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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

The WASHINGTON FOOD INDUSTRY
ASSOCIATION, a Washington Non-Profit
Corporation, and MAPLEBEAR INC. d/b/a
INSTACART, a Delaware corporation

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

Case No.

COMPLAINT

Plaintiffs the Washington Food Industry Association (“WFIA”) and Maplebear Inc.
d/b/a Instacart (“Instacart”), through their attorneys, assert these claims against Defendant
the City of Seattle:

I. NATURE OF THE CASE

1. In 2018, Washington voters approved Initiative 1634, the Prohibit Local Taxes on
Groceries Measure (codified as the Keep Groceries Affordable Act of 2018, RCW Chapter 82.84)
because “keeping the price of groceries as low as possible improves the access to food for all
Washingtonians.” To achieve its purpose, the initiative prohibits “local government entities”
from imposing any “charge, or exaction of any kind on” the “transfer” or “transportation” of
groceries. This lawsuit arises from just such a prohibited “charge” or “exaction” passed by the
City on food and grocery delivery services in Seattle.

1 2. Despite the will of Washington voters as expressed through the unequivocal
2 mandate of I-1634, on June 15, 2020, the Seattle City Council passed Council Bill 119799 (“CB
3 119799” or “Ordinance”), which Seattle Mayor Jenny Durkan signed on June 26, 2020. In an
4 unprecedented action purportedly in response to the COVID-19 pandemic, the Ordinance requires
5 “food delivery network companies,” including those that deliver groceries, to pay “premium pay”
6 to independent contractors who provide delivery services (referred to in the Ordinance as “gig
7 workers”) of \$2.50 for their first work-related stop on each online order and \$1.25 for each
8 additional work-related stop on the same online order.

9 3. The Ordinance’s requirement that food delivery network companies provide
10 “premium pay” to persons delivering groceries constitutes a new “charge” or “exaction of any
11 kind” on the transfer and transportation of groceries explicitly proscribed by I-1634.

12 4. In addition to this premium pay, the Ordinance makes unprecedented intrusions
13 into a business’s most fundamental management decisions. The Ordinance prohibits food
14 delivery network companies from: (1) “reduc[ing] or otherwise modify[ing]” the areas they
15 currently serve; (2) reducing a delivery person or business’s compensation; (3) limiting a delivery
16 person’s or business’s earning capacity including by “restricting access to online orders”; and (4)
17 “[a]dd[ing] customer charges to online orders for delivery of groceries.”

18 5. Food delivery network companies that do not comply with the Ordinance face
19 draconian and disproportionate penalties. An inadvertent failure to pay a single \$1.25 bonus per
20 additional pick-up or drop-off can result in fines and penalties of \$21,849.79 per aggrieved party.

21 6. By these extraordinary and unprecedented mandates, the Ordinance effectively
22 commandeers private network businesses for the benefit of specific members of the community—
23 “gig drivers” and consumers—rewrites the businesses’ independent contracts, and undermines
24 their ability to profitably provide essential grocery-delivery services to consumers. The
25 Ordinance violates Plaintiff Instacart’s rights protected by the Takings and Equal Protection
26 Clauses of the United States Constitution.

27 7. Because the Ordinance, without a rational basis, also precludes food delivery
28 network companies from offsetting the compelled premium pay by reducing payments to delivery

1 persons or businesses, and charging additional fees to customers for groceries, the Ordinance will
2 cause Plaintiff Instacart and other members of the WFIA to suffer unsustainable increased
3 operational losses in the Seattle market.

