C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No: **500-06-001211-222**

SHAI MEDALSY

Plaintiff

v.

MAPLEBEAR INC.

MAPLEBEAR CANADA ULC, in continuance of proceeding for Maplebear Canada Inc.

MAPLEBEAR DELIVERY CANADA ULC, formerly known as Maplebear Delivery Canada Inc.

Defendants

SETTLEMENT AGREEMENT

1. RECITALS

A. This Settlement Agreement is entered into by and among Plaintiff Shai Medalsy, on behalf of himself, as well as on behalf of the Class Members, and Defendants Maplebear Inc., Maplebear Canada ULC (in continuance of proceeding for Maplebear Canada Inc.) and Maplebear Delivery Canada ULC (formerly known as Maplebear Delivery Canada Inc.) to resolve in full the Action. Subject to Court approval as required by the *Code of Civil Procedure*, CQLR, c. C-25.01, and as provided herein, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Settlement Agreement and upon the issuance by the Court of a Final Judgment Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and terminated upon the terms and conditions contained herein.

B. **WHEREAS**, on December 1, 2022, Plaintiff filed the Application for Authorization which asserted claims under the *Consumer Protection Act*, CQLR, c. P-40.1 and the *Civil Code of Québec*, CQLR, c. CCQ-1991, in relation to the completion of a transaction on the Instacart Canada Platforms and the charging of a Fee.

C. **WHEREAS** the Application for Authorization has not been adjudicated.

D. **WHEREAS** the Parties have reached the resolution set forth in this Agreement following a settlement conference held on October 10, 2023 before Retired Justice William Fraiberg, providing for, *inter alia*, the settlement of the Action between and among the Plaintiff, on behalf of himself, as well as on behalf of the Class Members, and the Defendants on the terms and subject to the conditions set forth below.

E. **WHEREAS** the Parties have determined that a settlement of the Action on the terms reflected in this Agreement is fair, reasonable, adequate, and in the best interests of the Parties and the Class.

F. **WHEREAS** the Plaintiff maintains that his action is well founded in fact and in law, the Defendants deny the allegations made by the Plaintiff in his proceedings, have not conceded or admitted, shall not be deemed to have conceded or admitted and expressly deny any liability, including any liability for monetary compensation or compensation in kind to the Class Members.

G. **WHEREAS** the Parties, to avoid the cost of litigation, a judgment being rendered on the merits of the Action and any uncertainty as to the judgment that could be rendered, have concluded that it is desirable that the claims in the Action be settled, without admission, on the terms reflected in this Agreement.

H. **WHEREAS** the Defendants now consent to the authorization of the Action solely for the purposes of implementing this Agreement and contingent on the Court's approval as provided for in this Agreement, on the express understanding that such authorization shall not limit the respective rights of the Parties in the event that this Agreement is not approved or is terminated.

I. **WHEREAS** the Parties assert that the Plaintiff is an adequate Class representative for settlement purposes.

J. **WHEREAS**, on August 21, 2024, the Defendants filed a Notice of Continuance of Proceeding for Maplebear Canada ULC as the successor of Maplebear Canada Inc. and for Maplebear Delivery Canada ULC as the corporation formerly known as Maplebear Delivery Canada Inc.

NOW, THEREFORE, this Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and in consideration of the mutual promises, covenants and agreements contained herein and for value received, the Parties agree that upon the Effective Date, the Action and all Released Claims shall be settled and terminated as between the Plaintiff and the Class Members, on the one hand, and the Defendants, on the other hand, as detailed herein.

2. DEFINITIONS

2.1 As used in this Agreement and the attached schedules, the following terms shall have the meanings set forth below, unless this Agreement specifically provides otherwise:

(i) “**Account**” means the Instacart Canada account of a Class Member.

(ii) “**Action**” means *Shai Medalsy* v. *Maplebear inc. et al* (S.C.M.: 500-06-001211-222).

(iii) “**Agreement**” means this Settlement Agreement (including all Schedules hereto).

(iv) “**Application**” means collectively, the Instacart Canada customer application used by customers to shop for and order goods from various retailers.

