

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Employment

State of Minnesota by its Attorney General,
Keith Ellison,

Court File No. _____

Plaintiff,

CIVIL SUMMONS

vs.

Shipt, Inc.,

Defendant.

THIS SUMMONS IS DIRECTED TO: Shipt, Inc., 1010 Dale St. N, Saint Paul, Minnesota 55117-5603.

1. **You are being sued.** The Plaintiff has started a lawsuit against you. The *Complaint* is attached to this summons. Do not throw these papers away. They are official papers that affect your legal rights, even if nothing has been filed with the Court and there is no court file number on this *Summons*.

2. **You must BOTH reply, in writing, AND get a copy of your reply to the person/business who is suing you within 21 days to protect your rights.** Your reply is called an *Answer*. Getting your reply to the Plaintiff is called service. You must serve a copy of your *Answer or Answer and Counterclaim* (Answer) within 21 days from the date you received the *Summons* and *Complaint*.

ANSWER: You can find the *Answer* form and instructions on the Minnesota Judicial Branch website at www.mncourts.gov/forms under the "Civil" category. The instructions will explain in detail how to fill out the *Answer* form.

3. **You must respond to each claim.** The *Answer* is your written response to the Plaintiff's *Complaint*. In your *Answer* you must state whether you agree or disagree with each paragraph of the *Complaint*. If you believe the Plaintiff should not be given everything asked for in the *Complaint*, you must say that in your *Answer*.

4. **SERVICE: You may lose your case if you do not send a written response to the Plaintiff.** If you do not serve a written *Answer* within 21 days, you may lose this case by default. You will not get to tell your side of the story. If you choose not to respond, the Plaintiff may be awarded everything they asked for in their *Complaint*. If you agree with the claims stated in the *Complaint*, you don't need to respond. A default judgment can then be entered against you for what the Plaintiff asked for in the complaint.

To protect your rights, you must serve a copy of your *Answer* on the person who signed this *Summons* in person or by mail at this address: 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101.

5. Carefully read the Instructions (CIV301) for the *Answer* for your next steps.

6. **Legal Assistance.** You may wish to get legal help from an attorney. If you do not have an attorney and would like legal help:

- Visit www.mncourts.gov/selfhelp and click on the “Legal Advice Clinics” tab to get more information about legal clinics in each Minnesota county.
- Court Administration may have more information about places where you can get legal assistance.

NOTE: Even if you cannot get legal help, you must still provide a written *Answer* to protect your rights or you may lose the case.

7. **Alternative Dispute Resolution (ADR).** The parties may agree to or be ordered to participate in an ADR process under Rule 114 of the Minnesota General Rules of Practice. You must still serve your written *Answer*, even if you expect to use ADR.

Dated: October 27, 2022

Respectfully submitted,

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Employment

State of Minnesota by its Attorney General,
Keith Ellison ,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Shipt, Inc.

Defendant.

INTRODUCTION

The State of Minnesota, by its Attorney General, Keith Ellison (the “State”), for its Complaint against Defendant Shipt, Inc. (“Shipt”), alleges as follows:

1. Shipt is a wholly owned subsidiary of Target Corporation (“Target”) that provides same-day delivery of groceries and household goods to consumers that are ordered and arranged through the company’s online platform. Since its inception, Shipt has willfully based its business model on misclassifying its same-day delivery workers—who it refers to as “Shoppers”—as independent contractors. In doing so, Shipt has exploited thousands of Minnesotan low-wage workers and violated numerous Minnesota laws.

2. Shipt’s business would be impossible without its Shoppers. Target describes Shipt’s business function as “delivery via our wholly owned subsidiary.”¹ However, like many gig-economy companies, when the issue of employment is the topic, Shipt characterizes itself as

¹ Target Securities and Exchange Comm’n Form 10-K Report, Item 1 (Mar. 9, 2022), <https://perma.cc/7K54-R6F5>.

a “technology company that connects Shipt members through its online marketplace with a network of independent contractors who select, purchase, and deliver groceries and household essentials.”² This characterization is false, as Shipt does not create a virtual market connecting Shoppers to customers and allowing them to do business with each other. Instead Shipt allows customers to order goods from its corporate vendors through the Shipt App, marks up the goods ordered, and then charges customers with either a delivery fee, a membership fee, or both.

3. That Shipt is a delivery business and not simply a technology platform is evident from how it advertises its services to customers. Shipt does not tout the ease with which customers can interact with and choose the Shopper who best meets the customer’s delivery needs, because Shoppers have virtually no say as to which Shipt customers they work for. Instead, Shipt’s advertisements and description of its services is intrinsically linked to its control over its Shopper workforce and the service that it provides to customers: the convenient purchasing and delivery of goods to the customer’s home.

Shoppers that Bring the Magic

Shipt Shoppers go above and beyond. To become a Shipt Shopper, Shipt requires all applicants to submit a video interview and to consent to background and driving history checks. But that’s just the beginning. Shipt Shoppers work hard at providing the best possible experience to Shipt members. That means keeping you in the loop with text message updates, helping you find the freshest produce, and providing detailed substitution options if something you’ve ordered is out of stock.



² Target Securities and Exchange Comm’n Form 10-K Report, Item 1A (Mar. 9, 2022), <https://perma.cc/52S3-JF3T>.

4. Shipt explains that its markups on customer goods are necessary to “help cover the costs of picking, packing, and processing.”³ Without the work of the Shoppers, however, no goods would be picked, packed, and processed, no orders would be delivered, and thus no goods would be bought and no profit made by Shipt. Without Shoppers, Shipt would serve no purpose. This fact is highlighted by the fact that Shipt’s Shoppers—not its technology platform—make up the center of its advertising campaigns.

5. In addition to its reliance on Shoppers to do the work it advertises to its customers, Shipt exercises virtually total control over Shoppers while they do their work. It determines who is eligible to be a Shopper. It monitors how Shoppers perform each shop. It sets the price for goods ordered through its service, allowing no room for Shoppers to profit because of how they perform the work or their business acumen. It controls customer access to Shoppers, and vice-versa, even limiting how Shoppers and customers can communicate with each other by providing masked numbers that make it difficult for Shoppers to form durable relationships with customers on anything but Shipt’s terms. It engages in extensive data collection on its Shoppers’ work, including how customers rate Shoppers, how often Shoppers accept the orders it offers, and how often Shoppers deliver within the timeframe Shipt prescribes.

6. By misclassifying Shoppers as independent contractors, Shipt artificially lowers its operating costs by evading federal, Minnesota, and local laws establishing workplace protections that safeguard the wellbeing of employees in this state. These protections—such as minimum wages, overtime premiums, workers’ compensation coverage, occupational safety and health laws,

³ Shipt, *How are your prices determined*, <https://help.shipt.com/pricing/how-are-your-prices-determined>.

paid sick and safe time, and unemployment insurance—all depend on Shipt properly classifying its workers as employees under the law. Shipt has willfully refused to do so.

7. Shipt is a traditional employer of its misclassified Shoppers. It hires and fires them, controls what assignments are offered to them, sets Shopper quality standards, monitors Shoppers for compliance with those standards, disciplines (or deactivates) Shoppers for not meeting those standards, and prohibits Shoppers from running their own independent business by preventing them from hiring assistants, personally advertising their service, or letting their customers select the Shoppers of their choice.

8. Shipt has used its worker misclassification scheme to both take advantage of low wage workers who need work because of the COVID-19 pandemic and capitalize on customers who seek to utilize Shipt's services to mitigate their personal risk from the pandemic. In fact, because of its customers' desire to avoid exposure to COVID-19, Shipt's business exploded since 2020. In that time, Shipt tripled its Shopper workforce while its number of orders has increased by close to 400%.

9. The State of Minnesota, by and through its Attorney General, Keith Ellison, brings this enforcement action to stop Shipt's unlawful misclassification of its workers and to remediate the harm Shipt's misclassification scheme has caused to its Shoppers.

PARTIES

10. Keith Ellison, the Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8, including sections 8.01 and 8.31; the Minnesota Fair Labor Standards Act, section 177.45; and the Payment of Wages Act, section 181.1721, and has common law authority, including *parens patriae* authority, to bring this action to enforce Minnesota's laws,

to vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and provide full relief for—violations of Minnesota's laws.

11. Defendant Shipt, Inc. is a foreign corporation, incorporated in the state of Delaware, and is a wholly owned subsidiary of Target. Shipt is headquartered in Birmingham, Alabama, and its registered office address in Minnesota is 1010 Dale Street N., Saint Paul, Minnesota 55117-5603. Shipt lists its Chief Executive Officer as Kelly Caruso with the Minnesota Secretary of State, but in February 2022, Shipt announced that Kamau Witherspoon would be its CEO effective March 1, 2022. Shipt lists its Chief Executive Officer's address as 1000 Nicollet Mall, Minneapolis, Minnesota 55403—the principal executive office address for Target.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to Minnesota Statutes sections 8.01, 8.31, 177.45, 181.1721, and common law.

13. This Court has personal jurisdiction over this matter because, at all times relevant to this Complaint, Shipt has transacted business within Minnesota by advertising, marketing, and selling its same-day delivery services in Minnesota, has committed acts causing injury to its workers located in Minnesota, and has otherwise purposefully availed itself of this forum.

14. Venue is proper in Hennepin County pursuant to Minnesota Statutes section 542.09 because some of the unlawful practices discussed herein occurred in Hennepin County.

FACTUAL ALLEGATIONS

I. EMPLOYEES ARE ENTITLED TO MANY PROTECTIONS THAT INDEPENDENT CONTRACTORS ARE NOT.

15. In Minnesota—like in most states—many worker protections and benefits hinge on the worker being classified as an employee by his or her employer. That is true of minimum wage and overtime protections, employment discrimination protections, workers' compensation

protections, unemployment insurance coverage, occupational safety and health protections, and even tax benefits. In the cities of Minneapolis and St. Paul, employees are also entitled to sick and safe time protections. Independent contractors are not entitled to any of these benefits. As such, whether a worker is classified as an employee or an independent contractor is an important public policy concern because accurate classification affects the legal rights and obligations of both workers and employers.

