

and conclusions of law:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction over all parties hereto; the Complaint states a claim upon which relief may be granted against Defendants John Doe 1-2 (“Defendants”) under the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the Lanham Act (15 U.S.C. §§ 1114, 1125), common law of trespass to chattels, unjust enrichment and conversion, and intentional interference with contractual relationships.

2. There is good cause to believe that Defendants have engaged in and are likely to engage in acts or practices that violate the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the Lanham Act (15 U.S.C. §§ 1114, 1125), and constitute trespass to chattels, unjust enrichment, conversion, and intentional interference with contractual relations, and that Instacart is, therefore, likely to prevail on the merits of this action.

3. Instacart owns the registered trademarks Instacart, Instacart’s carrot logo, and other trademarks used in connection with its services, software and products. There is good cause to believe that, unless Defendants are restrained and enjoined by Order of this Court, immediate and irreparable harm will result from the Defendants’ ongoing violations of the Lanham Act.

4. The evidence set forth in Instacart’s Brief in Support of *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction (“TRO Application”), and the accompanying declarations and exhibits, demonstrates that Instacart is likely to prevail on its claim that Defendants have engaged in violations of the foregoing law by:

- a. intentionally accessing proprietary code, authentication tokens and order batch data residing in protected computers and computer networks of Instacart, without authorization or exceeding authorization;
- b. deploying Internet domains, IP addresses and e-commerce facilities to

establish an infrastructure by which means Defendants conduct illegal activities, including unauthorized access to computers and networks, creating a counterfeit Instacart application, and unauthorized access to proprietary code, authentication tokens and order batch data; and

- c. creating a counterfeit Instacart application that reproduces Instacart's trademarks.

5. There is good cause to believe that if such conduct continues, irreparable harm will occur to Instacart, Instacart's Shoppers, and the public. There is good cause to believe that the Defendants will continue to engage in such unlawful actions if not immediately restrained from doing so by Order of this Court.

6. There is good cause to believe that immediate and irreparable damage to this Court's ability to grant effective final relief will result from the continued operation, sale, transfer, or other disposition or concealment by Defendants of the counterfeit software at issue, related software distribution facilities and related discoverable evidence of Defendants misconduct that are hosted at, operate through or otherwise available through the Internet domains, the IP address and an account with an e-commerce platform identified in **Appendix A**, if Defendants receive advance notice of this action. Based on the evidence cited in Instacart's TRO Application and accompanying declarations and exhibits, Instacart is likely to be able to prove that:

- a. Defendants are engaged in activities that directly violate United States law and harm Instacart, Instacart's Shoppers, and the public;
- b. Defendants have continued their unlawful conduct despite the clear injury to the foregoing interests;
- c. Defendants are likely to continue their unlawful conduct and are likely to delete or to relocate the counterfeit software at issue, related software distribution facilities and related discoverable evidence disseminated through or available at the Internet domains, IP address and e-commerce account listed in **Appendix A**, thereby permitting them to continue their illegal acts; and
- d. Defendants are likely to warn their associates engaged in such activities if

informed of Instacart's action.

7. Instacart's request for this emergency *ex parte* relief is not the result of any lack of diligence on Instacart's part, but instead based upon the nature of Defendants' unlawful conduct. Therefore, in accordance with Fed. R. Civ. P. 65(b), 15 U.S.C. § 1116(a) and 28 U.S.C. § 1651(a), good cause and the interest of justice require that this Order be Granted without prior notice to Defendants, and accordingly, Instacart is relieved of the duty to provide Defendants with prior notice of Instacart's motion.

8. There is good cause to believe that Defendants have specifically directed their activities to Instacart's servers located in Virginia and the Eastern District of Virginia. There is further good cause to believe that Defendants have engaged in illegal activity using the infrastructure identified in **Appendix A** to host software that deceives Instacart's Shoppers and the public into believing the unauthorized software is sanctioned or associated with Instacart, in order to perpetuate Defendants' illegal activities. There is good cause to believe that Defendants have directed said unauthorized application and content through certain instrumentalities – specifically the domains, the domain registration facilities of the domain registries, the IP address, the hosting providers of the IP addresses, the e-commerce account, and the e-commerce platform provider identified in **Appendix A**.

9. There is good cause to believe that Defendants have engaged in illegal activity by using the domain registration facilities of the domain registries identified in **Appendix A** to register the Internet domains identified in **Appendix A**, the Internet hosting facility of the IP address identified in **Appendix A**, and an account with an e-commerce platform identified in **Appendix A** so as to deceive Instacart's Shoppers to misuse authentication tokens for their Shopper accounts, and to deliver from those domains, IP address and e-commerce account the code and application that Defendants use to access Instacart's infrastructure to obtain order

batch data without authorization.

10. There is good cause to believe that Defendants have engaged in illegal activity by using deceptive and fraudulent methods to obtain computer users' authentication tokens and to use such credentials for illegal purposes.

