

Instacart Denied Arbitration in Unfair Employment Suit by San Diego City Attorney

Court rules arbitration agreement inapplicable since City is bringing claims on behalf of workers. by Maureen Rubin, J.D.

SAN FRANCISCO, CALIFORNIA, UNITED STATES, July 1, 2022 /EINPresswire.com/ -- During the pandemic, many people turned to Instacart for home delivery of their groceries so they wouldn't

“

As a lawyer who primarily advocates for workers in employment matters, I am hopeful the California Supreme Court will rule that Prop 22 is unconstitutional.”
Richard Koss, Bay Area Employment Lawyer

have to risk exposure to COVID-19 at the market. Few, however, probably thought much about the shoppers who selected and delivered desired items to their homes. Were they Instacart employees entitled to minimum wage or independent contractors with no entitlement to benefits because of an arbitration agreement they signed as a condition of their employment? A Court of Appeals judge said their classification would not determine the outcome of the case because it was the government, not the workers, who filed it.

Administrative Presiding Justice Judith McConnell of Division One of the Fourth District Court of Appeal wrote the unanimous opinion of a three-judge panel on May 18th. The case, *The People v. Maplebear (DBA Instacart)*, No. D079209 (Cal. Ct. App. May. 18, 2022), was initiated by the Office of the San Diego City Attorney (the City) in 2019 under the Unfair Competition Law (UCL). The City argued that Instacart's "Shoppers," the people who actually fill and deliver customers' orders to their homes, are employees who should not have been classified as independent contractors, thus denying them minimum wage in violation of California's Unfair Competition Law (UCL).

Instacart argued the employment agreement with Shoppers that requires disputes to be settled by arbitration also applied to the City. Since the City is suing on behalf of the Shoppers, Instacart said, the City should be bound by the arbitration agreement as well. Although not a party to the agreement, Instacart claimed that the remedies sought were, in fact, "primarily for the benefit of the Shoppers. The appellate court disagreed as it affirmed an order of San Diego Superior Court Judge Timothy B. Taylor who denied Instacart's motion to compel arbitration.

Richard Koss, a [California employment law attorney](#) who was not involved in the case, fears the California court's decision may run afoul of the more recent decision of the United States

Supreme Court in *Viking River Cruises v. Moriana*. Koss says that an argument similar to the one made in the Instacart case was also presented in the Moriana case. There, the High Court ruled that employees should be held to the binding arbitration agreements they signed.

The San Diego City Attorney's complaint argued that Instacart "unlawfully misclassified" its employees so it could deny them proper compensation, protections and reimbursement related to their on-the-job expenses. The independent contractor classification also deprived the City of payroll tax revenue and gave Instacart an "unfair advantage against its competitors." Instacart brought a motion to compel arbitration that was based on its agreements with its Shoppers. The trial court denied Instacart's motion because the company "failed to meet its burden to show a valid agreement to arbitrate between it and the People."

The City asked for civil penalties authorized by the UCL of up to \$2,500 for each violation, injunctive relief requiring the company to properly classify its Shoppers as employees, and restitution for "unpaid wages, overtime, and rest breaks, missed meals, and reimbursement for expenses necessary to perform the work" such as car insurance and gas money.

The website for San Francisco-based Instacart boasts that it is "The World's largest online grocery service" that offers "Whatever you want from local stores, brought to your door." It also gives site visitors an opportunity to click and start the process to "Become a Shopper." Those who wish to apply complete a "registered profile" via the website or the Instacart app. They must also sign an "Independent Contractor Agreement" in order to use Instacart's platform. This Agreement, in effect since 2017, clearly states in all caps, "ANY AND ALL DISPUTES OR CLAIMS BETWEEN YOU AND INSTACART shall be exclusively resolved by final and binding arbitration by a neutral arbitrator." It goes on to explain that arbitration covers any disagreement over "contract, tort...or any claim under federal, state, or local law."

This Agreement is at the center of the initial lawsuit and all the legal skirmishes that followed. For several years, Instacart and the City waged court battles that were exacerbated by legislation and the passage of Proposition 22, a ballot initiative written by Uber and Lyft that defined "app-based" drivers as independent contractors. The Proposition was ruled unconstitutional by Alameda Superior Court Judge Frank Roesch in 2021. However, Proposition 22 remains in effect while gig economy employers such as Uber and DoorDash appeal the ruling, and the judge's ruling in that case has been stayed pending appeal. Before Prop 22, courts followed the "ABC



Richard Koss, San Francisco
Employment Attorney

test” articulated in the Dynamex case to determine whether a worker was an independent contractor or an employee. Dynamex was codified into law by the California Assembly when it passed AB 5, but Prop 22 carved out an exception to the law by expressly classifying app-based transportation and delivery drivers as independent contractors.

As a lawyer who primarily advocates for workers in employment matters, attorney Koss is hopeful the California Supreme Court will affirm the lower court’s holding that Prop 22 is unconstitutional. Koss believes that under the AB5/Dynamex standard, the Instacart shoppers would be considered employees.

The trial court distinguished all of the cases cited by Instacart from the present case because each of them was initiated by a private individual, not the City. The case finally went to the Court of Appeals which reviewed Instacart’s arguments that were first made in the trial court and repeated on appeal.

Justice McConnell’s opinion began by stating that both federal and state governments have “a strong public policy in favor of arbitration.” However, she explained, the party seeking to compel arbitration “bears the burden of proving the existence of a valid agreement.” Instacart failed to meet this burden. She ruled that the City was not and did not have to be a party to the arbitration agreement that related to Shoppers. While distinguishing this case from precedent, she concluded that “the City of San Diego (was) acting in its own law enforcement capacity to seek civil penalties for Labor Code violations traditionally prosecuted by the state.”

The UCL, she said, provided the city with independent authority to assert UCL claims. The City is not an employee like those who were bound by arbitration agreements in other cases. “Every case relied on by Instacart involves an individual employee or consumer who entered an arbitration agreement,” she stressed. She cited Instacart’s incorrect reliance on the California Supreme Court’s 2014 decision in *Iskanian v. CLS Transportation Los Angeles LLC*, which held arbitration agreements barring class-action suits cannot be applied to suits for Labor Code violations. She said that, unlike *Iskanian*, here the “real party in interest” is the government, not the Shoppers.

In conclusion, McConnell said, “Contrary to Instacart’s argument, the City is not attempting to circumvent or evade an applicable arbitration agreement between Instacart and its Shoppers. Rather, it is exercising its authority to enforce state law on behalf of the People of California ...the City is acting in its capacity as a public prosecutor exercising its traditional police powers.”

Richard Koss

Bay Area Employment Lawyer

+1 650-722-7046

[email us here](#)

Visit us on social media:

[Facebook](#)

This press release can be viewed online at: <https://www.einpresswire.com/article/579259190>

EIN Presswire's priority is source transparency. We do not allow opaque clients, and our editors try to be careful about weeding out false and misleading content. As a user, if you see something we have missed, please do bring it to our attention. Your help is welcome. EIN Presswire, Everyone's Internet News Presswire™, tries to define some of the boundaries that are reasonable in today's world. Please see our Editorial Guidelines for more information.

© 1995-2022 Newsmatics Inc. All Right Reserved.