16. Independent contractors were traditionally considered independent businesspeople with specialized training or expertise who had a great deal of control over how they performed their work. Such individuals generally have control over where they do their work, when they do their work, and the ability to hire assistants and substitutes for their work without permission from the person for whom the work is performed. The typical example of an independent contractor is a handyman who does one-off jobs for property owners. Other traditional independent contractors include doctors, dentists, photographers, and accountants.

17. The federal government has estimated that between 10 to 30% of employees are misclassified as independent contractors nationwide.⁴ This is in line with a 2007 report from Minnesota's Office of the Legislative Auditor ("OLA"), which estimated that more than 14% of Minnesota's employers misclassified workers.⁵ The OLA believed this estimate was conservative. Employers are incentivized to misclassify workers because "misclassifying employees as

⁴ *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* at 11, United States Government Accountability Office (August 2009), available at <https://perma.cc/7G5V-H8F6>.

⁵ *Misclassification of Employees as Independent Contractors* at x, Office of the Legislative Auditor, State of Minnesota (November 2007), available at <https://perma.cc/Y869-SA2X>.

independent contractors can significantly reduce an employer's cost of doing business.”⁶ For example, the OLA estimated that an employee costs an employer an additional \$7.82 per hour for a worker making \$30 per hour over an independent contractor making the same wage.

18. As the workplace has changed with the advent of remote work, smartphones, and smartphone-based applications, employers have increasingly sought to evade their obligations as employers by creating the fiction that their employees are independent contractors. This model has been especially prevalent in the smartphone application-based “gig economy” populated by companies such as Shipt, where almost all workers are classified as independent contractors.

19. While these companies—whose business model is founded on misclassifying workers—reap the benefits of decreased workers' compensation insurance, unemployment insurance payments, payroll taxes, and minimum wage and overtime protections, their workers suffer. Not only are the workers essentially at-will employees, but many are low-wage employees who may live paycheck to paycheck. These workers operate at the whim of companies like Shipt, who can cut them loose at no cost to the company while the worker becomes jobless without access to traditional social safety net programs.

20. Shipt's unfair and unlawful treatment of its Shoppers also confers an unfair competitive advantage to itself and its parent, Target, over their law-abiding competitors and would-be competitors. Shipt realizes illegitimate profits and savings from depriving its Shoppers of the full compensation and benefits they would earn as employees. Target is well aware that Shipt's expenses would increase if it accurately classified its workers as employees:

Our expenses could increase and our operations could be adversely affected by law changes or adverse judicial developments involving . . . the classification of workers as either employees or independent contractors (particularly as it applies to our Shipt subsidiary, a technology company that connects Shipt members

⁶ *Id.* at xi.

through its online marketplace with a network of independent contractors who select, purchase, and deliver groceries and household essentials ordered from Target and other retailers). The classification of workers as employees or independent contractors, in particular, is an area that is experiencing legal challenges and legislative changes. If our Shipt subsidiary is required to treat its independent contractor network as employees, it could result in higher compensation and benefit costs.⁷

II. SHIPT PROVIDES SAME-DAY DELIVERY SERVICES THAT EXPERIENCED RAPID GROWTH DURING THE COVID-19 PANDEMIC.

21. Shipt is headquartered in Birmingham, Alabama and incorporated in Delaware. It was acquired by Target in 2017 and now is a wholly owned subsidiary of Target. Shipt provides same-day delivery of groceries and household goods to consumers that are ordered and arranged through the company's online platform.

22. Shipt's business model consists of hiring individuals to shop and deliver goods to its customers. It labels these individuals as "Shoppers" and has, since the inception of its business, classified these Shoppers as independent contractors.

23. To work for Shipt, each Shopper must agree to a standard form contract and addenda. Each Shipt contract contains standardized terms and conditions that Shipt sets regarding Shopper work. Each Shipt contract and addenda also contains boilerplate language unilaterally designating each Shopper as an independent contractor. Prospective Shoppers have no ability to negotiate the terms of these form contracts; they must agree to be bound by them or forego working for Shipt.

24. A Shopper's basic work consists of traveling to a specific store designated by Shipt—such as an individual Target store—collecting items that a Shipt customer has ordered

⁷ Target Securities and Exchange Comm'n Form 10-K Report, Item 1A (Mar. 9, 2022), <https://perma.cc/52S3-JF3T>.

through the Shipt app, communicating with customers through the Shipt app, paying for the items using a Shipt-supplied credit card, and delivering the purchased items to the Shipt customer.

25. Shipt's retail partners include more than 130 retailers nationwide, ranging from regional grocers such as H-E-B and Publix to Petco and CVS Health. Shipt's delivery services cover roughly 80% of U.S. households in about 5,000 cities.⁸ In Minnesota, that includes national retailers like Target, CVS, Best Buy, and Walgreens as well as regional businesses such as Kowalski's Markets, Lunds & Byerlys, Fresh Thyme Markets, and Midtown Global Market. For example, as of August 16, 2022, an individual residing in the 55402 ZIP code (downtown Minneapolis) could obtain goods from Lunds & Byerlys, Walgreens, CVS, GNC, Target, Kowalski's Markets, Top Ten Liquors, Chicago Lake Liquors, Liquor Boy, Fresh Thyme Market, Bed Bath & Beyond, Petco, Sephora, Office Depot, Office Max, buybuy Baby, and Midtown Global Market.

26. Shipt has tripled its workforce to more than 300,000 Shoppers nationwide during the COVID-19 pandemic.⁹

27. At the same time, Shipt's business quadrupled during the pandemic.¹⁰ In the first year of the pandemic, Shipt's orders increased a staggering 252% compared to 2019. That trend did not stop in 2021, when Shipt's orders increased an additional 40% over 2020.¹¹

⁸ Melissa Repko, 'Out of stock' items plague grocery delivery services. *Personal shoppers at Target's Shipt aim to fix that*, CNBC (Oct. 12, 2021), <https://perma.cc/GQU6-USSN>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Nicole Norfleet, *With staggering growth behind it, Target's Shipt delivery business faces a now-what moment*, Star Tribune (Nov. 28, 2021), <https://perma.cc/5T25-LL96>.

28. This uptick in Shipt’s business during the pandemic is confirmed by public polling. In 2019, for example, only 11% of American adults reported ordering groceries online at least once per month. As of 2021, that number has more than doubled to 23%—almost a quarter of American adults.¹²

29. In Minnesota, Shipt’s expansion has cost some workers jobs as employees and forced them to change jobs or to accept misclassification as contract workers for Shipt. Lunds & Byerlys, for example, is halting its in-house employee delivery service after it agreed to partner with Shipt and says that its employee drivers can “continue to be a driver by joining the Shipt team.”¹³

30. In general, gig economy workers like Shipt’s Shoppers have struggled to afford their lives with gig work. Despite the fact that 66% of gig workers report their gig work as their only employment, gig workers have reported that the money they received was insufficient to meet their household expenses. In all, 80% of the workers surveyed in a UCLA study said that their pay was insufficient to meet household expenses. A third of the workers surveyed said that they did not have enough money to buy groceries, while 39% stated that they were close to not being able to afford groceries.¹⁴

31. Similarly, a New York study of gig workers revealed that 60% of gig workers relied on gig work as their main source of income. The majority of these gig workers did not choose gig

¹² *Id.*

¹³ Adam Uren, *Lunds & Byerlys partners with Shipt for grocery deliveries*, Bring Me the News (Apr. 27, 2022), <https://perma.cc/CGZ6-J6FK>.

¹⁴ Lucero Herrera, Brian Justie, Tia Koonse, and Saba Waheed, *Worker Ownership, COVID-19, and the Future of the Gig Economy*, at 3 (UCLA Labor Center and SEIU-United Healthcare Workers West 2020), available at <https://perma.cc/WWT6-RUHV>.

work because they preferred a flexible schedule. Rather, 57% of gig workers said they would prefer to have their employer set their schedule and provide benefits.¹⁵

32. Just like the California gig workers who struggled to buy groceries, the New York gig workers often required public assistance in purchasing food. For example, 40% of the workers reported utilizing SNAP benefits while 31% of the workers utilized cash assistance, welfare, or TANF funds.¹⁶

III. SHIPT SHOPPERS ARE EMPLOYEES UNDER MINNESOTA LAW.

33. The expansion of gig-economy work at the expense of stable employment is an important issue for Minnesota. Minnesota's explicit public policy under the Minnesota Fair Labor Standards Act ("MFLSA") is "(1) to establish minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not; and (3) to sustain purchasing power and increase employment opportunities." Minn. Stat. § 177.22. Shipt's expansion of misclassified Shoppers undermines each of these important goals.

34. The MFLSA applies to individuals who are employed by employers. "Employ" means "permit to work." Minn. Stat. § 177.23, subd. 5. An "employer" includes a "corporation" or "any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee." *Id.* subd. 6. An "employee" is "any individual employed by an employer." *Id.* subd. 7.

¹⁵ Irene Lew, Debipriya Chatterjee, and Emerita Torres, *The Gig Is Up: An Overview of New York City's App-based Gig Workforce during COVID-19*, at 5 (Community Service Society of New York 2021), available at <https://perma.cc/2JQF-9CCL>.

¹⁶ *Id.*

35. Minnesota law draws a distinction between an employee of a business and an “independent contractor.” For the purposes of the MFLSA, a worker’s proper classification as an employee or independent contractor is governed by Minn. R. 5200.0221, which incorporates the nine-factor test used in the context of workers’ compensation, Minn. R. 5224.0330-.0340, but applies the same weight to the “control” factor as to the other factors.¹⁷

36. Prior to the enactment of these rules, Minnesota utilized a five-factor common law test that analyzed: (1) the right to control the means and manner of performance; (2) the mode of payment; (3) the furnishing of material or tools; (4) the control of the premises where the work is done; and (5) the right of the employer to discharge. Under this test, the right of the employer to control the means and manner of performance was the most important factor.

37. The factors incorporated by Minn. R. 5200.0221 are weighed together and include the common law factors discussed above. The factors are: (1) the employer’s control over the worker; (2) the right of the employer to discharge the worker; (3) the worker’s availability to the public independent of the employer; (4) the manner in which the worker is paid by the employer; (5) the worker’s ability to realize a profit or loss for work done for the employer; (6) the right of the worker to quit without penalty; (7) substantial investment in the work by the worker; (8) responsibility; and (9) whether the workers are fundamental to the viability of the employer’s business. Minn. R. 5224.0330–.0340. All factors must be weighed together to determine whether the worker is economically dependent upon the business to which the worker provides services. Minn. R. 5200.0221.