4 8. Plaintiffs seek a declaratory judgment that the Ordinance is unlawful and invalid,
5 insofar as it applies to Plaintiffs' facilitation of the delivery of groceries, because the Ordinance
6 violates I-1634 (as codified at RCW Chapter 82.84). Plaintiffs also seek declaratory relief that
7 the Ordinance (1) is an unreasonable and illegal intrusion on private business that exceeds the
8 scope of the City's police powers to provide for the public health, safety, and welfare during and
9 after the COVID-19 emergency declared by the Mayor; (2) violates Plaintiff Instacart's rights
10 protected by the Fifth and Fourteenth Amendments of United States Constitution under the
11 Takings and Equal Protection Clauses, respectively; and (3) is an unconstitutional taking of
12 private property without just compensation in violation of Plaintiff Instacart's rights under article
13 I, section 16 of the Washington State Constitution. As a result, Plaintiffs seek preliminary and
14 permanent injunctions against any steps to enforce the Ordinance against Plaintiffs. Plaintiff
15 Instacart additionally seeks damages and attorneys' fees for any costs incurred pursuant to 42
16 U.S.C. § 1983.

17 II. PARTIES

18 9. Plaintiff WFIA is a non-profit corporation organized under the laws of
19 Washington and headquartered in Olympia, Washington. WFIA's members include independent
20 grocery stores, supermarkets, convenience stores, and their suppliers operating throughout
21 Washington. WFIA represents the interests of its retailer and wholesaler members on state and
22 local legislative issues that could upend their business operations, including labor, transportation,
23 and tax issues.

24 10. Plaintiff Instacart is a Delaware Corporation and a member of the WFIA. Instacart
25 provides an innovative service that facilitates on-demand grocery shopping and delivery services.
26 Through its website and smartphone application, Instacart offers a method to connect
27 independent shoppers with consumers seeking grocery shopping and delivery services from
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1 participating grocery stores. Instacart operates across the United States, including in Seattle, and
2 in Canada.

3 11. Defendant City of Seattle is a municipal corporation chartered under authority
4 conferred by the Constitution of the State of Washington, with powers to enact legislative
5 measures as limited by applicable state, federal, and constitutional law.

6 III. JURISDICTION AND VENUE

7 12. This Court has jurisdiction over this matter. Washington superior courts have
8 original jurisdiction in all cases in equity, all cases in law that involve “the legality of any tax,
9 impost, assessment, toll or municipal fine,” and in all other cases in which the demand amounts
10 to three hundred dollars. RCW 2.08.010. This Court has the power to “declare rights, status, and
11 other legal relations whether or not further relief is or could be claimed,” RCW 7.24.010, and to
12 grant restraining orders and injunctions. RCW 7.40.010.

13 13. Venue is proper in King County Superior Court against the City of Seattle, a
14 municipal corporation located and doing business in King County. *See* RCW 4.12.025.

15 IV. STANDING

16 14. WFIA has associational standing to challenge the Ordinance. WFIA has a direct
17 interest in protecting its members from unlawful ordinances and regulations affecting the grocery
18 and convenience store industries. WFIA’s members, including Instacart, grocery stores, and
19 other businesses that sell food for pick-up and delivery through online orders, will suffer
20 immediate, concrete, and specific economic injury from the Ordinance. The Ordinance
21 unlawfully burdens WFIA members by increasing the costs of operating food-delivery services to
22 obtain delivered groceries in Seattle and threatening the economic viability of those services in
23 Seattle. WFIA conducts legislative advocacy on behalf of its members on a wide variety of
24 issues, including in the areas of labor, transportation, and taxation, and it challenges laws and
25 regulations that unlawfully burden its members’ businesses and operations.

26 15. Instacart has standing to challenge the Ordinance. Instacart meets the Ordinance’s
27 definition of a “covered hiring entity” that “hire[s] 250 or more gig workers worldwide” and is
28 therefore subject to the Ordinance’s regulation. Section 100.020(A); *see also* Section 100.010

1 (defining “hiring entity” to mean a “food delivery network company”). The Ordinance will
2 unlawfully usurp the business judgment of Instacart’s management and cause Instacart, a private
3 business, to suffer immediate, concrete, and specific economic injury, including by, among other
4 things: (1) forcing it to provide delivery persons or businesses with a fixed “premium pay” for
5 each “work-related stop” in Seattle, thus significantly increasing its costs of doing business and
6 the losses it suffers on deliveries in Seattle; (2) prohibiting it from reducing or otherwise
7 modifying the areas of Seattle that it serves; (3) prohibiting it from reducing compensation to
8 delivery persons or businesses; (4) prohibiting it from restricting access to online orders; and (5)
9 prohibiting it from adding charges to its customers to offset its losses from the above.

