



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

January 8, 2026

Chris Rogers
Chief Executive Officer

Morgan Fong
General Counsel

Maplebear Inc. d/b/a Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105

Re: Instacart's Pricing Practices & New York's Algorithmic Pricing Disclosure Act

Dear Mr. Rogers and Mr. Fong:

I write on behalf of the New York State Office of the Attorney General to request information concerning recent reports of substantial price variations among shoppers using Instacart, as well as your efforts to comply with New York's Algorithmic Pricing Disclosure Act.

According to a report from Groundwork Collaborative and Consumer Reports, released on December 9, 2025, shoppers using Instacart see significantly different prices for the same products at the same stores.¹ Among the report's observations, Instacart "offered as many as five different sales prices for the exact same grocery item, in the exact same store, at the exact same time," with a 13% average price difference between highest and lowest prices for a single good. *Id.* at 2. Furthermore, the researchers found that even when shoppers were offered the same sale price, there were significant variations in the "original price" shown and the discount applied to arrive at the sale price. *Id.* at 12. Instacart has promoted its Eversight "Retail Pricing Suite" that facilitates "revenue optimization" and "pricing solutions" that involve "automated, continuous testing of ... prices directly with shoppers."² And Instacart has brought its pricing and promotions tools from the web into physical stores with the introduction of its proprietary Caper Cart "smart"

¹ Groundwork Collaborative & Consumer Reports, *Same Cart, Different Price: Instacart's Price Experiments Cost Families at Checkout* (Dec. 9, 2025), available at <https://groundworkcollaborative.org/work/instacart/>.

² Instacart, *Eversight by Instacart: AI-Powered Price Optimization*, www.instacart.com/company/retailer-platform/connected-stores/eversight (accessed Jan. 8, 2026).

shopping cart, “which provides three key capabilities: gamification, personalization, and advertising.”³

In response to that report, Instacart acknowledged the existence of price variations and, while claiming that it had been randomly assigning customers to price-testing cohorts, stated that its retail partners “may use behavioral data ... to inform discounts or promotional offers.” *Id.* at 13. When accomplished by means of an algorithm, the use of a consumer’s behavior and other personal data to inform the prices the consumer pays at checkout is considered “personalized algorithmic pricing” and requires disclosure under New York law.

On December 22, 2025, Instacart announced that, “effective immediately, Instacart is ending all item price tests on our platform. Retailers will no longer be able to use Eversight technology to run item price tests on Instacart.”⁴ Instacart barely described the “item price tests” that it was planning to end, though it claimed those particular “tests were not dynamic pricing or surveillance pricing.” *Id.* Whatever the now-canceled tests entailed, Instacart acknowledged that its “[r]etail partners will continue to set their own prices on Instacart” and that Instacart will “continue offering relevant promotions, discounts, and marketing incentives – including those funded by CPG brands and retailers – as well as loyalty integrations, to help bring additional savings to customers.” *Id.* Following Instacart’s announcement, “Instacart told [Consumer Reports] that it would still allow its partners—grocery retailers and food brands—to test different types of promotions and discounts on their customers through the platform.”⁵

New York’s Algorithmic Pricing Disclosure Act, G.B.L. § 349-A (the “Act”), which took effect on November 10, 2025, requires companies to disclose the use of personalized pricing algorithms when offering goods or services to consumers in New York. The Act covers “personalized algorithmic pricing,” which is defined as “dynamic pricing set by an algorithm that uses personal data.” G.B.L. § 349-A(1)(f). The Act further defines “dynamic pricing” as “pricing that fluctuates dependent on conditions, and “personal data” as “any data that identifies or could reasonably be linked, directly or indirectly, with a specific consumer or device.” G.B.L. § 349-A(1)(d), (e).

Under paragraph 2 of § 349-A:

Any entity that sets the price of a specific good or service using personalized algorithmic pricing, and that directly or indirectly, advertises, promotes, labels or publishes a statement, display, image, offer or announcement of personalized algorithmic pricing to a consumer in New York, using personal data specific to such consumer, shall

³ IGA News, *Why Smart Carts Are the Winning Technology Format for Independent Grocers* (Dec. 18, 2024), www.iga.com/insights/why-smart-carts-are-the-winning-technology-format-for-independent-grocers.

⁴ Instacart, *Ending Item Price Tests on Instacart* (Dec. 22, 2025), www.instacart.com/company/updates/ending-item-price-tests-on-instacart.

⁵ Consumer Reports, *Instacart Stops Pricing Tests on Its Platform Amid Outrage from Customers* (updated Dec. 23, 2025), www.consumerreports.org/money/questionable-business-practices/instacart-stops-ai-pricing-experiments-a1176475852/.

include with such statement, display, image, offer or announcement, a clear and conspicuous disclosure that states:

“THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA”.