¹⁷ The workers’ compensation test, on the other hand, allocates more weight to the control factor. Minn. R. 5224.0330, subp. 1.

38. When applied to Shoppers, the factors overwhelmingly weigh in favor of Shipt's Shoppers being Shipt employees—not independent contractors.

A. Shipt has Virtually Complete Control over Shoppers' Work.

39. Although control is not given special weighting under Minn. R. 5200.0221, an employee's control of the means and manner of performance has traditionally been considered the most important factor when it comes to determining whether a worker is an employee or an independent contractor.

40. The Minnesota Department of Labor and Industry promulgated Rule 5224.0330 to analyze whether an employer has control over an employee's method and manner of performance. That rule provides thirteen factors to evaluate when determining whether control exists: (1) authority over individual's assistants; (2) compliance with instructions; (3) oral or written reports; (4) place of work; (5) personal performance; (6) existence of continuing relationship; (7) set hours of work; (8) training; (9) amount of time; (10) simultaneous contracts; (11) tools and materials; (12) expense reimbursement; and (13) satisfying requirements of regulatory and licensing agency. These factors are evaluated under the totality of the circumstances to determine if an employer exercises sufficient control over an employee's means and manner of performance such that an employment relationship exists.

41. In the case of Shipt and its Shoppers, the totality of the circumstances overwhelmingly demonstrates that Shipt controls the means and manner of its Shoppers' performance of their work.

- i. Shoppers must comply with detailed instructions from Shipt on how to perform every facet of Shopper duties.

42. Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to work, including the order or sequence in

which the service is to be performed. Control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. Minn. R. 5224.0330, subp. 3.

43. Shoppers report that Shipt has the ability to—and does—control almost every facet of how Shoppers perform their work through detailed instructions. Shipt also communicates its policies and protocols to Shoppers by a variety of means, including e-newsletters, communications through the Shopper App, communications through Shipt’s Shopper Hub, and through Facebook groups controlled by Shipt’s agents. The best illustration of Shipt’s thorough control of Shopper work can be found by looking at the instructions a Shopper must follow on a particular day to complete an order.

44. Shipt instructs its Shoppers via its mobile application (“Shipt App”) through which Shoppers receive, complete, and deliver orders. Shoppers report that they are entirely dependent on the Shipt App in order to do their jobs, and any outages in the App renders a Shopper totally incapable of performing work for Shipt. Shipt controls almost all aspects of Shopper work through the Shipt App.

45. When a Shopper begins working for Shipt, Shipt assigns the Shopper a unique “Shopper ID” which the Shopper is prohibited from sharing with any other person. This Shopper ID is assigned to a Shopper and is tracked through the Shipt App.

46. According to Shoppers, at the start of each shift, Shoppers are required to report to a specific territory specified by the Shipt App. Shoppers are not paid for the time that they are “on shift” but are not assigned a customer order. A Shopper’s failure to report to their territory at the

start of a shift, cancelling a shift within 24 hours of the shift, or reporting late to a shift can result in Shipt disciplining or terminating a Shopper.

47. Shipt provides its Shoppers with their work and pay by controlling which orders individual Shoppers can receive through the Shipt App.¹⁸ Through the Shipt App, Shipt controls which Shoppers receive a customer order and when. When offered an order, Shoppers report that they have approximately 30 seconds to accept or decline an order before the order is offered to another Shopper.

48. When a Shopper receives an order, the order includes a Shipt partner store location designated by Shipt where Shoppers are to purchase customer goods. Shipt also provides Shoppers with directions for driving to the designated store and from the designated store to a customer's house. Shoppers report that they do not have the discretion to alter the order. For example, when a Shopper picks up an order for groceries, the Shopper does not have the discretion to choose to shop at Kowalski's Market or Lunds & Byerlys. Similarly, if a Shopper receives an order for groceries from Kowalski's Market, it expects Shoppers to shop at the specific Kowalski's location that Shipt has specified for a particular order. In fact, many Shoppers believe that the distance Shipt expects Shoppers to travel to and from a store is part of Shipt's "pay based on the effort it takes to complete the order" payment model, although most Shoppers are unclear as to how this payment model actually works.

49. Shipt meticulously tracks and monitors Shopper activity during orders via the Shipt App, and Shoppers must follow detailed procedures to notify Shipt through the Shipt App of the Shopper's status at key stages of the delivery process. For example, Shoppers must notify Shipt

¹⁸ Shipt further demonstrates its control over Shoppers by requiring them to go through a health screening for COVID-19 symptoms before they can access the Shipt App.

when they have started shopping an order, when they have paid for the ordered goods, and when an order is completed. Shipt uses the Shipt App to constantly monitor and control its Shoppers' behavior while its Shoppers are performing work for Shipt. For example, Shoppers report instances where they received texts from Shipt if they were running late on an order. Shoppers also report that they also must scan the bar code for each item they shop for in the Shipt App when picking items so that Shipt knows the item has been picked.

50. Shoppers report that Shipt provides them with detailed instructions about how to complete customer orders when items a customer has ordered are not available. For example, when an item a customer ordered is unavailable, Shipt directs the Shopper to contact the customer and to choose specific replacement items.

51. Shipt specifies detailed rules for Shoppers to follow to create a uniform experience for customers from which Shipt derives its brand recognition, reputation, and value. These detailed rules include how to interact with its customers, including what Shoppers should say when leaving voicemails, what to say on the phone with a customer to add a substitute item, and what to say when delivering groceries to customers.

52. Shipt not only dictates how Shoppers should interact with customers, but also explicitly requires Shoppers to only communicate with customers through the Shipt App. Shipt's contract prohibits contact between Shoppers and customers "other than for fulfilling delivery services."

53. Shipt additionally requires Shoppers to photograph and send Shipt receipts through the Shipt App after each customer order is completed. Shipt forbids Shoppers from sharing receipts with its customers, preventing customers from knowing how much Shipt marks up items that are purchased and delivered to customers.

- ii. Shipt requires Shoppers to personally render their services to Shipt and prohibits Shoppers from hiring assistants.

54. Control is indicated if the services must be personally rendered to the employing unit. Minn. R. 5224.0330, subp. 6. Lack of control is indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent. *Id.* Moreover, control over a worker is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistants' work. Minn. R. 5224.0330, subp. 2.

55. Shipt requires Shoppers to personally perform the Shipt orders that they accept.

56. Shipt offers specific orders to specific Shoppers through the Shipt App. Those orders are associated with the Shopper's Shopper ID, which the Shopper is prohibited from sharing with others.

57. Shopper services are rendered directly to Shipt because Shoppers perform orders as directed by Shipt. No Shopper receives an order directly from a customer. Similarly, Shoppers generally do not receive tips directly from Shipt customers. Instead, Shipt itself determines how it will compensate a Shopper for an order through its proprietary algorithm and pays Shoppers both order wages and gratuities once per week on a designated payday. When Shipt customers do tip Shoppers, those tips are generally provided electronically through the Shipt App.

58. Shipt Shoppers have no ability to utilize assistants in their work for Shipt. In fact, Shipt coined the term "co-shopping" for Shoppers who utilize assistants. Co-shopping is prohibited by Shipt and Shoppers are told that they can be disciplined and even terminated for utilizing assistants. In fact, Shipt expressly states that "Shipt Shopping is a solo enterprise. Shipt Shoppers may not bring anyone with them, including another approved Shipt Shopper. Only the

approved Shipt Shopper who has claimed the order is permitted to shop for and deliver to the member.”¹⁹

59. By prohibiting assistants, Shipt controls the means and manner of how a Shopper must perform the work by mandating that the Shopper personally shops for and delivers an order.

iii. Shipt compiles detailed reports on Shopper activity that it uses to judge and take action on Shopper performance.

60. Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit. Minn. R. 5224.0330, subp. 4.

61. Shipt, via the Shipt App, compiles detailed reports on each Shopper’s activities and performance of their work. Shipt adjusts the number and quality of jobs Shoppers are offered based on the three main metrics by which it judges Shoppers’ performance: (1) acceptance rate, (2) on-time percentage, and (3) customer rating. Shipt apprises Shoppers of their scores in these three metrics on a weekly basis.

62. Shipt keeps track of how often Shoppers accept or decline Shipt deliveries through a metric it calls “acceptance rate.” Shipt penalizes Shoppers who do not accept offered deliveries at a high enough rate and will terminate Shoppers whose acceptance rate falls below a certain threshold. Shipt’s specific term for Shopper termination is “deactivation.”

63. Shipt also tracks when Shoppers deliver orders and assigns a metric it terms “on-time percentage” to each Shopper. If Shoppers deviate from Shipt’s protocols or are running late, Shoppers report that Shipt will contact Shoppers via text or phone to inquire why the Shopper is not on time.

¹⁹ Shipt, *Being a shopper*, <https://help.shipt.com/being-a-shopper>.

64. Shipt also monitors, and ultimately controls, its Shoppers through feedback it solicits from its customers on every order via a rating system that Shipt uses to assess its Shoppers' performance. The Shipt App solicits feedback and prompts its customers to rate Shoppers from one to five stars for Shipt's benefit, as it uses its rating for the discipline and termination of Shoppers.

65. If the average customer rating of a Shopper falls below an established threshold set by Shipt, Shipt may suspend or terminate that Shopper from providing services to customers through the Shipt App. For example, according to Shoppers, a Shopper that falls below a customer satisfaction of 4.7 "stars" (out of a rating of one to five stars) has to take "refresher" training course offered by Shipt in order to continue work.

iv. Shoppers have a continuing, indefinite relationship with Shipt.

66. The existence of a continuing relationship between an individual and the person for whom he or she performs services indicates the existence of an employment relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available. Minn. R. 5224.0330, supb. 7.

67. Shipt and its Shoppers have a continuing relationship. If Shipt decides to hire a Shopper, the Shopper must sign a form contract that lays out their obligations to Shipt. Shipt's form contract for Shoppers is for an indefinite term; Shoppers do not need to separately contract with Shipt for each delivery accepted through the Shipt App.

68. Many Shoppers regularly perform work for Shipt at regular intervals over a long period of time—some for several months and some for years. For example, one Shopper reported

that he has worked for Shipt since December 2019, while others worked for Shipt for less than one year.