(v) “**Application for Authorization**” means the *Application for Authorization to Institute a Class Action* dated December 1, 2022, filed by the Plaintiff against the Defendants.

(vi) “**Approval Hearing**” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement and to determine the Class Counsel’s Fees.

(vii) “**Class**” and “**Class Member(s)**” means all customers who completed a transaction on the Instacart Canada Platforms during the Class Period and who placed an order for delivery in Québec and paid a price that included a Fee.

(viii) “**Class Counsel**” means Lex Group Inc.

(ix) “**Class Counsel’s Fees**” means the attorneys’ fees and expenses in the amount of $231,000, plus GST and QST of $34,592.25, for a total of $265,592.25, as described more particularly in Section 9 of this Agreement.

(x) “**Class Notice(s)**” or “**Notice(s)**” means the proposed Notices in the forms provided at **Schedule A** (English) and **Schedule B** (French).

(xi) “**Class Period**” means the period starting on June 15, 2021 and ending on July 31, 2024.

(xii) “**Court**” means the Superior Court of Québec, district of Montréal, in which the Action was filed and where the Parties will seek approval of the Agreement.

(xiii) “**Credit**” means a credit in the form of a non-transferable, non-refundable, and non-cash convertible credit with a Credit Value and a 24-month expiration date applied to the Accounts of Credit Eligible Members pursuant to the Agreement and to be used as a means of payment for a transaction on the Instacart Canada Platforms.

(xiv) “**Credit Eligible Member**” means a Class Member that satisfies the following criteria:

1. He/she placed at least one order during the Class Period via the Instacart Canada Platforms, for delivery to an address situated in the Province of Québec and was charged a non-optional Fee on this order;

2. He/she has not submitted a Request for Exclusion; and

3. He/she must have an active Account at the time of Credit issuance and he/she must not have voluntarily deleted or deactivated his/her account or have been suspended or removed from the Instacart Canada Platforms due to a violation of Instacart’s Terms and Conditions.

(xv) “**Credit Value**” means the amount to be applied to the Accounts of Credit Eligible Members and calculated as the Distribution Fund divided equally between all Credit Eligible Members.

(xvi) "**Days**" means calendar days, except that, when computing any period of time prescribed or allowed by this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday in Québec, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday in Québec.

(xvii) "**Defendants**" means Maplebear Inc., Maplebear Canada ULC (in continuance of proceeding for Maplebear Canada Inc.) and Maplebear Delivery Canada ULC (formerly known as Maplebear Delivery Canada Inc.).

(xviii) "**Distribution Fund**" means the amount of $469,000 to be distributed equally between Credit Eligible Members as a Credit.

(xix) "**Effective Date**" means:

a) if no appeal is taken from the Final Judgment Approving Settlement, forty (40) Days after the Court renders the Final Judgment Approving Settlement; or

b) if an appeal is taken from the Final Judgment Approving Settlement, the date on which all appeal rights have expired, been exhausted, or been finally disposed of in a manner that affirms the Final Judgment Approving Settlement.

(xx) "**Fee(s)**" means a service fee, delivery fee or any other type of fee or charge shown on the sub-total or invoice of a given transaction on the Instacart Canada Platforms, but excluding any tax or duty chargeable under federal or provincial legislation where such tax or duty must be charged directly to a customer to be remitted to a public authority.

(xxi) “**Final Judgment Approving Settlement**” means the Final Judgment Approving Settlement to be rendered by the Court:

a) approving the Settlement as fair, adequate, and reasonable;

b) approving Class Counsel’s Fees;

c) discharging the Released Parties of and from all further liability for the Released Claims; and

d) issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Agreement.

(xxii) “**Instacart Canada Platforms**” means collectively the Site, the Application and Instacart Services.

(xxiii) “**Instacart Services**” means all services provided to customers using the Site or the Application.

(xxiv) “**Maplebear’s Counsel**” means Blake, Cassels & Graydon LLP.

(xxv) “**Notice Date**” means thirty (30) Days after the Court’s approval of the Class Notice or any other date set by the Court, by which the Parties shall first send the Class Notice in accordance with the Notice Program.

