



DEPARTMENT OF LAW
CITY OF CHICAGO

February 26, 2021

Betsy A. Miller
Brian E. Bowcut
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave., NW, Fifth Floor
Washington, DC 20005

Dear Counsel:

The City of Chicago ("City"), by the undersigned, enters the following retainer agreement with Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein").

The City retains Cohen Milstein to provide legal services to assist the City in investigating and, if agreed by Cohen Milstein and City, pursuing litigation against and/or settlement with companies that provide meal delivery services to Chicago addresses (the "Matter"), through orders placed via the Internet, smartphone and tablet applications, and/or telephone numbers. The scope of this contract includes Grubhub, DoorDash, Uber Eats, Postmates, and their subsidiaries and affiliates (the "Defendants"), and potentially other meal delivery companies, if agreed in writing by the City and Cohen Milstein. Resolution of this matter, whether by court order or settlement, may include civil penalties, damages, restitution, disgorgement, additional injunctive relief and/or other relief appropriate to address Defendants' potentially deceptive and/or unfair marketing practices.

This retainer encompasses litigation of the Matter through trial, including any post-trial proceedings in the trial court. At the parties' mutual option, Cohen Milstein may continue to represent the City in pursuing or responding to appeals from a judgment in the Matter.

Fees and Expenses:

1. Cohen Milstein will be paid on a contingent fee basis, only upon a recovery in the Matter, as follows:
 - 15% of the net recovery if the Matter is resolved pre-complaint, not to exceed 2.5x times Cohen Milstein's attorneys' fees using a lodestar method;

- 20% of the net recovery if the Matter is resolved after a motion to dismiss but before the fact discovery deadline;
- 23% of the net recovery if the Matter is resolved after the fact discovery deadline but before summary judgment briefing concludes;
- 25% of the net recovery if the Matter is resolved after summary judgment briefing concludes but before trial begins; and
- 28% of the net recovery if the Matter is resolved after trial begins.

These percentages apply separately to each Defendant, as the investigation of, or litigation against, each Defendant may resolve at a different procedural stage.

If there is an appeal of a trial verdict, the City and Cohen Milstein will enter a separate contract for the appeal, if the parties mutually agree that Cohen Milstein will perform that work.

2. The net recovery is any settlement or judgment amount, not including any award of attorneys' fees and costs, minus the actual costs incurred by Cohen Milstein.
3. In the event that the court, special master, mediator or other tribunal awards attorneys' fees on any individual motion, the City will retain fees awarded for its hours/lodestar, and Cohen Milstein will retain the fees awarded for its hours/lodestar. If the court, special master, mediator, or other tribunal awards attorneys' fees pursuant to a fee-shifting statute upon conclusion of a trial in the Matter or any portion thereof, the attorneys' fees award will be shared equally between the City and Cohen Milstein unless Cohen Milstein's contingent fee is less than Cohen Milstein's fees (using the lodestar method) and costs, in which case Cohen Milstein will be entitled to any such fees until its fees (using the lodestar method) and costs are met; any remainder will then be shared equally. Any attorneys' fees received by Cohen Milstein under this provision shall be in addition to Cohen Milstein's contingent fee.
4. In the event that the Matter or any portion thereof is resolved by a settlement or judgment that includes substantial injunctive or in-kind relief, and the contingent fee based on that amount is less than Cohen Milstein's straight lodestar (actual billable hours multiplied by the applicable hourly rate), the City shall use its best efforts to seek attorneys' fees from Defendants that, when coupled with the contingent fee, are equal to Cohen Milstein's straight lodestar. If the City is unable, despite best efforts, to recover fees from Defendants that, when coupled with the Contingency Fee, equal Cohen Milstein's straight lodestar, the City shall not be obligated to pay any deficiency.
5. Cohen Milstein will advance all reasonable costs and expenses of the litigation. The City agrees to reimburse Cohen Milstein for costs and expenses out of any recovery before the contingent fee applies so long as those costs comply with the

City's Outside Counsel Guidelines, where applicable as agreed by Cohen Milstein and the City. Reimbursement of costs and expenses is not considered part of the contingent fee.