- v. Shipt requires Shoppers to go through onboarding training as well as corrective trainings if Shipt determines that the Shopper's performance is inadequate.

69. Control is indicated when employees are required to complete trainings. Minn. R. 5224.0330, subp. 9.

70. Shipt has control over Shoppers from the beginning of the employment relationship. First, Shipt utilizes an interview process, including background checks, to determine which Shoppers it will approve to provide its shopping and delivery services using the Shipt App. Shipt can change its Shopper-eligibility standards at its sole discretion.

71. Shipt has required newly hired Shoppers to complete several different trainings, including on how to shop for Shipt and how the app works. If a Shopper wishes to be able to receive orders involving alcohol or pharmaceuticals, Shipt has required Shoppers to complete a special certification training course provided by the company.

72. Shipt also requires Shoppers to go through corrective trainings if their acceptance rating, customer rating, or on-time percentage falls below certain levels dictated by Shipt. Shoppers report that failure of Shoppers to undergo those corrective trainings results in their termination (i.e., "deactivation").

- vi. Shipt furnishes Shoppers with the Shipt App, without which it is impossible for Shoppers to complete orders.

73. The furnishing of tools, materials, and supplies by the employing unit indicates control over a worker. However, lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade. Minn. R. 5224.0330, subp. 12.

74. The most vital tool Shipt furnishes to its Shoppers is the Shipt App. Without the Shipt App, Shoppers are unable to receive Shipt orders or begin orders they have already accepted. They are unable to communicate with customers during orders. They are unable to mark that they have retrieved items in an order. They are unable to indicate that they have paid for an order at a Shipt retail partner. They are unable to photograph receipts and send them to Shipt. They are unable to indicate to Shipt that they have completed an order and thus be eligible to receive payment for the order. In other words, without the Shipt App, a Shopper cannot perform any of the tasks for Shipt that the Shopper is required to fulfill in order to complete an order to Shipt's satisfaction and be compensated for their work.

75. Shipt has total control over the Shipt App. Without notice to Shoppers, Shipt experiments with features in the Shipt App which directly impact its Shoppers, creating an environment in which Shoppers are subject to shifting working conditions determined at Shipt's discretion. For example, Shipt tested out its algorithmic "effort-based" pay metric in certain markets before replacing its original pay scale for Shoppers nationwide.

76. In addition to the Shipt App, Shipt provides Shoppers with additional tools necessary to complete their work for Shipt. Shipt gives every Shopper a debit card with pre-loaded amounts that Shoppers use to make the purchases for Shipt customers. Shipt also provides Shoppers with Shipt paraphernalia, including Shipt shirts and face masks, and encourages Shoppers to wear Shipt clothing when handling orders.

77. While Shoppers generally provide their own vehicle, it is customary for delivery drivers to provide their own vehicles. Additionally, Target has begun supplying some of Shipt's

Shoppers with commercial vehicles instead of personal vehicles because the commercial vehicles can hold more packages than personal vehicles.²⁰

- vii. Shipt reimburses Shoppers for unexpected expenses related to customer orders.

78. Payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses. Minn. R. 5224.0330, subp. 13.

79. Shipt controls how Shoppers pay for customer deliveries. It provides each Shopper with a Shipt debit card. The cards are supplied with only enough money for Shoppers to complete customer orders that they have accepted. If there is an issue with the Shipt debit card and the Shopper is required to pay for a customer order out of pocket, Shipt reimburses the Shopper for the expenses incurred.

80. Similarly, if a customer's order requires numerous substituted items that exceed the amount of money Shipt has placed on the Shipt debit card for a particular order, Shoppers have reported that they may pay for the order out of pocket and Shipt will reimburse the Shopper for the order once the Shopper fills out reimbursement forms.

- viii. Shipt determines where Shoppers shop for and complete orders.

81. Control is indicated if work, which could be done elsewhere, is done on the employing unit's premises. Minn. R. 5224.0330, subp. 5. However, the fact that work is not done on the employer's premises does not show freedom from control where the services are necessarily performed away from the premises of the employing unit. *Id.*

²⁰ Nicole Norfleet, *Target streamlines digital order shipping in Twin Cities and beyond*, StarTribune (July 27, 2022) <https://perma.cc/SG5U-ZH47>.

82. The place of work factor is not particularly relevant to the work of a Shopper, which necessarily consists of traveling to retail establishments to procure items for Shipt customers and then to deliver those items to customers. As discussed above, however, while Shipt effectively does not have its own premises for Shoppers to perform work because of the nature of its business, Shipt controls which shops Shoppers travel to for orders and what customers they must travel to in order to complete orders. (*See* section III.A.i, *infra*.) For example, if a Shopper accepts a customer order for strawberries from Target, the Shopper has no discretion to fulfill the order at a Cub Foods even if the Shopper knows the Cub Foods offers the same product at a lower price.

ix. Even though Shoppers are provided with flexible work hours, they must generally schedule their work hours with Shipt in advance and are penalized when they deviate from those hours once they are set.

83. The establishment of set hours of work by the employing unit indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times indicates control. Minn. R. 5224.0330, subp. 8.

84. While Shoppers have some flexibility in how they schedule their work for Shipt, they are subject to certain requirements in order to continue shopping.

85. Shoppers do not have true control over their schedules. Instead of simply logging into the Shipt App when they want to work, Shoppers report that they provide their windows of availability to Shipt each week. Based on that availability, Shipt assigns them a schedule of shifts for the upcoming week.

86. Shoppers report that they must also be ready to review and accept orders at Shipt's discretion. Generally, Shipt releases and offers orders to Shoppers at a set time—for example, 6:00 a.m. on a particular day if a Shipt customer has placed an order in advance—and a Shopper

must have his or her phone ready to receive an order that is placed during a time the Shopper is on Shipt's schedule during the day. Shoppers who are not on Shipt's schedule are not offered orders.

87. Similarly, once a Shopper is on a schedule, a Shopper is penalized for declining too many orders. Shipt also reserves the right to penalize a Shopper for failing to accept at least one order per month. Similarly, if a Shopper has accepted an order, Shipt will penalize the Shopper for not completing the order within the timeframe required by Shipt.

x. Some Shoppers work full-time for Shipt.

88. Control is indicated where a worker must devote full time to the activity, and a lack of control is indicated if an individual works for a number of persons or firms at the same time. Minn. R. 5224.0330, subps. 10, 11.

89. Shipt does not require workers to devote full time to the activity of being a Shopper. However, some Shoppers report working 40 hours or more per week for Shipt in order to make enough money to support themselves. Other workers have jobs that they work in addition to their work for Shipt in order to make ends meet.

90. Taken as a whole, Shipt controls virtually every facet of a Shopper's day-to-day work. The only facet of work that a Shopper has control over is when he or she works and what territory he or she agrees to work in. Such limited discretion shows that the amount of control Shipt exercises is akin to an employer and is not the lack of control indicative of an independent contractor relationship. As the workplace has evolved in response to the COVID-19 pandemic, many employees have discretion over the location of work and have increased flexibility in their schedules. Finding that such limited discretion on the part of the worker is enough to establish a worker as an independent contractor would essentially eliminate the employment protections for

hundreds of thousands of workers in numerous professions. Like those workers, Shipt's Shoppers are appropriately classified as employees.

B. In Addition to Control, Other Factors Minnesota Courts Consider Demonstrate that Shipt Shoppers Should Be Classified as Employees.

91. In addition to “control,” in Minnesota courts look at eight other factors when determining whether an employment relationship exists. Those factors are: (1) right to discharge; (2) availability to the public; (3) method of compensation; (4) realization of profit or loss; (5) the worker's right to terminate employment; (6) the worker's substantial investment; (7) responsibility; and (8) whether the worker's services are fundamental to the business. Minn. R. 5224.0340.

92. Each of these factors further confirm that Shipt Shoppers should be classified as employees.

i. Shipt can discharge its Shoppers at any time for virtually any reason.

93. An employer has the right to discharge employees at will. The right to discharge exists if the worker may be terminated with little notice, without cause, or for failure to follow specified rules or methods. Minn. R. 5224.0340, subp. 2. Shipt has such discretion to discharge Shoppers.

94. According to Shipt's contract, it can terminate (i.e., “deactivate”) a Shopper for even an “alleged violation” of the form contract it requires Shoppers to sign:

b. Suspension. SHIPT may deactivate Your account or otherwise restrict You from accessing or using the Shopper App or the Shipt Services in the event of a violation or alleged violation of this Agreement or other misconduct that may adversely affect SHIPT's business or reputation, including: (1) Your shopper rating falls below the minimum required rating, as set forth in the hyperlinks in this Agreement; (2) Your on-time percentage falls below the minimum required percentage, as set forth in the hyperlinks in this Agreement; (3) You engage in conduct that may violate the professional and performance standards set forth in this Agreement (such as unprofessional, discourteous, abusive or discriminatory acts or language towards Users or in connection with Your Delivery Services, physical or other unwanted contact with Users, and unsafe conduct in connection with Delivery Services); or (4) You violate federal, state, and/or local laws when performing Delivery Services. SHIPT will make suspension and deactivation decisions on a case-by-case basis. SHIPT retains the right to deactivate Your Shopper ID pending investigation and to determine that the commission of any of the above acts alone or in combination violates this Agreement and results in immediate deactivation. SHIPT may deactivate Your Shopper ID if You have not fulfilled a request for Delivery Services using the Shopper App at least once a month.

95. Shipt can also deactivate a Shopper for an acceptance rating, customer rating, or on-time percentage falling below designated levels determined by Shipt.

96. Shipt can additionally deactivate a Shopper for performing in a manner that it deems "unprofessional," which includes but is not limited to Shopper appearance.

97. Shipt also maintains the right to deactivate a Shopper if they do not perform at least one delivery per month.

98. Finally, Shipt reserves the right to terminate Shoppers if it deems there to have been any breach of its Shopper contract and maintains the right to unilaterally terminate the contract without cause given a 14-day notice.

ii. Shopper services are only available to the public through Shipt.

99. Independent contractors make their services available to the general public on a continuing basis. Minn. R. 5224.0340, subp. 3. Availability to the public is indicated by: (1) having an office and assistants; (2) displaying a sign in front of a place of business; (3) holding a business license; (4) having a listing in a business directory or business listing in a telephone directory; or (5) advertising in a newspaper, trade journal, or magazine. *Id.* A worker who is not available to the public indicates an employment relationship.