10 16. The Court may also hear this action because it involves a controversy of
11 substantial public importance that immediately affects significant segments of the population who
12 rely on the delivery of groceries to reduce their exposure to disease and to obtain food during the
13 ongoing emergency lockdown.

14 V. ALLEGATIONS OF FACTS

15 ***Washington Voters Approve an Initiative to Prevent New Taxes, Fees, and Assessments on***
16 ***Groceries***

17 17. Washington voters approved I-1634 in the general election on November 6, 2018.
18 According to the explanatory statement which appeared in the Voters’ Pamphlet, “If adopted,
19 Initiative 1634 would prevent local governments from imposing or collecting any new tax, fee, or
20 other assessment on certain grocery items after January 15, 2018. This restriction would prohibit
21 any new local tax, fee, or assessment of any kind on the manufacture, distribution, sale,
22 possession, ownership, transfer, transportation, container, use, or consumption of certain
23 groceries.” The Voters’ Pamphlet “Argument For” I-1634 section highlighted that the initiative
24 would “help keep groceries affordable.”

25 18. I-1634 is codified at Chapter 82.84 RCW. The statute prohibits local governments
26 from “impos[ing] or collect[ing] any tax, fee, or other assessment on groceries.” RCW
27 82.84.040(1). The phrase “tax, fee, or other assessment on groceries” is broadly defined and
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1 “includes, but is not limited to . . . any . . . charge[] or exaction of any kind on groceries or the . . .
2 transfer, [or] transportation . . . therefor.” RCW 82.84.030(5).

3 ***Seattle City Council Flouts the Will of Washington Voters and Engages in Overreach in***
4 ***Enacting the Ordinance***

5 19. On June 15, 2020, the Seattle City Council passed the Ordinance. Among other
6 things, the Ordinance mandates that “food delivery network companies” – including Plaintiffs –
7 pay delivery persons or businesses (referred to in the Ordinance as “gig workers”) “premium
8 pay” for “each online order that results in . . . a work-related stop in Seattle.” Section
9 100.025(A). A “work-related stop in Seattle” means “time spent . . . that is related to the
10 provision of delivery services associated with an online order.” The mandated “premium pay” is
11 “\$2.50 for one pick-up point or one drop-off point in Seattle,” “\$1.25 for each additional pick-up
12 point in Seattle,” and “\$1.25 for each additional drop-off point in Seattle.” *Id.*

13 20. The Ordinance’s premium pay provisions remain in effect during the emergency
14 declared by Mayor Durkan on March 3, 2020, in response to new cases of COVID-19. Section
15 100.025(D). That emergency declaration, in turn, has no end date.

16 21. As originally introduced, the Ordinance would have also applied the premium pay
17 mandate to transportation network companies (“TNCs”) like Uber and Lyft that “offer[]
18 prearranged transportation services for compensation using an online-enabled application or
19 platform.” However, at the request of the Teamsters, who purport to be drafting broader
20 legislation covering TNCs, the TNCs were removed from the Ordinance’s scope, even though
21 TNC drivers, like taxi drivers and many other occupations in the City, face demonstrably higher
22 risks of infection than grocery-delivery drivers because they have direct person-to-person contact
23 while transporting individuals in the confined spaces of their vehicles-for-hire.

24 22. The Ordinance states in prefatory language that “gig workers working for food
25 delivery network companies during the COVID-19 emergency face magnified risks of catching or
26 spreading disease because the nature of their work can involve close contact with the public.”
27 The Ordinance also states that “provid[ing] premium pay to gig workers protects public health,
28 supports stable incomes, and promotes job retention by ensuring that gig workers are

1 compensated now and for the duration of the public health emergency for the substantial risks,
2 efforts, and expenses they are undertaking to provide essential services in a safe and reliable
3 manner during the COVID-19 emergency.”

