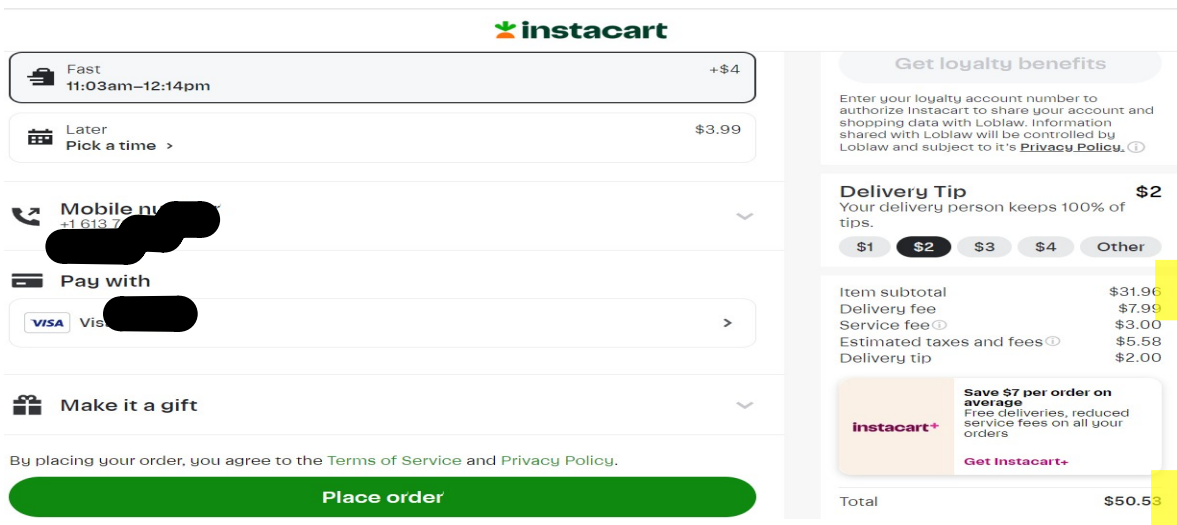
40. Maplebear has unlawfully structured the transaction process on the Instacart website and mobile app to charge customers an amount higher than the price initially indicated. This practice is legally referred to as “double ticketing” or “drip pricing.”

41. In essence, by only displaying the actual price of the order at the fourth stage of the process, Maplebear charges a higher price than that advertised and displayed at the first through to the third stage of the transaction (excluding applicable taxes).

42. A screenshot of the third stage is shown below:



43. A screenshot of the fourth stage is shown below:



44. In essence, Maplebear illegally charges fees to consumers that are not displayed the first time the total cost of the order is indicated to consumers, but only at the checkout stage of the transactional process. The illegally charged fees include, but are not limited to, service fees, delivery fees, priority fees, heavy order fees, alcohol service fees, direct-to-consumer shipping fees, bag fees, special handling fees, and long-distance fees, in addition to taxes imposed on each of these fees.

E. NATURE OF THE ACTION

45. Fundamentally, Plaintiff and Class Members were misled by Maplebear and were victim of Maplebear's double ticketing/drip pricing practices concerning the actual total cost of their order until the fourth stage of the transactional process.

46. The legally cognizable and compensable injuries suffered by every Class Member are the direct and proximate result of Maplebear's unlawful, tortious, and inequitable conduct.

Fraudulent or Negligent Misrepresentation

47. The facts canvassed under section D – FACTS of the present statement of claim serve as the factual foundation for the claims of fraudulent and negligent misrepresentation asserted against Maplebear. For greater certainty, the Plaintiff asserts that Maplebear committed the tort of fraudulent misrepresentation and, alternatively, that Maplebear instead committed the tort of negligent misrepresentation.

48. Maplebear's central misrepresentations concern the misleading practice of indicating two different prices in the transactional process for the same order placed on its Instacart.ca website and mobile application and subsequently charging Plaintiff and Class Members the higher, later displayed amount.