(xxvi) “**Notice Program**” means the notice program set forth in **Schedule C** and described in Section 6.

(xxvii) “**Objection Date**” means the date by which Class Members must notify to the Parties any objection to the Settlement and shall be no later than fifteen (15) Days before the date first set for the Approval Hearing.

(xxviii) “**Opt-Out Date**” means the postmark date by which a Request for Exclusion must be submitted to the Court in order for a Class Member to be excluded from the Class, and shall be stated in the Class Notice. The actual date cannot be earlier than thirty (30) Days after the date on which the Class Notice is first sent to Class Members and shall be no later than fifteen (15) Days before the date first set for the Approval Hearing.

(xxix) “**Parties**” means the Plaintiff and the Defendants.

(xxx) “**Plaintiff**” means Shai Medalsy.

(xxxi) “**Released Claims**” means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that could have been, or in the future might be asserted by the Plaintiff or any Class Member or any Releasing Party either in the Action or in any action or proceeding in this Court or in any other court or forum, against the Released Parties, including damages, costs, expenses, penalties, and attorneys’ fees (except for Class Counsel’s Fees provided at Section 9 below), known or unknown, suspected or unsuspected, in law or equity arising out of or relating to the allegations made in the Action or in the Application for Authorization. For avoidance of doubt, this includes all such claims that relate in any way to any Fee displayed or charged during a transaction on the Instacart Canada Platforms during the Class Period. However, this does not include other claims or causes of action regarding the goods or services themselves which were purchased on the Instacart Canada Platforms.

(xxxii) “**Released Parties**” means the Defendants Maplebear Inc., Maplebear Canada ULC, Maplebear Canada Inc. and Maplebear Delivery Canada ULC (formerly known as Maplebear Delivery Canada Inc.), including all of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stockholders, partners (including all retailers that sell goods through the Instacart Canada Platforms and persons who advertise to customers through the Instacart Canada Platforms), agents, servants, independent contractors (including all shoppers who provide shopping and delivery services to customers), successors, attorneys, insurers, representatives, licensees, licensors, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

(xxxiii) "**Releasing Parties**" means the Plaintiff and each and every Class Member, including each of their successors and all those who claim through them or who assert duplicative claims for relief on their behalf.

(xxxiv) "**Request(s) for Exclusion**" means the written communication that must be submitted to the Court pursuant to Article 580 C.C.P. and postmarked on or before the Opt-Out Date by a Class Member who wishes to be excluded (opt-out) from the Class.

(xxxv) "**Settlement**" means the settlement set forth in this Agreement.

(xxxvi) "**Settlement Amount**" means the amount of seven hundred thirty-four thousand five hundred and ninety-two dollars and twenty-five cents ($734,592.25), being the total maximum amount of the Defendants' monetary obligations under this

Agreement, and inclusive of capital, interest, additional indemnity, taxes, legal fees and costs of all kinds.

(xxxvii) "**Total Settlement Value**" means the Settlement Amount and the Business Practice Change provided for at Section 4.3 below.

(xxxviii) "**Site**" means the instacart.ca website in all its versions and forms, including the desktop and mobile websites.

2.2 Other capitalized terms in this Agreement but not specifically defined in this section shall have the meanings ascribed to them elsewhere in this Agreement, including by reference to capitalized terms indicating in parentheses.

2.3 All monetary amounts found in this Agreement are expressed in Canadian dollars.

3. CONDITIONAL AUTHORIZATION OF THE CLASS ACTION FOR SETTLEMENT PURPOSES ONLY

3.1 This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation made by the Plaintiff, or of any defence asserted by the Defendants in the Action, or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Class Member, or their respective counsel; (c) any wrongdoing, fault, violation of law, or liability relating to the manner in which a Fee is displayed on the Instacart Canada Platforms; or (d) the propriety of class action authorization in the Action or any other action or proceeding.