4 23. The Ordinance lacks any standards or rules that premium payments be used by
5 delivery persons or businesses to take proactive steps to increase health and safety. The
6 Ordinance identifies and requires no nexus between additional cash bonuses and reducing alleged
7 hazards faced by food delivery persons as a result of the COVID-19 emergency; it does not
8 require that delivery persons or businesses actually take precautions to safeguard health; and it
9 contains no finding that the amount of the bonus payments bears any relation to the cost of
10 necessary personal protective supplies.

11 24. The Ordinance also contains no legislative findings that food delivery persons are
12 at a greater risk for contracting COVID-19 than TNC drivers or any other workers providing
13 similar services during the COVID-19 emergency, such as taxicab drivers, private and for-hire
14 drivers, courtesy drivers, grocery-delivery drivers other than gig workers, workers making far
15 more frequent home deliveries of other essential and non-essential goods, retail and grocery-store
16 workers, food-service workers, or restaurant workers.

17 25. The Ordinance is a solution in search of a problem that does not exist. In fact,
18 delivery persons or businesses for food delivery network companies are already experiencing a
19 large increase in demand for their services—and therefore are working and earning more—as a
20 result of the pandemic. In the three months after Mayor Durkan declared a COVID-19
21 emergency, the number of independent shoppers contracting with Instacart more than tripled,
22 from approximately 1,000 shoppers serving Seattle to well over 3,000. As a result of the
23 COVID-19 emergency, there has been an ample increase in the supply of food delivery services
24 to handle the increased demand for grocery-delivery services from persons who wish to avoid the
25 risks of in-person shopping.

26 26. Moreover, even before the Ordinance was introduced, the average hourly pay of
27 shoppers had already increased substantially. Full-service independent shoppers contracting with
28 Instacart were earning approximately \$20 per hour working in Seattle in January and February

1 2020, including tips. As a result of increased demand leading to greater efficiencies that directly
2 benefit shoppers, they enjoyed a 50% increase—earning approximately \$30 per hour worked as
3 of May 2020, including tips, nearly double the \$16.39 minimum wage Seattle imposes on the
4 largest employers in the City, all before the even greater added payments mandated under the
5 Ordinance.

6 27. Rather than ensuring continuity of food delivery services, the transcripts of
7 statements by City Council members during deliberation and adoption of CB 119799, and
8 published reports and information from City officials, all reveal that the main motivation for
9 singling out food delivery network companies for the premium pay requirements was to assist
10 certain labor organizations in achieving their long-standing and continuing goal to organize
11 workers in the so-called “gig economy.” The most active outside advocate for the Ordinance is a
12 labor organization called Working Washington, which is closely affiliated with labor
13 organizations in Seattle that seek to organize gig economy workers and drive up pay for certain
14 workers at the expense of others who prefer to remain independent and choose to work on their
15 own schedule.

16 28. For *three years* following the termination of the civil emergency declared by
17 Mayor Durkan (which again has no end date), the Ordinance prohibits food delivery network
18 companies from taking any of the following actions “as a result of this ordinance going into
19 effect”: (1) “reduc[ing] or otherwise modify[ing]” the areas of Seattle that are currently served;
20 (2) reducing a delivery person or business’s compensation; (3) limiting a delivery person or
21 business’s earning capacity including by “restricting access to online orders”; and (4) adding
22 “customer charges to online orders for delivery of groceries.” These provisions intrude into the
23 core business and operations decisions of Instacart and other WFIA members.

24 29. The Ordinance also imposes steep penalties for violations. Upon receipt of a
25 complaint that a food delivery network company has violated the Ordinance, the City’s Office of
26 Labor Standards (“Agency”) will launch an investigation. The Ordinance gives the Agency
27 Director the power to impose relief for each violation, including ordering corrective action,
28 and/or payment of unpaid compensation, liquidated damages, civil penalties, fines, and interest.

1 The maximum penalty the Director may impose for a violation of the Ordinance is \$21,849.79
2 per aggrieved party.

3 30. The Ordinance also empowers the Director to request that the City’s Department
4 of Finance and Administrative Services deny, suspend, refuse to renew, or revoke the business
5 license of a food delivery network company until it complies with any remedy as defined in a
6 settlement agreement or final order.

