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15

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**

18 THE PEOPLE OF THE STATE OF) **Case No.: 24STCV04326**
CALIFORNIA, by and through the County)
19 Counsel of the County of Los Angeles,) **COMPLAINT FOR INJUNCTIVE**
20) **RELIEF, RESTITUTION, AND**
Plaintiff,) **PENALTIES**
21)
v.)
22)
GRUBHUB INC. and)
23 GRUBHUB HOLDINGS INC.)
24)
Defendants.)
25)

Exempt from Fees
Gov't Code 6103

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Superior Court of California,
County of Los Angeles
2/21/2024 9:25 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

1 Plaintiff the People of the State of California (“People”), by and through the County Counsel
2 of the County of Los Angeles, brings this action against Defendants Grubhub Holdings Inc. and
3 Grubhub Inc. (together, “Grubhub”), and alleges as follows:

4 **INTRODUCTION**

5 1. Grubhub is a technology company that has positioned itself as a meal ordering and
6 delivery marketplace, “connect[ing] millions of diners with the food they love from their favorite
7 local restaurants.” Owing to consolidation in the industry and a race for market share, Grubhub for
8 years has been one of the three largest meal delivery companies nationwide. Its presence in
9 California is ubiquitous: from 2019 to 2023, it processed millions of orders for meal delivery in Los
10 Angeles County alone.

11 2. Grubhub has built this vast marketplace through practices that mislead consumers
12 and restaurants and put the squeeze on the company’s delivery drivers. Multiple aspects of
13 Grubhub’s business—and every transaction for food delivery—are suffused with deception. When
14 consumers browse the Grubhub Platforms, they are shown search results that are based in part on
15 undisclosed restaurant advertising payments, rather than neutral factors such as proximity. When
16 consumers order delivery through the Grubhub Platforms, Grubhub misleads them about the price
17 they will pay and the benefits Grubhub provides to drivers. When restaurants contract with Grubhub,
18 Grubhub subjects them to an undisclosed and abusive policy whereby it often resolves customer
19 complaints by issuing refunds with restaurant money without first notifying, or receiving permission
20 from, the restaurant.

21 3. Grubhub’s misconduct has been mounting for years, but the scale and impact of that
22 misconduct soared with the COVID-19 pandemic. Grubhub capitalized on skyrocketing demand for
23 meal delivery while taking advantage of California consumers, restaurants, and drivers made
24 vulnerable by the circumstances of the pandemic. Grubhub’s revenue in 2020 was \$1.8 billion, a
25 39% increase over 2019 that set it up to be acquired by Dutch multinational Just Eat Takeaway in
26 2021. By contrast, as of May 2021, nearly a third of California’s restaurants had permanently closed
27 and two-thirds of workers had at least temporarily lost their jobs since the start of the pandemic.

1 4. Founded in 2004 in Chicago, Grubhub today operates across the country, including
2 throughout California and Los Angeles County. After pursuing an aggressive growth strategy for
3 the past decade, which saw Grubhub acquire and absorb several other meal delivery companies,
4 Grubhub now operates principally through two branded platforms: the Grubhub.com website and
5 Grubhub app (the “Grubhub Platform”) and the Seamless.com website and Seamless app (the
6 “Seamless Platform”). Since at least 2019, Grubhub has listed tens of thousands of Los Angeles
7 County restaurants, and additional tens of thousands of California restaurants outside of Los Angeles
8 County, on the Grubhub and Seamless Platforms (collectively, the “Grubhub Platforms” or
9 “Platforms”).

10 5. Grubhub’s business depends on two separate streams of revenue. First, Grubhub
11 charges commissions to restaurants that contract with Grubhub to provide marketing on the Grubhub
12 Platforms, order and payment processing, and food delivery through a network of gig drivers.
13 Second, Grubhub charges fees to consumers for online ordering and delivery (its “Service”).
14 Grubhub charges consumers a series of fees for delivery orders, including the “Delivery Fee”; the
15 “Service Fee”; a fee for “Driver benefits,” which it charges only in California (the “Driver Benefits
16 Fee”), and, where applicable, a “Small Order Fee” on orders under \$10.

17 6. Seeking to maximize these revenue streams, Grubhub engaged in the following
18 fraudulent and unlawful practices, each of which is pervasive and ongoing in California, including
19 in Los Angeles County:

20 a. *Bait-and-switch delivery pricing.* To entice consumers into ordering on its
21 Platforms, Grubhub engages in an e-commerce version of a bait-and-switch. Grubhub lures
22 consumers with a flat, unqualified price for delivery upfront (the Delivery Fee), even though it does
23 not intend to deliver the food for that price. Grubhub tacks on additional fees—for the same delivery
24 service—at checkout. Even then, Grubhub does not clearly disclose these charges (the Service Fee,
25 Small Order Fee, and Driver Benefits Fee), grouping them in a category of “other” fees and requiring
26 the consumer to affirmatively seek out the details. The Grubhub ordering experience reflects
27 precisely the sorts of tactics—including “drip pricing,” or parceling out the price over time—that
28

1 are called out in California’s new law prohibiting hidden fees.¹ As that law expressly recognizes,
2 however, these practices have long been illegal.²

3 b. ***Deceptive offer to “order online for free.”*** Grubhub’s online advertising to
4 California consumers takes its pricing deception one step further, flatly describing its Service as
5 “free.” On hundreds of Grubhub.com webpages tailored to California cities, zip codes, and colleges,
6 Grubhub misleadingly tells consumers they can “order online for free.” In fact, Grubhub has not
7 waived any fees; consumers must still pay the same set of fees—the Delivery Fee, Service Fee,
8 Small Order Fee (when applicable), and Driver Benefits Fee—to order online for delivery.

