

File No. 240579

Committee Item No. 9

Board Item No. 7

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: June 20, 2024

Board of Supervisors Meeting:

Date: July 2, 2024

### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU - FY2022-2024 - Clean
- MOU - FY2022-2024 - Redline
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract / DRAFT Mills Act Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

### OTHER

- Executed Tolling Agreement 052224
- CAT Ltr 052224
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Monique Crayton

Date: June 14, 2024

Prepared by: Monique Crayton

Date: June 28, 2024

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Tolling Agreement - Maplebear, Inc. - Gross Receipts, Homelessness Gross Receipts, and  
2 Payroll Expense Tax Dispute - \$2,204,716]

3 **Resolution approving a Tolling Agreement to extend the statute of limitations for**  
4 **Maplebear, Inc. (doing business as Instacart) to bring potential litigation against the**  
5 **City and County of San Francisco for a refund of \$2,204,716 of gross receipts,**  
6 **homelessness gross receipts, and payroll expense taxes to allow for possible**  
7 **resolution of the matter without litigation.**

8  
9 WHEREAS, Maplebear, Inc. has paid gross receipts and homelessness gross receipts  
10 taxes for the 2019 and 2021 tax years and payroll expense taxes for the 2019 tax year; and

11 WHEREAS, On February 28, 2023, Maplebear, Inc. filed claims for refund totaling  
12 \$2,204,716 (the "Claims"), alleging that it has overpaid its gross receipts and homelessness  
13 gross receipts taxes for the 2019 and 2021 tax years and payroll expense taxes for the 2019  
14 tax year; and

15 WHEREAS, To give Maplebear, Inc. and the City more time to resolve the Claims  
16 without potentially unnecessary litigation, the City and Maplebear, Inc. have agreed that the  
17 limitations period for any potential litigation related to the Claims shall be extended under the  
18 terms set forth in the Tolling Agreement on file with the Clerk of the Board of Supervisors in  
19 File No. 240579; and now, therefore, be it

20 RESOLVED, That the Board of Supervisors authorizes the City to agree that the  
21 statute of limitations for Maplebear, Inc. to file an action against the City with respect to the  
22 Claims shall be extended to and including December 2, 2024, under the terms set forth in the  
23 Tolling Agreement.

24  
25 n:\taxclm\cl2024\23-01512\01760099.docx

## **TOLLING AGREEMENT**

This tolling agreement ("Agreement") is entered into by and between Maplear, Inc. (doing business as Instacart), a Delaware corporation, on behalf of itself, its subsidiaries, successors and assigns, and each of them, if any (hereinafter referred to individually and collectively as "CLAIMANT"), the City and County of San Francisco, together with its elective and/or appointive boards, agents, servants, employees, consultants, departments, commissioners, and officers (hereinafter referred to individually and collectively as "CITY"), hereinafter each referred to as a "Party" and collectively as the "Parties."

### **I. Tolling Provision.**

The statute of limitations for CLAIMANT to file an action in San Francisco Superior Court for a refund of CLAIMANT's payment of payroll expense tax, gross receipts tax, homelessness gross receipts tax, and business registration fees, and related penalties, interest, and fees, under San Francisco Business and Tax Regulations Code Articles 6, 12, 12-A-1, and 28 and Former Article 12-A for the tax years, amounts, and on the grounds set forth in CLAIMANT's claims for refund filed on February 28, 2023, San Francisco Claim Numbers 23-01512 to 23-01517 and 23-01520 to 23-01523, attached hereto as Exhibit A, is hereby extended to and including December 2, 2024.

### **II. Modification.**

This Agreement can be extended or otherwise modified only in writing signed by the Parties.

### **III. Sole Purpose of the Agreement; No Effect on Liability.**

Except as specifically stated in this Agreement, this Agreement shall in no way affect, waive, or limit any rights, claims, or defenses of any of the Parties to this Agreement, other than the statute of limitations as described above, if any. This Agreement shall not be deemed to constitute an admission of any liability by any of the Parties. This Agreement cannot be introduced into evidence in any action in court, arbitration, or mediation, except to enforce its terms.