3.2 Prior to the filing of an Application to Approve the Settlement, Plaintiff will seek authorization of the class action for settlement purposes only and approval of the Class Notice. The Defendants hereby consent, solely for purposes of the Agreement, to the authorization of the class action and to the approval of the Plaintiff as an adequate representative of the Class; provided, however, that if the Court fails to approve this Agreement or the Agreement otherwise fails to be consummated by the Effective Date, then the Defendants shall retain all rights they had immediately preceding the execution of this Agreement to object to the maintenance of the Action as a class action and this Agreement shall be void and will not constitute, be construed as, or be admissible in evidence as an admission of any kind or be used for any purpose in the Action or in any other pending or future action. Moreover, the Court's authorization of the class action shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Agreement, and shall not be considered the law of the case, *res judicata*, unless and until the Court enters a Final Judgment Approving Settlement. Regardless of whether the Effective Date occurs, the Parties' agreement to class action authorization for settlement purposes only (and any statements or submissions made by the Parties in connection with seeking the Court's approval of this Agreement) shall not be deemed to be a stipulation as to the propriety of class action authorization, or any admission of fact or law regarding any request for class action authorization, in any other action or proceeding, whether or not involving the same or similar claims. In the event the Court does not render a Final Judgment Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void, the Parties' agreement to class action authorization for settlement purposes shall be null and void, the Court's authorization order shall be vacated, and thereafter no class or classes will remain authorized; provided, however, that Plaintiff may thereafter seek authorization of the same or a new class or classes in the

Action, and the Defendants may oppose such authorization on any available grounds.

4. SETTLEMENT RELIEF

4.1 The total maximum amount of the Defendants' monetary obligations under this Agreement is the Settlement Amount. The Defendants shall not be required to pay any other costs or fees to the Plaintiff, to Class Members or to Class Counsel.

4.2 The Credits are one of the considerations to Class Members provided for by this Settlement.

4.3 As part of the negotiated settlement herein, the Parties have also agreed to the following additional consideration provided by this Settlement to Class Members and to future Québec users of the Instacart Canada Platforms, namely that the Defendants agrees to implement and maintain a business practice change to their online transaction process for Québec users of the Instacart Canada Platforms (the "**Business Practice Change**"). Screenshots illustrating this new Business Practice Change, as already implemented by the Defendants as at the date of the execution of this Agreement, are included in **Schedule D**. The foregoing does not prevent the Defendants from modifying the display or content of their Instacart Canada Platforms as long as Québec users remain able to see and determine on the first screen or page where goods are selected the amount of non-optional Fee(s) that may apply on an order, namely before they start selecting goods to purchase from a retailer.

4.4 Whether this Settlement is approved or not and whether this Agreement is terminated or not, the Defendants will bear its internal costs of communication and publication of the Notices and the issuance of the Credits to the Accounts of Credit Eligible Members, as well as the reports on same required by the Court. No other costs for the communication and publication of the Notices or the issuance of the Credits are to be paid under this Agreement. The maximum amount to be distributed to Credit Eligible Members by Defendants is the Distribution Fund.

5. DISTRIBUTION OF CREDITS TO CREDIT ELIGIBLE MEMBERS

5.1 Within 30 Days of the Effective Date, the Credit will be made available directly in the Account of each Credit Eligible Member. The Credit Eligible Members shall not be required to provide any further information or take any further action.

5.2 The Defendants will send an email to each Credit Eligible Member to inform them the Credit has been made available in their Account.

5.3 The Credit will be automatically applied toward payment in respect of the first transaction made by a Credit Eligible Member on the Instacart Canada Platforms after the Credit has been made available on the Account.

5.4 The Defendants will send an email reminder to Credit Eligible Members, who have not done so, at 12 and 22 months, in English and French, to use the Credit prior to the expiration of the 24-months following the distribution of the Credit.

5.5 At the expiry of the 24-month expiration date of the Credits, any unused Credit will automatically become null and void. These unused Credit and the remaining value thereof will not be subject to any new distribution, will not revert to the Distribution Fund, and will not be credited back to the Settlement Amount or the Distribution Fund.

6. NOTICE TO THE CLASS

(a) Class Notice

6.1 No later than the Notice Date, the Defendants shall cause the Class Notice, in both French and English, to be published in accordance with the Notice Program. The Parties agree that the Notice Program provides for the most efficient means under the circumstances of this case to effect notice to the Class.