6. With the exception of the circumstances set forth in Paragraph 4, in no event will the combination of the contingent fee and any attorneys' fees award paid to Cohen Milstein exceed 50% of any total net recovery by the City.
7. In the event that one or more Defendants file for bankruptcy and there is a need for bankruptcy counsel, as determined by Cohen Milstein and with the approval of the City, Cohen Milstein will retain bankruptcy counsel and front their fees and reasonable expenses. These fees shall be treated as a reimbursable cost at the conclusion of the case, in accordance with the terms set forth in Paragraph 5.
8. The City must approve any expense of \$25,000 or more in advance.
9. Cohen Milstein will have no claim against Chicago for its time or expenses except as otherwise laid out in this retainer, even if there is no recovery or the recovery is not sufficient to cover its time or expenses.
10. The City and Cohen Milstein agree to resolve any dispute regarding the attorneys' fees due under this agreement through mediation and, if necessary, binding arbitration. Before proceeding to arbitration, the parties will first enter into mediation before a mutually agreeable mediator and will share equally the costs of the mediation. The parties agree to allot 120 days for resolution of the dispute through mediation. The proceedings in this paragraph will occur via video conference or, by mutual agreement, in Chicago.
11. Any restriction on hourly fees in the City's Outside Counsel Guidelines limits what the City may pay to Cohen Milstein but does not constitute a determination of a reasonable fee for purposes of a fee petition or payment of attorneys' fees by any defendants. Likewise, the Outside Counsel Guidelines limit what costs the City may be required to reimburse Cohen Milstein from any recovery but do not limit a determination of reasonable costs for purposes of a fee petition or payment of costs by any defendants.
12. For purposes of any application for attorneys' fees under paragraphs 3 or 4, Cohen Milstein will maintain contemporaneous time records. Cohen Milstein will also contemporaneously record and maintain documentation for any expenses reimbursable by the City.

Authority and Responsibilities

13. Cohen Milstein is responsible for providing the legal services required to assist the City in litigating the Matter, including all associated support services.
14. Cohen Milstein is authorized to retain or associate experts, investigators, technical and legal assistants, contract attorneys, and vendors as may be needed for the

Matter. The expense related to the employment and utilization of third parties will be reimbursed in the manner set forth above and subject to approval by the City per Paragraphs 5, 6, 7, and 8 above.

15. The City is responsible for providing access to any personnel, information, and documents required to assess and prosecute its claims (including any personnel, information, and documents required by court order or in discovery).
16. Cohen Milstein shall disclose and use confidential information obtained in the Matter only as permitted by applicable confidentiality agreements or protective orders in the Matter. Cohen Milstein shall use any confidential information obtained in the course of the Matter only in connection with its representation of the City, and not for any non-governmental purpose. With the City's permission, and pursuant to applicable work product and common interest privileges, Cohen Milstein may share such information with other governmental entities, provided it is done in compliance with any applicable confidentiality agreements or protective orders.
17. The City will maintain control of the Matter and will make all key decisions, including whether and how to proceed with litigation, which claims to advance, which Defendants to sue, what relief to seek, and whether and on what terms to settle. Cohen Milstein will be responsible for carrying out the investigation and/or litigation, in partnership with the City, and for making day-to-day decisions regarding court filings, discovery, court appearances, trial, and any appeal. Cohen Milstein will provide regular reports to the City on the status of and any significant developments in the Matter.
18. In addition to the supervisory authority and responsibilities outlined above, the City will appear in court and at depositions as agreed with Cohen Milstein, provide guidance to Cohen Milstein regarding local rules of practice, and will support Cohen Milstein's pro hac vice admission to the court where litigation is filed. The City shall comply with all reasonable requests of Cohen Milstein concerning the Matter and shall otherwise use its best efforts to advance the prosecution of the Matter.
19. The City must approve any settlements and must be apprised of any settlement offers made by Defendants.
20. The City will designate a point of contact who will supervise the Matter and who will be available directly to other parties in this Matter as needed.
21. The City may give or withhold approval for Cohen Milstein to assign or subcontract duties or obligations under this agreement, and it is understood that Cohen Milstein may seek to engage an additional law firm as a subcontractor to assist Cohen Milstein and work under Cohen Milstein's supervision, if the demands of the Matter justify it. Any approval under this paragraph must be in writing.