100. Shipt's Shoppers are not available to the general public. Instead, Shoppers are available to Shipt customers only through Shipt and at Shipt's discretion.

101. As discussed above, Shipt's Shoppers are prohibited from either employing assistants or subcontracting out their work to others. Instead, Shipt characterizes Shopping as a "solo enterprise" where an order assigned by Shipt must be personally completed by the Shopper to whom the order is assigned. (*See* section III.A.ii, *infra*.)

102. Independent contractors often require specialized licenses or registrations from governmental entities to perform their work. For example, an independent contractor electrician must have a license. There are no specialized business licenses required for a Shopper to work for Shipt; instead, Shipt provides the Shoppers with the training and information they need to perform their work. Shipt permits Shoppers to perform services with an ordinary driver's license and personal vehicle. Shoppers are not required to obtain business licenses of any kind, as shopping for and delivering goods is not a distinct trade, occupation, or business that would require such a license. When Shipt does ask Shoppers to make more sensitive purchases, such as those involving alcohol or pharmaceuticals, it has required Shoppers to complete a special certification training course provided by the company.

103. Shipt customers must go directly through Shipt (or Target, Shipt's parent company, for Target-specific orders) to request Shipt's on-demand delivery services. Because Shoppers cannot obtain orders other than through Shipt's App, there is no opportunity or need to maintain an office, display signage, or advertise services in a newspaper, trade journal, or magazine.

104. For example, almost any activity that an independent businessperson might engage in to expand their business is not relevant to a Shopper because Shipt exclusively controls those functions. Shipt—not Shoppers—collects payments from Shipt customers for goods ordered

through the Shipt App. Shipt handles invoicing, claim reconciliation, and resolution of complaints that arise from interactions between its customers and Shoppers. Shipt mediates and resolves conflicts involving its Shoppers in its discretion, including Shopper-customer disputes, allegations of Shopper or customer misconduct, lost items, and Shopper complaints of not receiving the full amount of compensation owed for delivery services provided through the Shipt App.

105. Shipt also controls and limits the information available to its Shoppers and customers through the Shipt App, which Shipt can change at any time without notice. When a Shopper is offered a customer order, Shoppers and customers do not freely negotiate over the terms of the delivery. Instead, Shoppers are paid a set rate for the delivery—determined solely by Shipt—and customers are free to tip Shoppers entirely at their discretion. In fact, Shipt sets its own fees for customer orders. It charges Shipt members a \$7 delivery fee for orders less than \$35, but no delivery fee for orders more than \$35. Shipt also charges a \$9.99 fee for all deliveries to non-members. Shipt also unilaterally marks up prices on items ordered by customers.

106. Shipt does not allow Shoppers to increase their income by building a base of customers who enjoy working with a particular Shopper. In fact, until August 2021, the Shipt App did not allow customers to request particular Shoppers. Shipt also requires Shoppers to communicate with customers through the Shipt App, and its contract prohibits contact between Shoppers and customers “other than for fulfilling delivery services.” This prevents Shoppers and customers from communicating directly and exchanging information. This limits Shoppers’ ability to differentiate themselves and increase their earnings in a way true independent contractors or service-based entrepreneurs typically would.

107. Thus, Shoppers have virtually no availability to the public that is not filtered through and controlled by Shipt.

- iii. Shipt pays Shoppers on a regularly scheduled payday rather than on a per-job basis.

108. Shipt attempts to disguise its payment structure as a per-job payment plan, when in fact it pays its workers more similarly to employees. Independent contractors are paid by the job, while employees are generally paid at stated intervals with no requirement for repayment of the excess drawn over commissions earned. The guarantee of a minimum salary indicates an employment relationship. Minn. R. 5200.0340, subp. 4.

109. Shipt tries to pass off its Shoppers as independent contractors because they have the discretion to accept or reject offered customer orders. However, this masks the true nature of Shopper compensation. Shipt's contract states that Shoppers are paid at a weekly interval by direct deposit. As seen in the Shipt contract shown above, Shoppers are also required to shop at least once per month or face deactivation.

110. Further, until recently, Shipt offered Shoppers a pay range for each order, including a guaranteed minimum payment per order. It characterizes this payment plan as "effort-based" but does not actually disclose to Shoppers how it factors "effort" into an order. For example, according to the technology publication Gizmodo, Shipt's "effort-based" pay plan assigned a 1,400 item order with a \$20 pay for the Shopper.²¹ Shipt continues to use the "effort-based" model but Shoppers report that Shipt recently eliminated the pay range for orders and now offers a set base pay amount for each order.

111. More recently, Shipt has claimed to its Shoppers that its pay algorithm based on "effort" effectively amounts to an hourly rate. Specifically, Shipt claimed that "every shopper across all cities will earn at least \$16 per hour for each offer, based on Shipt's time and effort

²¹ Bryan Menegus, *Shipt's 'Effort-Based' Pay Model Decided a 1,400-item Order Was Worth About \$20*, Gizmodo (Sept. 25, 2020), <https://perma.cc/HP6J-HA4Q>.

estimates.” Shipt characterized this as the “Shipt Earnings Standard, which is a guarantee that no offer will have offer pay that is less than \$16 per hour in every single market across the country, based on Shipt’s time and effort estimates.”

112. Finally, as the Shipt form contract states, the Shipt-Shopper relationship is indeterminate. The contract term is ostensibly for one year, but it automatically renews without action from either party. In other words, once a person becomes a Shopper for Shipt, they remain a Shopper until Shipt fires them or until the Shopper ends the relationship. This demonstrates that a Shopper is not truly employed by Shipt on a per-job basis; instead Shoppers are employees who work for Shipt for an indeterminate term.

- iv. Shoppers are unable to realize a profit or loss based upon their job performance.

113. Independent contractors have an ability to realize a profit or suffer a loss based on how they perform their services. An opportunity for profit or loss is demonstrated by: (1) an ability to hire, direct, and pay assistants; (2) provide their own office, equipment, materials, or other facilities for doing the work; (3) continuing and recurring financial liabilities or obligations relating to the work; (4) profit or loss in the work depends on the relationship or receipts to expenditures; (5) expenses incurred in connection with the work are paid by the individual; (6) specific jobs are performed for prices agreed upon in advance; and (7) performance of the services affects the individual’s business reputation, not the business reputation of those who purchase the services. Minn. R. 5224.0340, subp. 5.

114. As discussed above, Shipt strictly forbids Shoppers from hiring assistants. (*See* section III.A.ii, *infra*.)

115. While Shoppers provide their own vehicles, Shipt’s contract expressly states that it leases the Shopper’s vehicle for the purposes of Shopper work. During those periods where

“Delivery Services” are being performed, “Shipt shall assume complete responsibility for the operation of the vehicle during that time.”²²

e. **Shipt Responsibilities.** Shipt is leasing Your vehicle only during those periods in which You have accepted an Engagement and are actively performing Delivery Services pursuant to this Agreement. During those periods and as required by law, Shipt shall have exclusive possession, control and use of the vehicle, and Shipt shall assume complete responsibility for the operation of the vehicle during that time. This does not mean You transfer physical possession or ownership of Your vehicle to Shipt. This subparagraph is set forth solely to comply with federal and state regulations and shall not be used or construed for any other purposes, including any attempt to classify You as an employee of Shipt. Nothing in this provision is intended to effect whether You or any driver provided by You is an independent contractor or an employee of Shipt. It is the Parties’ intent that You shall be and remain an independent contractor at all times during this Agreement.

116. Shoppers have no continuing financial obligations related to their work as Shoppers. Shoppers are guaranteed minimum pay for each order performed, so they do not have the ability to profit based on the comparison of receipts to expenditures.

117. Shoppers do not negotiate or agree in advance on what they will be paid for orders. They are offered orders with specific pay unilaterally determined by Shipt and have approximately 30 seconds to accept or decline an order. Shipt does not provide Shoppers with any opportunity to counter-offer or bid on customer orders.

118. Similarly, Shipt and its retail partners have control over the prices that customers pay for goods ordered through the Shipt App and collected and paid for by Shoppers. Shoppers have no control over markups on goods. Shipt also has sole control of the pay offered to Shoppers for specific deliveries. Shipt does not share details about its pay algorithm with workers nor does it explain how it calculates pay for each order within its form contracts.

119. Shipt also utilizes competitions and promotional offers for its Shoppers through the Shipt App that incentivize Shoppers to accept more orders and perform more deliveries.

²² While Shipt’s contract contains a clause specifying that its relationship with Shoppers is that of an independent contractor, employers cannot escape their obligations simply by coercing employees to agree to be misclassified as independent contractors. Instead, it is a factual issue decided by weighing the factors laid out by the applicable Minnesota rules.

120. Before August 2021, Shipt customers were unable to request specific Shoppers. As a result, a Shopper's performance of their work for Shipt had no affect on the individual's business reputation. Instead, Shopper performance solely affected Shipt's customer views of Shipt's services, as can be seen through reviews of Shipt through websites such as Google.

121. Beginning in August 2021, Shipt created a "Preferred Shopper" program, where a customer can add a Shopper to a list of "Preferred Shoppers" who receive priority on assignment to a customer's order. Shoppers, however, do not have any input into this process, are not notified by Shipt when they are selected as a Preferred Shopper and are not notified when a customer who has designated a Shopper as a Preferred Shopper has scheduled an order. Additionally, if a customer designates multiple Shoppers as Preferred Shoppers, the customer has no input as to which Preferred Shopper is actually assigned an order. Unlike the book of business an independent contractor could garner through repeat work for multiple clients, the "Preferred Shopper" program keeps Shoppers locked within the Shipt ecosystem and does not facilitate their building of a client base for a delivery business outside of Shipt.

122. The only economic choices a Shopper can make that impacts the Shopper's ability to make money is when and how often to shop for Shipt. This choice alone is not consistent with the level of decision-making normally exercised by an entrepreneur or an individual operating their own independent business. As Rule 5224.0340 states, the "opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss."

123. Further, Shipt functionally limits a Shopper's ability to accept or decline orders offered to the Shopper through its acceptance rate metric and through the provision in its contract that requires Shoppers to shop at least one customer order per month.