Entities found to be in violation of the law may, after continuing to violate the Act following receipt of a cease-and-desist letter, be subject to injunctive and monetary relief. G.B.L. § 349-A(4).

We have some concerns about Instacart’s attempts to comply with the Act. Based on our observations, the Instacart platform provides the following disclosure on a page linked to certain retail stores’ front pages, accessed by clicking fine print text: “New York law requires the following disclosure because certain prices and/or fees may vary based on randomized tests, we use personal information (such as delivery address) to calculate fees, and we offer certain personalized incentives: this price was set by an algorithm using your personal data.”⁶ This form of disclosure does not appear to comply with, among other things, the “clear and conspicuous” requirements of the Act. Moreover, there was no disclosure on category pages listing product prices (e.g., Meat & Seafood) or on individual product pages displaying price, though a disclosure is required for all displays of price covered by the Act.

In order to ensure compliance with the Act, we request that you provide, by January 29, 2026, the following documents and information:

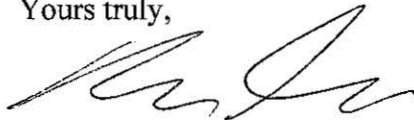
1. All current agreements with the retailers Target, Stop & Shop, Wegmans, Best Buy, Key Food, Aldi, ShopRite, and Costco in any way concerning (a) the prices, discounts, offers, and promotions available for Instacart users when purchasing from that retailer, including terms addressing the setting of any markups or discounts, (b) any loyalty or rewards program of the retailer, including integration in the Instacart and Eversight platforms and the setting of any prices, discounts, offers, or promotions in connection with the program, and (c) the use of the Eversight platform or Caper Cart system. If any such agreements were changed in connection with Instacart’s December 22 announcement that it was halting some price experiments, provide also the version effective prior to the announcement.
2. All current agreements with the consumer packaged goods (CPG) brands Frito-Lay, Hormel Foods, Nabisco, Oscar Mayer, Pepsi, and Coca Cola in any way concerning (a) the prices, discounts, offers, and promotions available for Instacart users when purchasing those CPG brand’s products, including terms addressing the setting of any markups or discounts and, and (b) the use of the Eversight platform or Caper Cart system. If any such agreements were changed in connection with Instacart’s December 22 announcement that it was halting some price experiments, provide also the version effective prior to the announcement.

⁶ The fine print text on the Instacart app that linked to the disclosure page was: for Stop & Shop, “View pricing policy”; for Wegmans, “Higher than in-store prices”; and for Costco, “Pricing & fees.”

3. A detailed description of the Eversight platform and Caper Cart system and how each is used, by Instacart or by retailers and CPG brands using the Instacart platform, to adjust prices and promotions, including how consumer data may be used for pricing and promotions.
4. A detailed description of all price experiments performed and being performed by Instacart and/or retailers or CPG brands through Instacart's platforms and tools (including Eversight or Caper Cart), including (1) the starting and ending dates of the price experiments, (2) how customers were selected for price experimentation and how many customers were affected, (3) the variables that were adjusted as part of the price experiment (e.g., sale price, original price, discount, or promotion), (4) how those variables were adjusted, including whether customer data was used and how different values for different variables were assigned to different customers, and (5) the effect on total prices paid for products and baskets of products for individual affected consumers and all affected consumers as a group.
5. A statement whether Instacart and/or retailers or CPG brands using Instacart's platforms and tools (including Eversight or Caper Cart) use dynamic pricing or personalized algorithmic pricing (as defined in the Act)—including by fluctuating base prices or discounts, offers, or promotions affecting price—when offering goods or services to consumers in New York State; and if so, (a) the specific goods or services or categories subject to dynamic pricing or personalized algorithmic pricing, (b) a list of all conditions on which pricing fluctuations depend, identifying specifically all categories of personal data and personal data specific to a consumer, and (c) a brief description of how the pricing is set by an “algorithm” (as defined in G.B.L. § 349-A(1)(a)).
6. If Instacart and/or retailers or CPG brands using Instacart's platforms and tools (including Eversight or Caper Cart) use personalized algorithmic pricing, an explanation of efforts to comply with the disclosure requirement of G.B.L. § 349-A(2), accompanied by screenshots and screen-flows of consumer transactions from initial display of price, discount, offer, promotion, or other pricing information, for relevant web pages and mobile apps (with accompanying links or directions to locate app interfaces).
7. Other documents sufficient to demonstrate the policies and practices Instacart is undertaking to comply with the provisions of the Act.

Please send your responses to me by email at ryan.galisewski@ag.ny.gov or to my attention at 28 Liberty Street, New York, NY 10005 by January 29, 2026. We appreciate your cooperation and your efforts to comply with the new legal obligations discussed above.

Yours truly,



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