6.2 The Class Notice shall be in substantially the form of **Schedules A and B**, attached hereto, agreed to by the Parties and to be approved by the Court.

(b) Notice Program and Publication of the Class Notice

6.3 The Class Notice shall be published in accordance with the Notice Program no later than by the Notice Date.

6.4 The Class Notice, in both French and English, may also be sent via e-mail to all persons that subscribed to Class Counsel's mailing list or request a copy from Class Counsel.

6.5 The Class Notice, in both French and English, shall also be posted on the website of Class Counsel (lexgroup.ca) and on the Quebec Class Actions Registry.

7. OBJECTIONS, REQUESTS FOR EXCLUSION, AND MEDIA COMMUNICATIONS

(a) Objections

7.1 Unless otherwise authorized by the Court, any Class Member who intends to object to the approval of the Agreement must do so in writing no later than the Objection Date. The written objection must be sent by email or fax to Class Counsel and Maplebear's Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action and Court number (500-06-001211-222); (b) the objector's name, address, telephone number and email address and, if represented by counsel, of his/her counsel; (c) a statement that the objector completed a transaction on the Instacart Canada Platforms during the Class Period and paid a non-optional Fee for this transaction; (d) whether the objector intends to appear at the Approval Hearing, either in person, remotely or through counsel; (e) a statement that the Class Member is objecting to the approval of the Agreement and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's signature.

7.2 Any Class Member may appear at the Approval Hearing, either in person, remotely or through counsel hired at the Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement.

7.3 Unless otherwise authorized by the Court, any Class Member who fails to comply with the above provisions shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments entered in in the Action.

(b) Requests for Exclusion (Opt-Out)

7.4 Any Class Member may request to be excluded from the Class. A Class Member who wishes to opt-out of the Class must do so by sending to the clerk of the Court a written Request for Exclusion that is postmarked no later than the Opt-Out Date. The Request for Exclusion must be personally signed by the Class Member requesting exclusion, include his/her email and mailing address, and contain a statement that indicates a desire to be excluded from the Class.

7.5 Any Class Member who does not file a timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment Approving Settlement in the Action, unless he or she has already pending litigation or arbitration against the

Defendants relating to the Released Claims.

7.6 Any Class Member who properly requests to be excluded from the Class shall not: (a) be bound by any orders or judgments entered in the Action; (b) gain any rights by virtue of the Agreement; and (c) be entitled to object to any aspect of the Agreement.

(c) Media Communications

7.7 The Parties agree to maintain, on an ongoing basis, all confidentiality obligations they have with respect to the Action and information shared during the Action, including during settlement discussions. Any public statements, responses to inquiries, or press releases by any Party shall only include information relating to the Action or this Agreement available in the public record.

7.8 The Parties agree not to make any disparaging comments about the other and any other statements or communications to the media pertaining to the Action, this Agreement or its terms shall be limited to promoting the virtues of this Agreement. Defendants may make such disclosures regarding the Action and the terms of the Agreement as it deems necessary in its filings with regulators, to its auditors, or as otherwise required by provincial, federal or foreign law.

7.9 Nothing herein shall prevent Class Counsel from responding to Class Members' inquiries regarding the Settlement in a manner consistent with the terms and conditions of this Agreement. Class Counsel will also have the option to post on its social media accounts links toward this Settlement and/or toward the Notices and/or toward its firm website in this file.

8. RELEASES

8.1 The Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with respect to any Released Claim. Upon the Effective Date, and subject to fulfillment of all of the terms of this Agreement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum.

8.2 On the Effective Date, each Releasing Party shall be deemed to have released and forever discharged each of the Released Parties of and from any and all liability for any and all Released Claims.

8.3 On the Effective Date, each of the Released Parties shall be deemed to have released and forever discharged each of the Releasing Parties and their respective counsel, including Class Counsel, for all claims arising out of or relating to the institution, prosecution and resolution of the Action, except to enforce the terms and conditions contained in this Agreement.