### **IV. Applicability.**

This Agreement shall bind and benefit each of the Parties and their respective predecessors, successors, and assigns, as applicable.

### **V. Governing Law.**

This Agreement shall be governed by and interpreted pursuant to the law of the State of California without regard to California's choice of law provisions.

### **VI. Severability of Provisions.**

If any provision of this Agreement is found to be unenforceable or unlawful, the remaining provisions of this Agreement shall remain fully effective and enforceable.

### **VII. Counterparts.**

This Agreement may be signed in counterparts and each signed counterpart shall be deemed an original document, but all of which together shall constitute one and the same instrument.

**VIII. Entire Agreement.**

This Agreement shall constitute the entire understanding between the Parties concerning the subject matter of this Agreement. This Agreement is the entire agreement of all who are bound by it with respect to the matters addressed herein.

**IX. Understanding and Interpretation.**

Each Party or other person bound by this Agreement has read and understood this Agreement and so warrants. Each Party or other person bound by this Agreement has received independent legal advice about the advisability of signing this Agreement. All Parties to this Agreement agree that the rule of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in interpretation of any provision of this Agreement. Headings in this Agreement are inserted for convenience only and shall not constitute part hereof for any purpose whatever.

**X. Binding Agreement.**

Each person signing this Agreement warrants that he or she has authority to bind the entity on whose behalf he or she signs. This Agreement shall be binding upon and inure to the benefit of each Party signing it and their respective successors, assigns, and legal representatives.

**XI. Required Approval.**

CLAIMANT acknowledges that this Agreement is contingent upon the approval of the Board of Supervisors by resolution. This Agreement shall not be effective or binding as against either Party unless and until such approval has been obtained.

**XII. Termination.**

Neither Party shall have the right to terminate this Agreement. Notwithstanding, to the extent this Agreement is terminated for any reason, the extension of the statute of limitations in paragraph 1 of this Agreement shall survive any termination of this Agreement and remain in full force and effect.

Dated: May 22, 2024

MAPLEBEAR, INC.  
By:   
Claimant

Name: Mike Wittig  
Title: VP, Tax

CITY AND COUNTY OF SAN FRANCISCO  
DAVID CHIU, CITY ATTORNEY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Yvonne Meré  
Chief Deputy City Attorney

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MAPLEBEAR, INC.

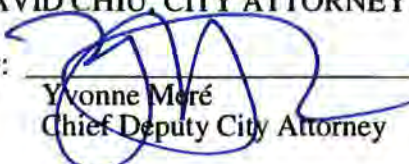
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Claimant

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO  
DAVID CHIU, CITY ATTORNEY

Dated: 5.22.2024

By:  \_\_\_\_\_  
Yvonne Moré  
Chief Deputy City Attorney

**Exhibit A - REDACTED**

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU  
City Attorney

OFFICE OF THE CITY ATTORNEY

KERNE H. O. MATSUBARA  
Deputy City Attorney

Direct Dial: (415) 554-4631  
Email: kerne.matsubara@sfcityatty.org

May 22, 2024

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Re: RESOLUTION AND TOLLING AGREEMENT: Claim Nos. 23-01512 to  
23-01517 and 23-01520 to 23-01523 - Maplebear, Inc. - Gross Receipts,  
Homelessness Gross Receipts, and Payroll Expense Tax Dispute

Dear Ms. Calvillo:

Attached please find electronic copies of a proposed resolution and tolling agreement regarding the above referenced claims for Board of Supervisors approval.

The following is a list of accompanying documents:

- Resolution
- Tolling Agreement

The following person may be contacted regarding this matter:

Kerne H. O. Matsubara  
Deputy City Attorney  
(415) 554-4631  
Kerne.Matsubara@sfcityatty.org

Very truly yours,

DAVID CHIU  
City Attorney

A handwritten signature in blue ink that reads "Kerne H. O. Matsubara".

Kerne H. O. Matsubara  
Deputy City Attorney