124. Thus, Shipt directly shapes its Shoppers' earnings, and thereby effectively prevents Shoppers from attaining the profits and losses that would ordinarily be the hallmarks of running their own, independent businesses.

- v. Shoppers may terminate their working relationship with Shipt at will and without incurring any penalty.

125. A worker's ability to terminate a working relationship with an employer at will and without any liability indicates employment. Minn. R. 5224.0340, subp. 6. A requirement to provide notice isn't relevant for the purposes of this factor. *Id.*

126. Shoppers may stop working for Shipt at any time. They can affirmatively inform Shipt that they wish to terminate the relationship, as per the contract. Alternatively, Shoppers can simply decline to log into the app and accept orders.

127. There is no penalty for a Shopper who chooses to stop working for Shipt, even if the worker quits during an order and never completes it.

128. A Shopper's ability to quit at any time without penalty indicates an employment relationship with Shipt.

- vi. Shopping for Shipt does not require substantial investment on the part of a Shopper.

129. When a worker makes a substantial investment in his or her own facilities, that indicates independent contractor status. Minn. R. 5224.0340, subp. 7. Facilities include equipment or premises necessary for the work. *Id.*

130. Shoppers' "facilities" for the purposes their work for Shipt primarily consist of the facilities of the retail partners where Shoppers do their shopping for Shipt customer orders.

131. According to Shoppers, the majority of Shopper work is done in the stores of Shipt's retail partners where Shipt directs Shoppers to Shop for goods, and without access to a

Shipt retail partner's facilities, a Shopper would be unable to perform work for Shipt. Shoppers indicate that it can take an hour or more to shop for all of the items a customer has ordered. Shoppers also estimate that they spend 50-75% of their time shopping for Shipt doing the physical shopping, as opposed to delivering customer orders in their vehicles. For example, one Shopper estimated that he spent about 45 minutes to 1 hour shopping for an order and spent approximately 25 minutes per order driving to the store and then to the customer's house.

132. As explained above, the primary "equipment," which Shoppers use to complete their work is the Shipt App, which Shipt provides to Shoppers to enable them to perform their work for Shipt.

133. As discussed above, a Shopper is completely unable to perform work for Shipt without the use of the Shipt App, as well as a pre-loaded debit card provided by Shipt to make purchases for Shipt orders. (*See* section III.A.vi, *infra*.)

134. Many individuals own vehicles and smartphones regardless of whether or not they shop for Shipt, as such, they do not purchase the vehicle or smartphone as an investment that allows them to work for Shipt. For these reasons, this factor also favors establishing an employment relationship between Shipt and its Shoppers.

vii. Shipt explicitly takes responsibility for Shopper actions.

135. If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contact with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated. Minn. R. 5224.0340, subp. 8.

136. As seen above, although Shipt requires Shoppers to take some responsibility for their actions while they provide services for Shipt customers, Shipt also "assume[s] complete

responsibility for the operation of” a Shopper’s vehicle while a Shopper performs delivery services. “Delivery Services” means a Shopper’s “provision of shopping, loading and unloading of property into and from [the Shopper’s] vehicle and delivery services via the” Shipt App.

137. Indeed, as discussed above, Shipt controls and directs many Shopper interactions with customers and even masks Shopper identities from customers and vice versa.

138. Shipt also dictates the types of cars that its Shoppers may use for shopping and delivery services, as well as the standards that Shoppers’ vehicles must meet. Shipt can change its vehicle standards at its sole discretion. When Shoppers begin working for Shipt, they must supply Shipt with their driver’s license as well as their auto insurance.

139. Thus, both Shipt and Shoppers bear some responsibility for Shopper behavior during the time that Shoppers perform services for Shipt.

viii. Shipt’s Shoppers are fundamental to the viability of Shipt’s same-day delivery business.

140. When a worker’s services are necessary to the fundamental business purpose for which the organization exists, that factor indicates an employment relationship. Minn. R. 5224.0340, subp. 9.

141. Shipt would not be a functional business without the work of Shoppers.

142. Shipt’s Shoppers are engaged in work that is within the usual course of Shipt’s business: the same-day delivery of groceries and other household goods a Shipt customer orders through Shipt’s online platform.

143. Shoppers provide the on-demand shopping services for Shipt’s customers. They are an integrated and essential part of Shipt’s same-day delivery business. The immediate availability and temporal convenience of on-demand delivery is the fundamental service that Shipt sells to its customers.

144. Shipt is financially integrated with and dependent on its Shoppers. Shipt only generates income for its same-day delivery business if its Shoppers actually shop for and transport goods to its customers. Shipt sets the markup for goods that its customers pay and the rate of pay Shoppers receive. It collects the entire payment from customers and then disburses some percentage of that payment to its Shoppers as compensation for providing same-day delivery services to its customers while keeping the remainder of the delivery fee and product markups for itself. Without Shopper labor to provide Shipt's services, Shipt's on-demand delivery services would not exist.

145. Far from merely connecting customers with Shoppers, Shipt is deeply involved in how its same-day shopping and delivery services are provided, presumably to burnish Shipt's own brand by ensuring that services are of a uniform quality. It controls customer access to its services. It controls Shopper access to providing delivery services to Shipt customers. Shipt prescribes qualifications for its Shoppers, determines what customer orders Shoppers receive, and designs and monitors the service that its Shoppers must provide to each customer. Shipt sets the price for goods ordered through its service, incentivizes particular types of orders, and uses the Shipt App to distribute orders to Shoppers at its discretion. Specifically, Shipt states that its "prices will vary slightly from in-store prices to help cover the costs of picking, packing, and processing. For example, a loaf of Wonderbread costs \$2.29 in the store and \$2.59 to have it delivered to your door using Shipt."²³ In other words, Shipt explicitly acknowledges that its business is not just as a technological platform, but a grocery delivery business whose activities include "picking, packing, and processing" items.

²³ Shipt, *How are your prices determined*, <https://help.shipt.com/pricing/how-are-your-prices-determined>.

146. Shipt engages in extensive data collection and surveillance of its Shoppers, tracking Shopper hours, movements, quality of services, percentage of offered orders accepted, as well as other metrics from when Shoppers log onto the Shipt App until they log off. Shipt uses this detailed data to monitor and make disciplinary decisions regarding Shoppers as well as for other business purposes. Shipt’s business model begins and ends with Shoppers.

147. Shipt publicly holds itself out as a delivery company in the business of delivering goods to customers so that they do not have to go and shop for the good themselves. Shipt advertises that, “We’re more than delivery.” On its Facebook page, Shipt also states that “Shipt is a grocery delivery service that lets members order groceries and alcohol from their local store for delivery right to their door (in as little as one hour!).” Shipt’s website advertises an identical claim:

We’re more than delivery.

We go beyond bringing the things people need – to building positive and personal relationships that last. Whether it’s taking the time to get to know our members, coming together as a team to make shoppers feel extra appreciated, or authentically representing ourselves and our partners — we spark connections that show every person counts. That’s how a simple delivery can feel like so much more.

148. On its website, Shipt claims that “People are the magic behind Shipt,” highlighting the stories of numerous Shoppers and painting them as integral members of Shipt’s mission”²⁴

²⁴ Shipt, *About*, <https://www.shipt.com/about/>.

People are the magic behind Shipt.

Passionate. Creative. Caring. Flat-out fun. Meet the team who make up Shipt. From music lovers, to skydivers, to culinary mavens, to Dungeon Masters, you'll find some of the most authentic and diverse people around. See some of the members of our extended community below and get to know the fearless leaders of Shipt.

[Meet our leadership team](#)



"My best shopping experience to date was helping a woman who was going through cancer treatment. I've experienced that in my family and was able to share encouragement with her."

Lashanda E.
SHIPT SHOPPER



149. Indeed, Shipt encourages the identification of Shoppers with Shipt. For example, Shipt provides Shoppers with Shipt shirts and face masks at no charge and encourages Shoppers to wear Shipt clothing when handling orders. Shoppers thus do not provide greater visibility of their own services by contracting with Shipt; instead, their work for Shipt simply serves to advertise Shipt's own services and only benefit Shipt's reputational interests.

150. Recognizing how crucial Shoppers are to its business, Shipt does everything in its power to make it clear to customers that it has control over its Shoppers and how they interact with customers. For example, Shipt represents to its customers that each Shopper “must successfully complete a background check before they are approved to shop on” the Shipt App.²⁵

151. Shipt also advertises to customers that it purposefully keeps customer payment information away from its Shoppers: “This means Shoppers never have access to a member’s payment information.”²⁶

152. Shipt also explicitly highlights that it does not allow Shoppers to directly contact customers. “Shipt leverages technology that permits a member and Shopper to communicate via text or phone call without sharing telephone numbers. Through this process, Shipt utilizes a “masked number” to ensure that neither party’s actual phone number” is shared.²⁷ It tells customers that they “should never be asked by a Shopper to provide your actual number for Shipt-related reasons. We recommend that you do not provide your telephone number to another person while using Shipt.”²⁸ In other words, Shipt Shoppers are not provided with the type of customer information that they would need to actually run their own grocery delivery businesses.

IV. SHIPT’S UNLAWFUL MISCLASSIFICATION OF SHOPPERS HAS RESULTED IN THE VIOLATION OF NUMEROUS MINNESOTA LAWS THAT PROTECT THE RIGHTS AND WELFARE OF EMPLOYEES.

153. By misclassifying its Shoppers, Shipt has devised an unlawful business model that denies Shoppers the protections and benefits they have earned and are entitled to receive as

²⁵ Shipt, *Trust and Safety*, <https://www.shipt.com/trustandsafety/>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

employees. Through this misclassification, Shipt has gained an unlawful and unfair competitive advantage in the marketplace. Shipt's misclassification of its Shoppers hurts vulnerable Shoppers—especially during the COVID-19 pandemic—and evades Shipt's responsibility to contribute its share as employers into Minnesota's social insurance programs. Shipt's actions also harm taxpayers who are often called upon to address negative consequences to Shoppers and their families of Shipt's unlawful employment practices.

154. Shipt's misclassification of its Shopper workforce has allowed it to gain an unlawful competitive advantage over its competitors by circumventing the protections and benefits that Minnesota law requires employers to provide to their employees. The laws violated by Shipt include, but are not limited to, requirements related to minimum wage, overtime wages, wage statements, sick and safe leave in certain local jurisdictions, and social insurance programs.