8.4 The Court shall retain exclusive and continuing jurisdiction to interpret, apply and enforce the terms, conditions, and obligations under the Agreement, including managing any ancillary matters that may arise from this Agreement.

9. CLASS COUNSEL'S FEES

9.1 Subject to Court approval, the Defendants agree to pay Class Counsel's Fees in the amount of $231,000, plus GST and QST of $34,592.25, for a total of $265,592.25, which forms part of the Settlement Amount. Defendants shall take no position with regards to the approval of the Class Counsel's Fees described herein during the Approval Hearing, other than that it has agreed to pay them up to the stipulated amount and that the Agreement is fair, reasonable, adequate, and is in the best interest of the Parties and the Class.

9.2 During the Approval Hearing, Class Counsel will make representations before the Court to obtain approval of the Class Counsel's Fees, which includes all taxes, legal fees, extrajudicial costs and disbursements incurred up to the date of the Final Judgment Approving Settlement.

9.3 No later than thirty (30) Days before the Effective Date, Class Counsel will provide the Defendants with a letter to the attention of Maplebear's Counsel, confirming the amount of Class Counsel's Fees approved by the Court, to be paid by the Defendants to Class Counsel as legal fees and extrajudicial costs in this matter, along with separately itemized amounts for GST and QST, confirming valid GST and QST numbers, and confirming the ACH transfer/payment information (a bank fee of $17.50 is to be added to any amount sent by way of wire transfer).

9.4 Within fifteen (15) Days of the Effective Date, the Defendants will pay to Class Counsel the amount of Class Counsel's Fees if and as approved by the Court in the Final Judgment Approving Settlement.

9.5 In consideration for the payment of the Class Counsel's Fees, as decided by the Court, Class Counsel will not claim any other fee or disbursement from the Defendants or from the Class Members.

10. FINAL JUDGMENT APPROVING SETTLEMENT

10.1 This Agreement is subject to and conditional upon the issuance by the Court of the Final Judgment Approving Settlement that grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

11. REPRESENTATIONS AND WARRANTIES

11.1 The Defendants represent and warrant: (1) that they have the requisite corporate power and authority to execute, deliver and perform the Agreement; (2) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of the Defendants; and (3) that the Agreement has been duly and validly executed and delivered by the Defendants and constitutes its legal, valid and binding obligation.

11.2 The Plaintiff represents and warrants (1) that he is entering into the Agreement without the receipt of any consideration other than what is provided in the Agreement; and (2) that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable.

11.3 The Parties warrant and represent that no promise, inducement or consideration for the Agreement has been made, except those set forth herein. No consideration, amount or sum paid, accredited, offered, or expended by the Defendants in its performance of this Agreement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against it.

12. NO ADMISSIONS, NO USE

12.1 The Agreement and every stipulation and term contained in it is conditional upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by the Plaintiff, the Defendants, any Class Member, any Releasing Party or any Released Party, of the truth of any fact alleged or the validity of any claim or defence that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, or wrongdoing of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by the Plaintiff, the Defendants, any Releasing Party or any Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

13. TERMINATION OF THIS AGREEMENT

13.1 Either Party may terminate this Agreement by providing written notice to the other Parties within ten (10) Days of the occurrence of any of the following:

(i) The Court does not authorize the class action for settlement purposes as contemplated herein or the Court's order authorizing the class action is reversed, vacated, or modified in any material respect by another court; or

(ii) The Court does not enter the Final Judgment Approving Settlement in its entirety, or, if entered, such Final Judgment Approving Settlement is reversed, vacated, or modified in any material respect by any court.

13.2 The Defendants may unilaterally withdraw from and terminate this Agreement if more than two hundred and fifty (250) Class Members have submitted valid and timely Requests for Exclusion. Defendants may exercise their right to terminate under this provision by giving notice before the date of the Approval Hearing. If the Defendants elect to terminate the Agreement pursuant to this Section 13.2, the Agreement, subject to Section 13.4 hereto, and all related documents exchanged or signed by the Parties or submitted to the Court shall be null and void and shall have no effect whatsoever on the Action or its adjudication (and Defendants will remain solely liable for any and all administration and notice costs incurred under this Agreement).