7 31. The Ordinance also provides that “[a]ny person or class of persons that suffers
8 financial injury as a result of a violation of this ordinance, or is the subject of prohibited
9 retaliation under Section 100.050, may bring a civil action.”

10 ***The Relationship Established by Food Delivery Network Companies Benefits Retailers,***
11 ***Consumers, and Delivery Persons or Businesses***

12 32. Food delivery networks operate a multi-sided platform involving relationships
13 among multiple parties, which benefits all parties, not just the food delivery network companies:
14 First, food delivery network companies create an online marketplace or platform. Second,
15 grocery stores and other retailers use the platform to offer their products to consumers. Third,
16 consumers search for and purchase products through the platform. Fourth, independent delivery
17 persons or companies, or their personnel, choose to provide services through the platform by
18 delivering retailers’ products to consumers.

19 33. Grocery stores benefit from the operations of food delivery network companies,
20 which provide them greater access to customers. Instacart has enabled grocery stores to access
21 new revenue streams without the prohibitive investment in the infrastructure necessary to create
22 their own on-demand online ordering and delivery systems. In 2019, Instacart’s online delivery
23 technology increased grocery store revenues by \$55.8 million in Washington. More significant
24 for this case, from 2014 to 2018, net employment in Seattle metropolitan area grocery retailers
25 has increased by approximately 1,700 persons – and *all* of that net increase was attributable to
26 increased sales through Instacart. *See, e.g.,* Robert Kulick, *The Economic Impact of Instacart on*
27 *the Retail Grocery Industry: Evidence from Four States* (2020).

1 34. Consumers also benefit from the multi-party relationship established by food
2 delivery network companies by having access to a broader range of on-demand food options and
3 being able to obtain groceries without going into a grocery store. These benefits are especially
4 relevant during the COVID-19 pandemic, particularly for consumers in higher-risk populations.
5 During the COVID-19 emergency, Instacart has seen an increase in the percentage of new
6 customers who are 45 or older or retired. The networks have also helped reduce traffic in retail
7 outlets overall, thereby promoting social distancing and potentially slowing the virus's spread.

8 35. In addition to the increased employment and earnings above, food delivery
9 persons or businesses working on independent contracts, often with multiple network technology
10 companies simultaneously, also benefit from the relationship. They enjoy significant freedom
11 and discretion over when, where, and how long to work. They choose which orders to fulfill,
12 when to fulfill them, and how many to fulfill. Because they are independent contractors and not
13 employees, they are never required to accept a particular order or work in a specific place or at a
14 specific time. This freedom most benefits workers who could not work assigned full-time shifts,
15 including students, working parents, and people with limited work histories.

16 36. In fact, the availability of essential delivery-network jobs has been a lifeline for
17 many people during the pandemic. Throughout the country, delivery networks have seen an
18 influx of hundreds of thousands of workers offering their services for the first time, many of them
19 recently unemployed as a result of nationwide shutdowns. In Seattle, Plaintiff Instacart has
20 tripled the number of shoppers with whom it contracts, from approximately 1,000 to well over
21 3,000.

22 37. When providing services through a delivery network, workers are typically paid
23 through a mix of service fees or payments and customer tips. During the COVID-19 emergency
24 in Seattle, there has been a surge in the number of customers ordering groceries online through
25 the food delivery network companies. Workers' earnings per hour increased because of the
26 increased number of deliveries they can make per trip to the grocery store, and the overall
27 increase in the number of deliveries ordered by customers. The earnings have also increased
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1 because the size of the average order—or “batch”—has increased, and thus the corresponding
2 payment from Instacart has also increased.

3 38. For example, shoppers and businesses contracting with Instacart enjoyed an
4 increase of approximately 50% in total average hourly earnings compared to earnings
5 immediately before COVID-19, due in large part to network efficiencies created by greater
6 demand and larger average orders during the pandemic. In other words, well before the
7 Ordinance was passed, food delivery persons or businesses were already enjoying an upturn in
8 earnings due to the allegedly higher risks during COVID-19.