(a) Fraudulent Misrepresentation

49. The elements of the tort of fraudulent misrepresentation are established as:

- i. Maplebear made representations that were untrue, inaccurate and/or misleading as concerns the cost of each order placed on its Instacart.ca website and mobile application, and by omitting or otherwise failing to disclose that the initially indicated cost does not represent the actual cost of the order, and

- ii. Maplebear knew that its representations were untrue or were reckless as to their truthfulness;
- iii. Maplebear intended for its representations to deceive Plaintiff and Class Members or acted with reckless disregard for the truth knowing that the Plaintiff and Class Members would rely on Maplebear's representations;
- iv. The Plaintiff and Class Members actually did rely on Maplebear's representations concerning the cost of orders initially displayed on the Instacart.ca website and mobile application, leading them to complete their orders on the app or website; and
- v. The Plaintiff and Class Members sustained pure economic loss as a result of their reliance on Maplebear's representations, in the form of the price paid to complete their orders on the Instacart.ca website or mobile application.

(b) Negligent Misrepresentation

50. Alternatively, the elements of the tort of negligent misrepresentation are established as:

- i. Maplebear owed a duty of care to the Plaintiff and Class Members based on the special relationship between Maplebear as representor inviting the representees, Plaintiff and Class Members, to complete orders on the Instacart.ca website and mobile application and to select and pay for a delivery service option;
- ii. Maplebear's representations concerning the initially advertised price for orders processed on the website and application, were untrue, inaccurate and/or misleading, including in omitting or otherwise failing to disclose that the actual price is higher than the price initially advertised, and that the cost associated with the delivery service option selected by consumers is lower than the amount actually charged by Maplebear;
- iii. Maplebear acted negligently in making said representations. A reasonable supplier of grocery delivery services would have satisfied their duty to exercise such reasonable care to ensure that the representations made to consumers are accurate and not misleading, including by expressly identifying the aforementioned functional

limitations in advertising, marketing, instructional, and other materials disseminated to the public;

- iv. As representees, Plaintiff and Class Members, reasonably relied on said negligent misrepresentations, especially as, but not exclusively based on the fact that, Maplebear owns, designed, developed, operates, markets, advertises, maintains, and administers the Instacart.ca website and mobile application and is in the best position and expected to provide the most accurate description and representation of the actual price and amounts of delivery fees associated with orders placed thereon;
- v. Plaintiff and Class Members' reasonable reliance on Maplebear's representations were detrimental in leading them to incur economic loss in the form of the price paid for in the form of the difference between the initially advertised price and the total cost of their respective orders after adding all additional fees to complete their orders on the Instacart.ca website or mobile application.

51. The Plaintiff and Class Members suffered significant legally-cognizable and compensable injuries as the direct and proximate result of Maplebear's fraudulent or negligent misrepresentations.

Unjust Enrichment

52. The facts canvassed under section D – FACTS of the present statement of claim serve as the factual foundation for the claims of unjust enrichment asserted against the Defendants.

53. In essence, Maplebear enriched itself by charging fees for each transaction completed on the Instacart.ca website and mobile application that were added to the initially advertised price of each order.

54. Maplebear also enriched itself by charging additional delivery, bagging, priority, long distance, service and other fees that were not initially displayed with the cost of the order at the

third stage of the transactional process and that could not, therefore, lawfully be added at the fourth stage of that process on the Instacart.ca website and mobile application.

55. The Plaintiff and Class Members were correlatively deprived and impoverished in the amount corresponding to all fees charged at the fourth stage of the respective orders they placed on the Instacart.ca website and mobile application and that were not previously disclosed to them when the total cost of their order was initially advertised or otherwise indicated.

56. As the enrichment violated the *Competition Act*, and instantiated the torts of fraudulent or negligent misrepresentation, and in the absence of any legal justification or authority for the enrichment, there was no juristic reason for the Defendants enriching themselves at Class Members' expense.