Termination

22. The City may terminate this agreement for convenience at any time, either in whole or in part, by giving thirty (30) days written notice specifying the effective date and scope of such termination.
23. In the event Cohen Milstein fails to fulfill any of the material terms set forth in this agreement, the City shall have the right to terminate this agreement for cause, provided that the City has fulfilled its substantive obligations set forth in this agreement, and after written notice to Cohen Milstein and the expiration of any cure period provided for below. The following shall not constitute failure by Cohen Milstein to perform a substantive obligation under this agreement: (a) Cohen Milstein's unwillingness to undertake work that is contrary to its best professional judgment; and (b) the emergence of a conflict of interest that did not exist, and was not reasonably foreseeable, as of the date of the agreement.
24. If the City terminates Cohen Milstein for cause, the City will have no obligation to pay Cohen Milstein's attorneys' fees or costs or any portion of a recovery in this matter after the date of the conduct giving rise to the for-cause termination, even if the City proceeds thereafter to litigate this matter using in-house or other counsel.
25. Except as otherwise provided in this Agreement, Cohen Milstein shall not be in default hereunder unless it fails to correct such default within a period of ten (10) business days after written notice given by the City to Cohen Milstein identifying the default. Notwithstanding the foregoing, if a default cannot be cured within such ten business-day period, Cohen Milstein shall not be in default hereunder if and for so long as Cohen Milstein shall, to the City's satisfaction, diligently and in good faith, have commenced to remedy the default within such ten-day period, shall prosecute to completion with diligence and continuity the remedying of default to the City's satisfaction, and shall remedy such default within a reasonable time to the City's satisfaction. In the case of a notice of default to Cohen Milstein, no new work shall be undertaken by Cohen Milstein after the date of receipt of the notice without the express consent of the City.
26. If Cohen Milstein is terminated without cause, Cohen Milstein shall be entitled to reimbursement for reasonable costs incurred and compensation for the reasonable value of services provided (attorneys' fees) pursuant to this agreement prior to the date of termination, upon collection by the City of a monetary recovery in the Matter. Calculation of the reasonable value of services provided shall take into account Cohen Milstein's investment of time in the Matter, creation of original or novel case theories and arguments, the risks and costs incurred by Cohen Milstein in undertaking the representation on a contingency fee basis, the opportunity cost of representing the City in lieu of devoting resources and time to other potential clients, and the parties' agreement and expectation that Cohen Milstein's fee would be based on a percentage of recovery rather than lodestar. In no event shall the reimbursement of costs or attorneys' fees obtained by Cohen Milstein under

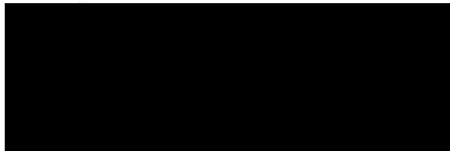
this provision exceed (a) the amount provided for in this agreement, specifically the contingent fee percentages described in Paragraphs 1 through 6, or (b) costs permitted by the City's Outside Counsel Guidelines, where agreed by the City and Cohen Milstein.

27. Following any termination of this retainer, any otherwise non-public information that the City has supplied to Cohen Milstein shall be kept confidential in accordance with applicable rules of professional responsibility or returned to the City.

Conflicts

28. Cohen Milstein has conducted a conflicts check and has determined that there are no actual conflicts related to its representation of the City in the Matter. The City understands and does not object that Cohen Milstein may represent other public entities in separate investigations and lawsuits against Defendants involving the same or similar subject matter.

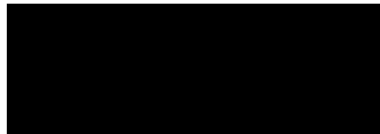
For the City of Chicago
Accepted by:



Stephen J. Kane
(printed name)

Date: 3/18/2021

For Cohen Milstein
Accepted by:



Betsy A. Miller
(printed name)

Date: 2/26/2021