A. Shipt's Wage Payment Practices Results in Shoppers Sometimes Receiving Hourly Pay Below Minimum Wage.

155. Minnesota Statutes, section 177.24, requires Shoppers to be paid the applicable state or local minimum wage for each hour worked, regardless of the compensation formula or method used.

156. In Minnesota, the state minimum wage for large employers was \$9.86 per hour as of January 1, 2019, and rose on the first day of each year to \$10.00, \$10.08, until its current rate of \$10.33 on January 1, 2022. In the city of Minneapolis, the local minimum wage is \$14.50 per hour, while in the city of Saint Paul, the local minimum wage is \$12.50 per hour.

157. Shoppers report that they are often assigned one order for each hour they are on the schedule, and many report that the process of driving to, Shopping for, and delivering an order can take an hour or more on average.

158. Shipt does not guarantee its Shoppers the minimum wage under relevant state and local laws. According to Shipt data obtained by the Attorney General, orders can pay as little as \$4 and the average order payout for Shipt’s designated “Minneapolis” area was approximately \$12.50 in the spring and early summer of 2020. Because orders often take at least an hour for Shipt workers to complete, this amount is below the applicable local minimum wage.

159. Shipt also does not pay its Shoppers for all hours worked. Examples of such unpaid time includes, but is not limited to, time spent waiting in line to pay at Shipt retail partners, time spent refueling, time spent maintaining vehicles according to Shipt’s standards, time spent driving to and from Shipt retail partner locations, and time spent logged on and monitoring the Shipt App for customer orders to be offered. Shipt cannot provide delivery services to its customers without Shopper performance of these tasks.

160. Shipt has failed to meet its minimum wage obligations to its Shoppers, who are employees for purposes of Minnesota’s wage and hour laws. For example, one Shopper estimated that she made approximately \$8-9 per hour while working for Shipt. Another Shopper estimates that, for scheduled orders offered by Shipt, without tips, he only makes \$6-10 per order.

B. Some Shipt Shoppers Who Devote Long Hours to Shipt Work Are Deprived of Overtime Wages Required By Law.

161. Minnesota Statutes section 177.25, subdivision 1 requires that employees are paid the applicable overtime rate of pay—one-and-one-half times the Shoppers’ regular rate of pay—for all hours worked in excess of forty eight hours per week under Minnesota law.

162. However, Shipt does not pay its Shoppers overtime wages as required by law, despite the fact that some Shoppers routinely work overtime to ensure that Shipt has a steady and constant supply of Shoppers for deliveries on which its business depends. Indeed, some Shoppers indicate they spent at least 50-60 hours in some weeks performing work for Shipt.

163. Shipt has failed to meet its overtime wage obligations to its Shoppers, who are employees for purposes of Minnesota's wage and hour laws.

C. Shipt Has Failed to Provide Wage Statements to its Employees as Required By Law.

164. Minnesota Statutes section 181.032 requires that Shoppers receive employment notices, including an initial notice upon hiring, complete itemized wage statements, and supplementary notices when the terms of employment changes.

165. Shipt does not provide Shoppers with any wage notices and, in fact, is wholly opaque when it comes to how it calculates Shopper compensation. Its "effort-based" pay algorithm is a black box to Shoppers and Shipt's description of the factors that make up the algorithm are not sufficient to comply with Minnesota law.

166. Shipt has failed to meet the notice requirements owed to its Shoppers, who are employees for purposes of Minnesota's wage and hour laws.

D. Shipt Does Not Provide Sick and Safe Time Wages Required by Local Ordinances to its Shoppers.

167. The cities of Minneapolis and Saint Paul require employers to provide employees with paid sick and safe time for hours worked within those city boundaries.

168. Shipt's Shoppers do not accrue the paid sick and safe time benefits when they perform work for Shipt within the boundaries of Minneapolis or St. Paul.

169. Shipt has failed to meet its sick and safe time obligations with respect to its Shoppers, who are employees for purposes of the cities' paid sick and safe time ordinances.

E. Shipt's Misclassification Scheme Deprives Shoppers of Access to Social Insurance Programs to Which They Are Entitled.

170. Minnesota law requires Shipt to remit contributions and take other mandatory actions under the Minnesota's social insurance programs, including, but not limited to, unemployment insurance and workers' compensation insurance.

171. These programs are intended to provide wage replacement and other benefits in the event an employee loses a job, is hurt on the job, or is otherwise unable to work.

172. Shipt has failed to meet these obligations with respect to its Shoppers, who are employees for purposes of Minnesota's social insurance programs. Shipt has instead shifted the burden of workers' compensation insurance onto its Shoppers through its form contract, which requires Shoppers to maintain their own workers' compensation insurance.

**COUNT I
MISREPRESENTATION OF EMPLOYMENT RELATIONSHIP PROHIBITED
MINN. STAT. § 181.722, SUBD. 1**

173. The State re-alleges all prior paragraphs of this Complaint.

174. Minnesota Statutes section 181.722, subdivision 1 prohibits an employer from misrepresenting the nature of its employment relationship with its employees to any federal, state, or local government unit; to other employers; or to its employees.

175. An employer misrepresents the nature of its employment relationship with its employees if it makes any statement regarding the nature of the relationship that the employer knows or has reason to know is untrue and if it fails to report individuals as employees when legally required to do so. Minn. Stat. § 181.722, subd. 1.

176. Shipt has repeatedly informed Shoppers, including but not limited to in its form contracts, that they are independent contractors despite having reason to know that such statements are false and untrue. As discussed above, Shipt has reason to know that it has misclassified its

employees according to Minnesota law. Shipt's parent company, Target, has acknowledged as much in its Federal Securities and Exchange 10-K Report, where it states that "Our failure to comply with federal, state, local, and international laws . . . could increase our costs, reduce our margins, and lower our sales."

177. Shipt has also repeatedly failed to report Shoppers as employees to numerous state agencies when legally required to do so.

178. Minnesota Statutes section 268.044 requires employers to provide wage detail reports to the Minnesota Department of Employment and Economic Development for all employees. Employers who fail to report employees are subject to an administrative service fee equal to 2% of the employee's total wages for each employee for whom the information is completely missing. Minn. Stat. § 268.044, subd. 3. Because it classifies its Shoppers as independent contractors, on information and belief, Shipt has failed to provide wage detail reports to the Department of Employment and Economic Development for all employees.

179. Under Minnesota's Workers' Compensation Act, employers are required to have workers' compensation insurance to cover potential claims of employees, either through an insurance carrier or by having a qualifying self-insurance program authorized by written order of the Minnesota Department of Commerce. Minn. Stat. § 176.181, subd. 2. Target, of which Shipt is a wholly-owned subsidiary, is self-insured against workers' compensation claims.²⁹ Self-insurers are required by law to report to the Minnesota Department of Commerce various information, including payroll, by April 1 of each year. Minn. R. 2780.0500. Because the Shoppers are misclassified as independent contractors, on information and belief, Shipt does not

²⁹ [Target Corporation 2021 Form 10-K](#) at 30.

report them on its payroll, and Shipt's independent contractor agreement with Shoppers places the burden on Shoppers to maintain workers' compensation insurance.

180. Employers are required to take a withholding tax out of their employees' wages. Minn. Stat. § 290.92, subd. 2a(1). Based on the allegations above, Shipt Shoppers should have been classified as employees for withholding tax purposes. Shipt's classification of its Shoppers as independent contractors thus resulted in Shipt failing to report and withhold these wages to the Minnesota Department of Revenue, provide accurate quarterly returns to the Department of Revenue, or provide accurate wage statements and tax forms to Shoppers.

181. The Attorney General has the authority to enforce section 181.722 pursuant to Minnesota Statutes sections 181.1721 and 8.31.

182. Shipt's conduct, practices, and actions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 181.722, subd. 1.

COUNT II
AGREEMENTS RESULTING IN EMPLOYEE MISCLASSIFICATION PROHIBITED
MINN. STAT. § 181.722, SUBD. 2

183. The State re-alleges all prior paragraphs of this Complaint.

184. Minnesota Statutes section 181.722, subdivision 2 prohibits an employer from requiring or requesting any employee to enter into any agreement, or sign any document, that results in misclassification of the employee as an independent contractor or otherwise does not accurately reflect the employment relationship with the employer.

185. Shipt requires all Shoppers to sign an agreement stating that "the relationship between the parties to this Agreement"—Shipt and the Shopper—"is solely that of independent contractors." The agreement further claims that the parties "expressly agree" that "this Agreement

is neither an employment agreement nor one that creates an employment relationship between SHIPT and You.”

186. This agreement does not accurately reflect the employment relationship between Shipt and its Shoppers, and results in the misclassification of Shoppers as independent contractors when they should be classified as employees under Minnesota law.

187. The Attorney General has the authority to enforce section 181.722 pursuant to Minnesota Statutes sections 181.1721 and 8.31.

188. Shipt’s conduct, practices, and actions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 181.722, subd. 2.

COUNT III
MINIMUM WAGE VIOLATIONS UNDER THE MINNESOTA FAIR LABOR
STANDARDS ACT
MINN. STAT. § 177.24

189. The State re-alleges all prior paragraphs of this Complaint.

190. The Minnesota Fair Labor Standards Act (“MFLSA”), Minnesota Statutes section 177.24, requires employers to pay employees at least the minimum wage for all hours worked.

191. Section 177.24 sets out a higher wage for “large employers,” meaning employers whose business done is not less than \$500,000.

192. Shipt is a “large employer” for the purposes of section 177.24.

193. Starting August 1, 2016, the minimum wage in Minnesota for large employers was \$9.50 an hour, subject to annual adjustment for inflation. Minn. Stat. § 177.24, subd. 1(b)(1), (f). Minnesota’s large-employer minimum wage was increased to \$9.65 an hour in 2019, \$10.00 an hour in 2020, \$10.08 an hour in 2021, and is currently \$10.33 an hour in 2022.

194. Section 177.24, subdivision 4 also requires employers to reimburse employees for travel expenses if those expenses would bring the employee’s average rate below the minimum

wage and are unrelated to an employee's travel from the employee's residence and place of employment.