57. Plaintiff and Class Members are therefore entitled to restitution in an amount corresponding to all fees charged at the fourth stage of the respective orders they placed on the Instacart.ca website and mobile application and that were not previously disclosed to them when the total cost of their order was initially advertised or otherwise indicated.

STATUTORY REMEDIES

Violations of the Competition Act

58. The facts canvassed under section D – FACTS serve as the factual foundation for the claims that the Defendants violated sections 52 and 54 of the *Competition Act* by structuring the transaction process on the Instacart website and mobile app to charge customers an amount higher than the price initially indicated.

59. Section 54(1) provides as follows:

<p>Double ticketing</p> <p>54 (1) No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,</p> <p>(a) on the product, its wrapper or container;</p> <p>(b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or</p> <p>(c) on an in-store or other point-of-purchase display or advertisement.</p>	<p>Double étiquetage</p> <p>54 (1) Nul ne peut fournir un produit à un prix qui dépasse le plus bas de deux ou plusieurs prix clairement exprimés, par lui ou pour lui, pour ce produit, pour la quantité dans laquelle celui-ci est ainsi fourni et au moment où il l'est :</p> <p>a) soit sur le produit ou sur son emballage;</p> <p>b) soit sur quelque chose qui est fixé au produit, à son emballage ou à quelque chose qui y est inséré ou joint ;</p> <p>c) soit dans un étalage ou la réclame d'un magasin ou d'un autre point de vente.</p>
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60. In essence, s. 54(1) prohibits a person or entity from supplying a product at a price that exceeds the lowest of two or more clearly expressed prices at the time the product is supplied.

61. Paragraph 54(1)(b) extends to Maplebear's double ticketing practices and misrepresentations in failing to disclose on the Instacart.ca website or mobile application that the cost of orders initially indicated placed at the third stage of the transactional process does not represent the actual cost of the order to be charged to customers including Plaintiff and Class Members.

62. Paragraph 54(1)(c) extends to Maplebear's double ticketing practices and misrepresentations in displays and advertisements appearing on the point of purchase – the Instacart.ca website and mobile app – with respect to the fact that the initially indicated cost of orders placed thereon for “products” ordered from retailers via the website or app does not represent the actual cost of the order to be charged to Plaintiff and Class Members.

63. Subsection 2(1) defines “product” to an “article” and a “service”; in relation to a service, “supply” means to “sell, rent, or otherwise provide a service or offer so to provide a service.”

64. The Defendants' practices also contravene s. 52 of the *Competition Act*, the relevant parts of which read as follows:

<p>False or misleading representations 52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.</p> <p>Proof of certain matters not required (1.1) For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that (a) any person was deceived or misled; (b) any member of the public to whom the representation was made was within Canada; or (c) the representation was made in a place to which the public had access.</p> <p>[...]</p> <p>Drip pricing (1.3) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsection (1) by or under an Act of Parliament or the legislature of a province.</p>	<p>Indications fausses ou trompeuses 52 (1) Nul ne peut, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'utilisation d'un produit, soit des intérêts commerciaux quelconques, donner au public, sciemment ou sans se soucier des conséquences, des indications fausses ou trompeuses sur un point important.</p> <p>Preuve non nécessaire (1.1) Il est entendu qu'il n'est pas nécessaire, afin d'établir qu'il y a eu infraction au paragraphe (1), de prouver : a) qu'une personne a été trompée ou induite en erreur; b) qu'une personne faisant partie du public à qui les indications ont été données se trouvait au Canada; c) que les indications ont été données à un endroit auquel le public avait accès.</p> <p>Indication de prix partiel (1.3) Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé au paragraphe (1).</p>
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65. In the present case, the "fixed obligatory charges or fees" charged by the Defendants are not "imposed on a purchased... by or under an Act of Parliament or the legislature of a province."

66. Incidentally, it should be noted that Maplebear’s practice of adding several types of fees to the costs of each order at the fourth stage of the transactional process that increases the price initially advertised at the third stage constitutes “drip pricing” within the meaning of ss. 74(1.1) of the *Competition Act*.