11. There is good cause to believe that to immediately halt the injury caused by Defendants, Defendants must be prohibited from accessing Instacart's infrastructure without authorization from the Internet domains, IP address and e-commerce account identified in **Appendix A** to the computers of Instacart's servers or Instacart's Shoppers.

12. There is good cause to believe that Defendants have engaged in illegal activity using the Internet domains, IP addresses, and an account with an e-commerce platform identified in **Appendix A** to host the malicious content used to access without authorization Instacart's servers to obtain batch data. There is good cause to believe that to immediately halt the injury caused by Defendants, each of Defendants' domains set forth in **Appendix A** must be immediately transferred beyond the control of Defendants, that Defendants be denied access to the IP address identified in **Appendix A**, and that Defendants be denied access to an account with an e-commerce platform identified in **Appendix A** thus making them inaccessible to Defendants.

13. There is good cause to believe that to immediately halt the injury, the execution of this Order should be carried out in a coordinated manner by Instacart and by the domain registries identified in **Appendix A**, the Internet hosting company identified in **Appendix A**, and the e-commerce platform identified in **Appendix A**, on such date and time within five (5) days of this Order as may be reasonably requested by Instacart.

14. There is good cause to permit notice of the instant Order, notice of the Preliminary Injunction hearing and service of the Complaint by formal and alternative means, given the exigency of the circumstances and the need for prompt relief. The following means of service are authorized by law, satisfy Due Process, and satisfy Fed. R. Civ. P. 4(f)(3) and are reasonably calculated to notify Defendants of the instant order, the Preliminary Injunction hearing and of this action: (1) transmission by email, facsimile, mail and/or personal delivery to the contact information provided by Defendants to Defendants' domain registrars, hosting companies and e-commerce platform and as agreed to by Defendants in Defendants' domain registration, hosting or e-commerce platform agreements, (2) publishing notice on a publicly available Internet website, (3) by personal delivery upon Defendants, to the extent Defendants provided accurate contact information in the U.S.; and (4) personal delivery through the Hague Convention on Service Abroad or similar treaties upon Defendants, to the extent Defendants provided accurate contact information in foreign countries that are signatories to such treaties.

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

IT IS THEREFORE ORDERED that, Defendants, Defendants' representatives, and any other persons who are in active concert or participation with Defendants, are temporarily restrained and enjoined from: (1) intentionally accessing and sending any communication to Instacart and the protected computers of Instacart and its Shoppers, without authorization; (2) sending unauthorized software designed to create a counterfeit Instacart application; (3) configuring, deploying, operating, or otherwise participating in or facilitating infrastructure described in the TRO Application, including but not limited to the software hosted at and operating through the Internet domains set forth in **Appendix A**, the IP address identified in **Appendix A**, and an account with an e-commerce platform identified in **Appendix A**, and

through any other component or element of the Defendants' illegal infrastructure at any location; (4) misappropriating that which rightfully belongs to Instacart or in which Instacart or its Shoppers have a proprietary interest; (5) undertaking any similar activity that inflicts harm on Instacart, Instacart's Shoppers, or the public.

IT IS FURTHER ORDERED that, Defendants, Defendants' representatives, and any other persons who are in active concert or participation with Defendants are temporarily restrained and enjoined from (1) using and infringing Instacart's trademarks, including specifically Instacart's registered trademarks Instacart, Instacart's corporate logo, and/or other trademarks, trade names, service marks, or Internet Domain addresses or names containing or infringing such trademarks, trade names or service marks; (2) using in connection with Defendants' activities, products, or services any false or deceptive designation, representation or description of Defendants or of their activities, whether by symbols, words, designs or statements, which would damage or injure Instacart or give Defendants an unfair competitive advantage or result in deception of Instacart's Shoppers, customers or the public; or (3) acting in any other manner which suggests in any way that Defendants' activities, products or services come from or are somehow sponsored by or affiliated with Instacart, or passing off Defendants' activities, products or services as Instacart's.

IT IS FURTHER ORDERED that, with respect to any currently registered Internet domains set forth in **Appendix A** to this Order, the domain registries located in the United States shall take the following actions:

A. Within five (5) business days of receipt of this Order, shall unlock and change the registrar of record for the domains to CSC Corporate Domains, Inc. or such other registrar specified by Instacart. To the extent the registrar of record does not assist in changing

the registrar of record for the domains under its control, the domain registry for the domains, or its administrators, including backend registry operators or administrators, within five (5) business days of receipt of this Order, shall change, or assist in changing, the registrar of record for the domains to CSC Corporate Domains, Inc. or such other registrar specified by Instacart. The purpose of this paragraph is to ensure that Instacart has control over the hosting and administration of the domains in its registrar account at CSC Corporate Domains, Inc. or such other registrar specified by Instacart. Instacart shall provide to the domain registry or registrar of record any requested registrar information or account details necessary to effectuate the foregoing;

B. The WHOIS registrant, administrative, billing and technical contact and identifying information should be the following, or other information as may be specified by Instacart:

Domain Administrator
Maplebear, Inc.
50 Beale St., Suite 600
San Francisco, CA 94105
Phone: +1.910.817.2278
Email: domains-contact@instacart.com

C. Prevent transfer, modification or deletion of the domain by Defendants and prevent transfer or control of the domain to the account of any party other than Instacart;

D. Take all steps required to propagate to the foregoing changes through the Domain Name System (“DNS”), including domain registrars.