195. No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the minimum wage. Minn. Stat. § 177.24, subd. 2.

196. Shipt's misclassification of its Shoppers as independent contractors has caused its Shoppers to routinely receive no pay for some compensable work time and sometimes receive less than the applicable minimum wage for work they perform for Shipt. The tips received by Shoppers do not remedy Shipt's failure to pay Shoppers the applicable minimum wage. Shipt willfully misclassified its Shopper workforce as independent contractors.

197. The Attorney General has the authority to enforce section 177.24 pursuant to Minnesota Statutes sections 177.45 and 8.31.

198. Shipt's conduct, practices, and actions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 177.24.

COUNT IV
VIOLATIONS UNDER THE PAYMENT OF WAGES ACT
MINN. STAT. § 181.101, 181.13, 181.14

199. The Payment of Wages Act ("PWA"), Minnesota Statutes sections 181.01–181.1721, requires employers to pay employees all the wages owed to them or be subject to back wages, liquidated damages, and civil penalties.

200. Minnesota Statutes section 181.101 requires employers to pay employees all wages owed under any statute, regulation, rule, ordinance, or other legal authority and provides employees with a substantive right to those wages. Minnesota Statutes sections 181.13 and 181.14 require employers to promptly provide employees with earned, unpaid wages after the employee is discharged, quits, or resigns.

201. The City of Minneapolis Ordinance, Title 2, Chapter 40, article 390 (“Minneapolis Minimum Wage Ordinance”) sets forth the minimum wage for work performed in the City of Minneapolis. On July 1, 2018, the applicable minimum wage for large employers was \$11.25. On July 1, 2019, the minimum wage increased to \$12.25. On July 1, 2020, the minimum wage increased to \$13.25. On July 1, 2021, the minimum wage increased to \$14.25.

202. Gratuities cannot be credited, applied, or utilized towards payment of Minneapolis’s minimum wage requirement. Minneapolis, Minn., Code Title 2, § 40.400.

203. The Minneapolis Minimum Wage Ordinance provides a substantive right to the minimum wages set out in the ordinance, including both administrative remedies and a private cause of action for aggrieved employees.

204. City of Minneapolis Ordinance Title 2, Chapter 40, article 330 defines a “large business” as one that has more than 100 employees.

205. Shipt is a “large business” for the purpose of Minneapolis’ Minimum Wage Ordinance.

206. Minimum wages under the Minneapolis Minimum Wage Ordinance are collectible under Minnesota Statutes sections 181.101, 181.13, and 181.14. The Attorney General has the authority to enforce each of these statutes through Minnesota Statutes sections 181.1721 and 8.31.

207. The City of Saint Paul Ordinance chapter 224 (“Saint Paul Minimum Wage Ordinance”) sets forth the minimum wage for the City of Saint Paul. On July 1, 2020, the applicable minimum wage was \$11.50. On July 1, 2021, the applicable minimum wage was \$12.50.

208. Gratuities cannot be credited, applied, or utilized towards payment of St. Paul’s minimum wage requirement. St. Paul, Minn., Code Part II, Title XXIII, § 224.04(a).

209. The Saint Paul Minimum Wage Ordinance provides a substantive right to the minimum wages set out in the ordinance, including an administrative process by which a complainant can seek back wages owed.

210. City of Saint Paul Ordinance section 224.01 defines a “large business” as one with more than 100 employees.

211. Shipt is a “large business” for the purpose of Saint Paul’s Minimum Wage Ordinance.

212. Minimum wages under the Saint Paul Minimum Wage Ordinance are collectible under Minnesota Statutes sections 181.101, 181.13, and 181.14. The Attorney General has the authority to enforce each of these statutes through Minnesota Statutes sections 181.1721 and 8.31.

213. Shipt’s misclassification of its Shoppers as independent contractors has caused its Shoppers to routinely receive no pay for some compensable work time and sometimes receive less than the applicable minimum wage for work they perform for Shipt. Shipt willfully misclassified its Shopper workforce as independent contractors.

214. Shipt’s conduct, practices, and actions described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 181.101, 181.13, and 181.14.

COUNT V
OVERTIME VIOLATIONS OF THE MINNESOTA FAIR LABOR STANDARDS ACT
MINN. STAT. §§ 177.25

215. The State re-alleges all prior paragraphs of this Complaint.

216. The MFLSA, Minn. Stat. § 177.25, requires employers to pay employees overtime wages of at least 1.5 times their regular rate of pay after 48 hours of work during a workweek.

217. The Attorney General has the authority to enforce Minn. Stat. § 177.25 pursuant to Minn. Stat. §§ 177.45 and 8.31.

218. Shipt Shoppers who worked more than 48 hours in a workweek were not paid the overtime wages owed under the MFLSA because Shipt misclassified its Shopper workforce as independent contractors. Shipt willfully misclassified its Shopper workforce as independent contractors.

219. The Attorney General has the authority to enforce Minn. Stat. § 177.25 pursuant to Minn. Stat. §§ 177.45 and 8.31.

220. Shipt's conduct, practices, and actions described in this Complaint regarding failure to pay overtime wages constitute multiple, separate violations of Minnesota Statutes section 177.25.

COUNT VI
NONPAYMENT OF SICK AND SAFE TIME UNDER THE PAYMENT OF WAGES
ACT
MINN. STAT. § 181.101

221. The State re-alleges all prior paragraphs of this Complaint.

222. Minnesota Statutes section 181.101 requires employers to pay employees all wages owed under any statute, rule, regulation, rule, ordinance, or other legal authority and provides employees with a substantive right to those wages. Minn. Stat. § 181.101(a).

223. The City of Minneapolis Ordinance, Title 2, Chapter 40, article 210 ("Minneapolis Sick and Safe Time Ordinance") sets forth required sick and safe time wages employees are entitled to receive for work performed in the City of Minneapolis.

224. Employees accrue one hour of sick and safe time for every thirty hours worked within the boundaries of the city of Minneapolis, up to a maximum of 48 hours per year.

225. The Minneapolis Sick and Safe Time Ordinance provides a substantive right to the sick and safe time wages set out in the ordinance.

226. Had Shipt correctly classified its Shoppers as employees, Shoppers who work within the boundaries of Minneapolis would have been entitled to sick and safe time wages under the Minneapolis Sick and Safe Time Ordinance.

227. The sick and safe time wages owed to employees are collectible through Minn. Stat. § 181.101.

228. The Attorney General has the authority to enforce Minn. Stat. § 181.101 pursuant to Minn. Stat. §§ 181.1721 and 8.31.

229. Shipt Shoppers who worked within the boundaries of Minneapolis did not receive sick and safe time wages. Shipt Shoppers who were misclassified as independent contractors are owed sick and safe time wages as a result of Shipt's misclassification. Shipt has willfully classified its Shopper workforce as independent contractors.

230. Shipt's conduct, practices, and actions described in this Complaint regarding failure to pay sick and safe time wages constitute multiple, separate violations of Minnesota Statutes section 181.101.

COUNT VII
FAILURE TO PROVIDE EMPLOYMENT NOTICE UNDER THE PAYMENT OF
WAGES ACT
MINN. STAT. § 181.032

231. The State re-alleges all prior paragraphs of this Complaint.

232. Minnesota Statutes section 181.032(d) requires Minnesota employers to provide employees a written notice containing certain information, including the rate of pay and basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other method and the specific application of any additional rates.

233. Shipt does not provide Shoppers with the employee notice required by law.

234. Specifically, Shipt does not provide Shoppers with sufficient information to determine how Shipt calculates the pay that Shoppers are owed for a particular order. Because Shoppers should be classified as employees, the failure to provide this information at the start of employment is a violation of section 181.032(d).

235. The Attorney General has the authority to enforce Minn. Stat. § 181.032 pursuant to Minn. Stat. §§ 181.1721 and 8.31.

236. Shipt's conduct, practices, and actions described in this Complaint regarding failure to provide notice of employment constitute multiple, separate violations of Minnesota Statutes section 181.032(d).

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to award judgment against Defendant Shipt, as follows:

1. Declaring that Shipt's conduct described in this Complaint constitutes a misclassification of Shoppers as independent contractors when they are legally employees, and permanently enjoining Shipt from continuing in the acts, practices, and conduct of misclassifying its Shoppers as independent contractors;
2. Declaring that Shipt's acts described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 177.24, 177.25, 181.032, 181.101, 181.13, and 181.14 by misclassifying its Shopper workforce as independent contractors instead of employees;
3. Permanently enjoining Shipt and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or

participation with them from engaging in the misclassification of workers under Minnesota law;

4. Directing that the court's findings of fact and conclusions of law be transmitted to the Minnesota Department of Labor and Industry, who shall then report the finding to relevant state and federal agencies, including the Minnesota Department of Commerce, the Minnesota Department of Employment and Economic Development, the Minnesota Department of Revenue, the Internal Revenue Service, and the United States Department of Labor, pursuant to Minnesota Statutes section 181.722, subdivision 5;
5. Awarding judgment against Shipt for restitution and/or disgorgement under the *parens patriae* doctrine, the general equitable powers of the Court, Minnesota Statutes section 8.31, and any other authority, for all persons injured by Shipt's acts as described in this Complaint, including restitution and/or disgorgement for all unpaid minimum wages, overtime wages, and sick and safe time wages;
6. Awarding judgment against Shipt for back pay, gratuities, and compensatory damages for misclassified workers injured by Shipt's misconduct, less any amount actually paid to the worker by Shipt, along with judgment against Shipt in an additional, equal amount as liquidated damages, pursuant to Minnesota Statutes section 177.27, subdivisions 7 and 8, and as otherwise provided by law;
7. Awarding judgment against Shipt for civil penalties of up to \$25,000, pursuant to Minnesota Statutes, section 8.31, subdivision 3, for each separate violation of Minnesota law;

8. Awarding the State its costs, including costs of investigation, attorneys' fees, as authorized by Minnesota Statutes, section 8.31, subd. 3a; and
9. Granting such further relief as provided by law or equity or as the Court deems appropriate and just.

Dated: October 27, 2022

Respectfully submitted,

KEITH ELLISON
Attorney General

JAMES W. CANADAY
Deputy Attorney General
State of Minnesota

/s/ Jonathan D. Moler

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MINN. STAT. § 549.211**ACKNOWLEDGMENT**

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2012).

Dated: October 27, 2022

Respectfully submitted,

/s/ Jonathan D. Moler

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