9 39. Food-delivery persons and businesses do not transport passengers and so are at a
10 low risk of infection while performing much of their job—driving from grocery stores to
11 residences. When they arrive at a customer’s residence, the default setting for all food deliveries
12 is “Leave at My Door” to minimize person-to-person contact.

13 40. Instacart has also taken various measures to promote the health and safety of
14 independent contractors in Seattle on the Instacart platform during the COVID-19 emergency.
15 Instacart offers a free health-and-safety kit that includes a washable face mask and hand sanitizer
16 to any active shopper who requests one. All Instacart shoppers in the United States can use
17 Apple Pay or Google Pay to check out of grocery stores without needing to touch their wallets or
18 use a keypad to pay.

19 41. Instacart has also updated its mobile app to provide access to safety resources and
20 daily in-app wellness checks that direct users to contact their healthcare providers if they have
21 COVID-19 symptoms. And shoppers who submit proof of a COVID-19 diagnosis such as a
22 doctor’s note automatically receive a lump-sum payment equal to their earnings from Instacart
23 for their last 14 days of shopping services (exclusive of tips) and are suspended from shopping
24 during that period.

25 ***The Ordinance Will Cause Substantial Harm***

26 42. Instacart and other food delivery network companies operating or seeking to
27 operate in Seattle will immediately and irreparably suffer financially unsustainable damages as a
28 direct result of the Ordinance if it is not invalidated. For example, Plaintiff Instacart will (1) be

1 obligated to pay premium pay, causing Instacart to lose additional money on every delivery;
2 (2) be prohibited from managing its businesses to profitability—particularly in its use of
3 independent contractors, charges to consumers, and the geographic areas it chooses to serve—to
4 address its evolving economic and financial circumstances; and (3) suffer further harm by
5 incurring significant compliance costs, including costs associated with reengineering the platform
6 to comply with the law, keeping records, and providing shoppers with required notices translated
7 into multiple languages.

8 43. Moreover, the Ordinance’s provisions prohibiting food delivery network
9 companies from altering their areas of service in Seattle, adjusting pay for delivery persons or
10 businesses in response to evolving markets and competition, restricting access to online orders,
11 and adding customer charges for groceries are to remain in effect for three years after the
12 termination of the civil emergency declared by Mayor Durkan, which has no end date. Thus, for
13 three years after the mayor declares the end of the COVID-19 emergency, the severe legal
14 intrusions into the operations of WFIA members including Instacart, purportedly justified in the
15 first place by a health emergency, will remain in place. Covered entities therefore will continue
16 to suffer substantial damages even after the COVID-19 pandemic—the justification for the
17 Ordinance—has subsided.

18 44. The Ordinance in effect empowers the City to commandeer private food delivery
19 businesses to force them to provide services that the City has deemed “essential services” on an
20 unsustainable and commercially impracticable multi-year basis in the City of Seattle. This effect
21 is particularly acute in the grocery-delivery business, which is the only business prohibited from
22 recouping expenses from consumers. That special disadvantage leaves grocery-delivery
23 businesses with no way to remain profitable. They alone are expected to subsidize unprofitable
24 deliveries in Seattle with revenues derived from other jurisdictions and lines of business.

25 45. The Ordinance subjects Plaintiffs to duplicative and draconian penalties, fines and
26 civil judgments.

1 VI. CAUSES OF ACTION

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3 **FIRST CAUSE OF ACTION**
4 **DECLARATORY JUDGMENT THAT THE ORDINANCE VIOLATES I-1634**

5 46. Plaintiffs incorporate by reference the allegations in all the preceding paragraphs.

6 47. There is an actual, present, and justiciable controversy as to whether the
7 Ordinance’s “premium pay” provision, insofar as it applies to Plaintiffs’ facilitation of the
8 delivery of groceries, violates I-1634, as codified at RCW 82.84.040. A judicial determination on
9 the illegality, invalidity, and enforceability of the Ordinance will conclusively resolve these
10 issues of substantial public concern and the parties’ dispute.