IT IS FURTHER ORDERED that, with respect to the IP address listed in **Appendix A**, the Internet hosting provider located in the United States and listed at Appendix A shall:

A. Not enable, and shall take all reasonable steps to prevent, any circumvention of this order by Defendants or Defendants’ representatives associated with the IP address or any

other person;

B. Within five (5) business days of receipt of this Order, shall disable and deny to Defendants and Defendants' representatives, access to any and all systems, "backup" systems, arrangements or services that might otherwise be used to support the Defendants' malicious activities on or through the IP address set forth in **Appendix A** or that might otherwise be used to circumvent this Order;

C. Log all attempts to connect to or communicate with the IP address set forth in **Appendix A**;

D. Preserve, retain and produce to Instacart all documents and information sufficient to identify and contact Defendants and Defendants' representatives operating or controlling the IP address set forth in **Appendix A**, including any and all individual or entity names, mailing addresses, e-mail addresses, facsimile numbers and telephone numbers or similar contact information, including but not limited to such contact information reflected in billing, usage, access and contact records and all records, documents and logs associated with Defendants' or Defendants' representatives' use of or access to the IP address.

E. Completely refrain from providing any notice or warning to, or communicating in any way with Defendants or Defendants' representatives and shall refrain from publicizing this Order;

F. Provide reasonable assistance in implementing the terms of this Order and take no action to frustrate the implementation of this Order.

IT IS FURTHER ORDERED that, with respect to the account with an e-commerce platform listed in Appendix A, the e-commerce platform provider located in the United States and listed at Appendix A shall:

A. Not enable, and shall take all reasonable steps to prevent, any circumvention of this order by Defendants or Defendants' representatives associated with the account;

B. Within five (5) business days of receipt of this Order, shall disable and deny to Defendants and Defendants' representatives, access to any and all accounts, including without limitation any services of Defendants that might otherwise be used to support the Defendants account set forth in **Appendix A** or that might otherwise be used to circumvent this Order;

C. Log all attempts to connect to or communicate with the e-commerce account set forth in **Appendix A**;

D. Preserve, retain and produce to Instacart all documents and information sufficient to identify and contact Defendants and Defendants' representatives operating or controlling the e-commerce account set forth in **Appendix A**, including any and all individual or entity names, mailing addresses, e-mail addresses, facsimile numbers and telephone numbers or similar contact information, including but not limited to such contact information reflected in billing, usage, access and contact records and all records, documents and logs associated with Defendants' or Defendants' representatives' use of or access to the e-commerce account;

E. Completely refrain from providing any notice or warning to, or communicating in any way with Defendants or Defendants' representatives and shall refrain from publicizing this Order;

F. Provide reasonable assistance in implementing the terms of this Order and take no action to frustrate the implementation of this Order.

IT IS FURTHER ORDERED that copies of this Order, notice of the Preliminary Injunction hearing and service of the Complaint may be served by any means authorized by law, including (1) transmission by email, facsimile, mail and/or personal delivery to the contact

information provided by Defendants to Defendants' domain registrars, hosting companies and e-commerce platform and as agreed to by Defendants in the domain registration, hosting or e-commerce platform agreements, (2) publishing notice on a publicly available Internet website, (3) by personal delivery upon Defendants, to the extent Defendants provided accurate contact information in the U.S.; and (4) personal delivery through the Hague Convention on Service Abroad or similar treaties upon Defendants, to the extent Defendants provided accurate contact information in foreign countries that are signatories to such treaties.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b) that the Defendants shall appear before this Court on May 10, 2021 at 2:00^{PM} to show cause, if there is any, why this Court should not enter a Preliminary Injunction, pending final ruling on the Complaint against Defendants, enjoining Defendants from the conduct temporarily restrained by the preceding provisions of this Order.

IT IS FURTHER ORDERED that Instacart shall post bond in the amount of \$10,000 to be paid into the Court registry.

IT IS FURTHER ORDERED that Defendants shall file with the Court and serve on Instacart's counsel any answering affidavits, pleadings, motions, expert reports or declarations and/or legal memoranda no later than one (1) day prior to the hearing on Instacart's request for a preliminary injunction.

IT IS SO ORDERED

Entered this 20th day of April, 2021

at 11:25 AM



Anthony J. Tregga
United States District Judge
UNITED STATES DISTRICT JUDGE