67. Subsection 74(1.1) falls under Part VII.1 of the Act, which is entitled “Deceptive Marketing Practices” and reads as follows:

<p>Drip pricing (1.1) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.</p>	<p>Indication de prix partiel (1.1) Il est entendu que l’indication d’un prix qui n’est pas atteignable en raison de frais obligatoires fixes qui s’y ajoutent constitue une indication fautive ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d’une loi fédérale ou provinciale.</p>
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68. However, under para. 36(1)(b), a private right of action in respect of anti-competitive acts falling within s. 74(1.1) is only available if the Competition Tribunal issues an order in respect of same and the entity subject to the order fails to comply with it.¹

69. As a result, the Plaintiff’s claims under the *Competition Act* are, as stated, limited to remedies under para. 36(1)(a) in respect of the false and/or misleading representations prohibited under s. 52(1) and 54.

70. Note that Instacart continues to engage in these problematic practices even after settling a class action limited to Quebec residents on the same issue: see *Medalsy c. Maplebear inc.*, 2025 QCCS 199.

¹ See e.g., *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2006 BCSC 1047, at para. 45, and *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2014 BCSC 1281, at para. 37. Conclusions in respect of ss. 78 and 79 of the Competition Act, which apply mutatis mutandis to s. 74(1.1)

G. REMEDIES

Compensatory Damages

71. The Plaintiff and each Class Member has suffered legally-cognizable and compensable injuries and loss as a direct and proximate result of Maplebear's unlawful, tortious, and inequitable conduct.

72. The fundamental purpose of the law of compensatory damages is that the Plaintiff is to be compensated to the extent of the harm or loss suffered as a result of the Defendant's conduct (*restitutio in integrum*).

73. The Plaintiff claims on her own behalf and of that of Class Members the amount corresponding to the difference between the delivery fee advertised for the delivery service option they respectively selected and the delivery fee actually charged by Maplebear.

Statutory Damages

74. The Plaintiff and Class Members are entitled to damages and the costs of investigation of their losses pursuant to s. 36 of the *Competition Act* for the Defendants' violation of ss. 52 and 54 thereof.

Punitive Damages

75. The Plaintiff seeks on her own behalf, and of that of Class Members, punitive or exemplary damages for the Defendants' conduct at issue in the present proposed class action.

76. The said conduct displayed serious negligence, carelessness, and ignorance, and was oppressive, callous, high-handed, wilful, outrageous, deliberate, wanton, reckless, and in total disregard for the rights and interests of Plaintiff and Class Members.

77. Note that Instacart continues to engage in these problematic practices even after settling a class action limited to Quebec residents on the same issue: see *Medalsy c. Maplebear inc.*, 2025 QCCS 199.

78. The Plaintiff asserts that an award of punitive damages is required to denounce and condemn the Defendants' shocking and outrageous conduct and to deter further breaches by the Defendant and/or others.

COMMON ISSUES

79. The present proposed class action raises the following common issues:

- i. Did Maplebear structure the transaction process on the Instacart website and mobile application to charge Plaintiff and Class Members an amount higher than the price initially indicated?
- ii. Is Maplebear's representation of the total cost of orders placed on the Instacart.ca website and mobile application false, misleading, or deceptive to reasonable consumers?
- iii. Did Maplebear commit the tort of fraudulent or negligent misrepresentation?
- iv. Did Plaintiff and Class Members incur economic loss?
- v. Did Maplebear become unjustly enriched as a result of the above-listed conduct?
- vi. Did Maplebear violate s. 52 of the *Competition Act*?
- vii. Did Maplebear violate s. 54 of the *Competition Act*?
- viii. Are Plaintiff and Class Members entitled to damages and the costs of investigation under s. 36 of the *Competition Act*?
- ix. Are Plaintiff and Class Members entitled to restitution to Class Members in an amount equivalent to all fees charged and paid for that were not announced before the checkout phase of the transactional process?

VENUE

80. The Plaintiff proposes that the present class action be tried in Ottawa, Ontario.

DATE: February 12, 2025

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