13.3 It is expressly agreed that neither the failure of the Court to grant the Class Counsel's Fees award nor the amount of any Class Counsel's Fees that may be finally determined and awarded shall provide a basis for termination of this Agreement by the Plaintiff or by Class Counsel.

13.4 In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, Section 3 herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void.

14. MISCELLANEOUS PROVISIONS

14.1 **Entire Agreement:** The Agreement, including all Schedules hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by one of Class Counsel and one of Maplebear's Counsel and, if required, approved by the Court. The Parties contemplate that the Schedules to the Agreement may be modified by subsequent agreement of Maplebear's Counsel and Class Counsel, or by the Court. The Parties may make non-material changes to the Schedules to the extent deemed necessary, as agreed to in writing by all Parties.

14.2 **Governing Law and Jurisdiction:** The Agreement shall be construed under and governed by the laws of the Province of Québec, Canada applied without regard to conflict of laws provisions. The Parties hereby submit themselves exclusively to the Courts of the Province of Québec, District of Montreal, concerning any and all matters related to the interpretation or application of this Agreement.

14.3 **Execution in Counterparts:** The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures scanned to PDF and sent by e-mail shall be treated as original signatures and shall be binding.

14.4 **Notices:** Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by email to:

(a) If to Class Counsel:

Mtre. David Assor
davidassor@lexgroup.ca

(b) If to Maplebear's Counsel:

Mtre. Simon J. Seida
simon.seida@blakes.com

14.5 **Suspension of Proceedings:** Upon the execution of this Agreement, all proceedings in this Action shall be suspended until further order of the Court, except for proceedings to seek authorization of the class action and approval of the Class Notice, and proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Agreement.

14.6 **Good Faith:** The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

14.7 **Binding on Successors:** The Agreement shall be binding upon, and enure to the benefit of the heirs, successors and assigns of the Released Parties.

14.8 **Settlement conference:** The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation during a settlement conference held on October 10, 2023 before Retired Justice William Fraiberg, with consideration by, and participation of, the Parties hereto, Maplebear's Counsel and Class Counsel. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction providing that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

14.9 **Waiver:** The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

14.10 **Variance:** In the event of any variance between the terms of this Agreement and any of the Schedules hereto, the terms of this Agreement shall control and supersede the Schedule(s).

14.11 **Schedules:** All Schedules to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

14.12 **Taxes:** No opinion concerning the tax consequences of the Agreement to any Class Member is given or will be given by the Defendants, Maplebear's Counsel, Class Counsel or the Plaintiff; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Class Member. Each Class Member, including the Plaintiff, is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

14.13 **Retain Jurisdiction:** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreement embodied in this Agreement.

14.14 **Language:** The Parties acknowledge that they have required and consented to this Agreement and all related documents be drafted in English. *Les parties reconnaissent avoir exigé et consenti à ce que la présente convention et tous les documents connexes soient rédigés en anglais.*

14.15 **Translation:** Nevertheless, the Defendants shall procure a French translation of the Agreement. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall govern.

14.16 **Transaction:** The present Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties hereby renounce to any errors of fact, of law and/or calculation.

14.17 **Recitals:** The recitals to this Agreement are true and form part of the Agreement.

14.18 **Authorized Signatures:** Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, on behalf of the Parties identified above and their law firms.

[Signature page follows]

IN WITNESS WHEREOF, each of the Parties hereto, Class Counsel and Maplebear's Counsel have executed this Agreement as of the date set forth below.

Date:____________________

City :____________________

____

Mtre. Simon J. Seida

Blake, Cassels & Graydon LLP
Attorneys for Defendants

Date:____________________

City :____________________

____

Mr. Morgan Fong, General Counsel

Duly authorized representative of **Maplebear Inc., Maplebear Canada ULC and Maplebear Delivery Canada ULC**, as he so declares

Date:____________________

City :____________________

____

Mtre. David Assor

Lex Group Inc.
Class Counsel

Date:____________________

City :____________________

____

Mr. Shai Medalsy

Plaintiff