11 48. I-1634, as codified at RCW 82.84.040, states that (subject to certain exceptions not
12 applicable here) “a local governmental entity may not impose or collect any tax, fee, or other
13 assessment on groceries.” The phrase “[t]ax, fee, or other assessment on groceries” “includes,
14 but is not limited to . . . any . . . charge[] or exaction of any kind on groceries.” RCW
15 82.84.030(5).

16 49. The Ordinance violates RCW 82.84.040, insofar as it applies to Plaintiffs’
17 facilitation of the delivery of groceries, because its premium pay provisions constitute a “charge”
18 or “exaction of any kind” on the transfer or transportation of groceries.

19 50. Because the People have prohibited cities from levying and enacting such charges
20 and exactions, the Ordinance is illegal, invalid, and void.

21 51. The Ordinance is also preempted by state law because it directly and
22 irreconcilably conflicts with the state’s prohibition on a locality to impose any charge or exaction
23 of any kind on the transfer or transportation of groceries. I-1634 contains an express legislative
24 intent to occupy the entire field in which the Ordinance aims to regulate, and the Ordinance does
25 not meet one of the exceptions in subsections (2)-(4) of RCW 82.84.040 that permit a locality
26 concurrent jurisdiction with the state.

27 52. Plaintiffs reserve the right to raise any legal bases under Washington law to
28 challenge the constitutionality, legality, validity, or enforceability of the Ordinance.

1 **SECOND CAUSE OF ACTION**
2 **DECLARATORY JUDGMENT THAT THE ORDINANCE EXCEEDS THE CITY'S**
3 **POLICE POWERS**

4 53. Plaintiffs incorporate by reference the allegations in all the preceding paragraphs.

5 54. The Ordinance relies on the City's police powers as the source of the City's
6 authority to pass the Ordinance. The Ordinance declares that it is an "emergency ordinance," and
7 it purports to promote "public health, safety, and welfare during the . . . COVID-19 . . .
8 emergency."

9 55. To be a lawful exercise of police power, an ordinance must be reasonably
10 necessary in the interest of the public health, safety, morals, and general welfare and be
11 substantially related to the evil sought to be cured. In addition, the classes of businesses,
12 products, or persons regulated must be reasonably related to the legitimate object of the
13 legislation.

14 56. The Ordinance is void as an ultra vires act and an unlawful exercise of the City's
15 police powers. It is not reasonably necessary to the public health, welfare, or safety to require
16 food delivery networks—and no other private businesses—to increase pay to their private
17 contractors during the COVID-19 pandemic.

18 57. The Ordinance imposes irrational and arbitrary restrictions on particular private
19 businesses that have no relationship to the stated purpose of the Ordinance to promote the "public
20 health, safety, and welfare *during* the . . . COVID-19 . . . emergency." Instacart and WFIA's
21 members will suffer economic injury as a direct result of the Ordinance's intrusions on their
22 rights to control and manage their business operations and contractual relationships.

23 **THIRD CAUSE OF ACTION**
24 **INSTACART'S CLAIM THAT THE ORDINANCE TAKES PRIVATE PROPERTY IN**
25 **VIOLATION OF THE FEDERAL AND STATE CONSTITUTIONS**

26 58. Instacart incorporates by reference the allegations in all the preceding paragraphs.

27 59. The Takings Clause of the Fifth Amendment of the Constitution of the United
28 States, extended to state and local governments by the Fourteenth Amendment, provides that no
private property shall be taken for public use without just compensation. The Washington
Constitution's provision on Eminent Domain (art. I, sec. 16) provides the same restriction that

1 private property shall not be taken for public or private use without just compensation. The
2 Ordinance violates both the Takings Clause in the U.S. Constitution and the Eminent Domain
3 section of the Washington Constitution.

4 60. The U.S. Supreme Court has held that the Takings Clause applies to intangible
5 property, such as contract rights, and that “regulatory” takings may be unlawful even where they
6 do not directly appropriate property.

7 61. By compelling Instacart to pay unsustainable premium pay for every food delivery
8 in Seattle, while prohibiting Instacart from taking any steps to pass the costs of such charges to
9 consumers or receive any compensation from the government or reduce or modify areas of
10 Seattle served by food delivery network companies, the City is rendering commercially
11 impracticable Instacart’s previously agreed-to contracts for services with the independent
12 contractor delivery persons or businesses and their facilitation of food delivery services to
13 consumers, thereby taking Instacart’s private property without just compensation.

14 62. Further, by mandating, regardless of profitability and business needs, that Instacart
15 and other food delivery network companies continue to provide grocery-delivery services
16 throughout the City without reducing or otherwise modifying the areas of Seattle served, while at
17 the same time prohibiting Instacart from passing through to Instacart’s customers the substantial
18 additional charges and exactions the City is imposing, the City is appropriating Instacart’s
19 fundamental property rights in its business for the private benefit of independent contractors
20 receiving “premium pay” not required by contract and Seattle residents paying below-marginal
21 cost for food delivery services, without just compensation.

22 63. Instacart will suffer economic injury and damages as a direct result of the City’s
23 unconstitutional takings.

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FOURTH CAUSE OF ACTION
INSTACART’S CLAIM THAT THE ORDINANCE VIOLATES THE EQUAL
PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED
STATES CONSTITUTION

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64. Instacart incorporates by reference the allegations in all the preceding paragraphs.

65. The Ordinance’s mandate to provide premium pay applies exclusively to food delivery network companies, which are defined as “an organization whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order.”

66. The Equal Protection Clause of the 14th Amendment of the United States Constitution provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

67. The Ordinance violates the Equal Protection Clause. By singling out food delivery network companies, the Ordinance is designed to increase earnings for a subset of grocery and food delivery businesses. The City Council singles out food delivery workers from food delivery network companies because they allegedly confront special health hazards in their line of work; but because these workers have no passengers and are not near other people when driving, they face lower risks of infection than the grocery store workers who spend their entire day in the stores, or food workers in restaurants who deal with customers in person or who deliver food to customers, or transportation network drivers who transport passengers in the close confines of their vehicle for hire. There is no rational basis for singling out food-delivery persons or businesses for food delivery network companies for the premium pay requirement on food

1 deliveries, and certainly no rational basis for doing so by imposing unsustainable requirements on
2 Plaintiff Instacart without allowing it to pass on the additional charges or stop doing business in
3 Seattle. In fact, the Ordinance bars Instacart from even adjusting its service levels, effectively
4 freezing its businesses in place. The Ordinance places no similar burdens on taxis, TNCs, or any
5 other businesses or service providers in the grocery and food industry that face equal or greater
6 risks of exposure.

7 **FIFTH CAUSE OF ACTION**
8 **INSTACART'S CLAIM FOR VIOLATION OF 42 U.S.C. § 1983**

9 68. Instacart incorporates by reference the allegations in all of the preceding
10 paragraphs.

11 69. By enacting the Ordinance, the Seattle City Council has, under color of law,
12 violated the rights of Instacart protected by the United States Constitution and federal law.

13 70. Instacart is entitled to recover damages and attorneys' fees as a result of such
14 violations.

15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs request that judgment be entered as follows:

17 **1. Declaratory Relief.**

- 18 a. For a declaratory judgment that Council Bill 119799 is illegal, invalid, and
19 unenforceable insofar as it applies to Plaintiffs' facilitation of the delivery
20 of groceries because it violates RCW 82.84.040.
- 21 b. For a declaratory judgment that Council Bill 119799 is illegal, invalid, and
22 unenforceable in its entirety because it exceeds the City's police powers.
- 23 c. For a declaratory judgment that Council Bill 119799 is illegal, invalid, and
24 unenforceable in its entirety because it violates the Takings Clauses of the
25 United States Constitution and the Washington Constitution.
- 26 d. For a declaratory judgment that Council Bill 119799 is illegal, invalid, and
27 unenforceable in its entirety because it violates the Equal Protection Clause
28 of the Fourteenth Amendment of the United States Constitution.