9 c. ***Misrepresentations about driver benefits and tips.*** Grubhub further
10 misrepresents—to the detriment of its own delivery drivers—the nature and purposes of its Driver
11 Benefits Fee. Grubhub began charging consumers this fee in December 2020 to fund its own
12 obligations to provide certain wage and benefit guarantees required by Proposition 22 (“Prop 22”).³
13 Grubhub deceptively conveys to consumers that the Driver Benefits Fee funds healthcare benefits
14 for all drivers, including the driver who will deliver their order. In fact, Grubhub merely funds a
15 partial subsidy for health insurance—and most drivers do not even qualify for that subsidy. Grubhub
16 further misleads consumers by suggesting that the Driver Benefits Fee eliminates the need to tip
17 drivers, even though one study found that the Prop 22 wage guarantee ostensibly funded by the
18 Driver Benefits Fee amounts to less than \$6 per hour. Adding insult to the drivers’ injury, Grubhub
19 has reinforced this deception by changing its default tipping options—making it easier for
20 consumers to tip their drivers less.

21 d. ***Paid restaurant search results.*** Grubhub not only lures consumers with
22 deceptively low delivery prices, but also with the restaurant search results it presents on Platforms.

23 _____
24 ¹ California Senate Bill No. 478, § 1 (enacted Oct. 7, 2023)

25 ² *Id.* § 1(a)-(b) (“This act is intended to specifically prohibit drip pricing, which involves advertising a price that
26 is less than the actual price that a consumer will have to pay for a good or service. This practice, like other forms of bait
27 and switch advertising, is prohibited by existing statutes, including the Unfair Competition Law (Chapter 5
28 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code) and the False
Advertising Law (Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions
Code).”)

³ See Cal. Bus. & Prof. Code §§ 7453-7454.

1 Grubhub presents its default restaurant listings—keyed off the user’s delivery address—as based on
2 impartial criteria including the user’s location. Grubhub does not disclose to consumers that the
3 results are tainted by undisclosed, paid marketing arrangements. Grubhub positions restaurants that
4 pay higher marketing commission fees more prominently in search results.

5 e. *Unilateral customer refunds with restaurant funds.* Finally, Grubhub
6 deceptively resolves customer complaints about orders by freely issuing refunds at the restaurant’s
7 expense, but without the restaurant’s authorization. Grubhub nowhere adequately discloses this
8 internal policy to restaurants. Without such disclosure, it is reasonable for restaurants to believe that
9 Grubhub will consult the restaurant and/or otherwise verify that the problem was a result of the
10 restaurant’s error. Instead, Grubhub’s policy leaves restaurants on the hook for customer fraud and
11 delivery problems the restaurants did not cause.

12 7. The People bring this action under the California Unfair Competition Law (“UCL”) and False Advertising Law (“FAL”) to permanently enjoin these fraudulent and unlawful practices
13 and to secure appropriate restitution and other relief.
14

15 **PARTIES**

16 8. The People bring this civil law enforcement action by and through Dawyn R. Harris,
17 County Counsel for the County of Los Angeles, pursuant to statutory authority provided under the
18 UCL, Bus. & Prof. Code § 17200, *et seq.* and the FAL, Bus. & Prof. Code § 17500, *et seq.*

19 9. Defendant Grubhub Inc. is a Delaware corporation with its headquarters and
20 principal place of business at 111 W. Washington Street, Suite 2100, Chicago, Illinois 60602.

21 10. On June 15, 2021, Grubhub Inc., together with its subsidiaries, was merged with and
22 into Checkers Merger Sub II, Inc. pursuant to an acquisition agreement with Just Eat Takeaway.com
23 N.V. (“Just Eat Takeaway”), a public entity incorporated under the laws of the Netherlands. In
24 connection with the merger, the name Checkers Merger Sub II, Inc. was changed to Grubhub Inc.
25 Pursuant to the merger, the new Grubhub Inc. entity (formerly known as Checkers Merger Sub II,
26 Inc.) is a wholly owned subsidiary of Just Eat Takeaway and holds all debts, liabilities, and duties
27 of the original Grubhub Inc. entity.
28

1 11. Defendant Grubhub Holdings Inc. (doing business as Grubhub and Seamless), a
2 wholly owned subsidiary of Grubhub Inc., is a Delaware corporation with its headquarters and
3 principal place of business at 111 W. Washington Street, Suite 2100, Chicago, Illinois 60602.

4 12. Grubhub Inc. and Grubhub Holdings Inc. (collectively, “Grubhub”) own and operate
5 the Grubhub Platforms, which provide food order and delivery services to consumers in California.
6 Grubhub describes itself as “one of the first online food delivery platforms” and claims to “feature[]
7 more than 365,000 restaurant partners in over 4,000 U.S. cities.”

8 13. Grubhub provides its food order and delivery services through the Grubhub
9 Platforms, which include the Grubhub-branded mobile app and Internet web platform and the
10 Seamless-branded mobile app and Internet web platform.

11 **JURISDICTION AND VENUE**

12 14. The Superior Court has original jurisdiction over this action pursuant to Article VI,
13 Section 10 of the California Constitution, which grants the Superior Court original jurisdiction in
14 all causes other than those specifically enumerated therein.

15 15. This Court has personal jurisdiction over Grubhub because Grubhub: (1) regularly
16 transacted, solicited, and performed business services in California and purposefully directed its
17 actions into California, including by publishing websites and mobile apps that advertise restaurants
18 and fulfill meal order processing and delivery in the State, and by otherwise engaging in restaurant
19 and consumer solicitation, meal order processing, meal delivery, customer service, and marketing
20 activities in California; (2) engaged in fraudulent and unlawful practices in California, as set forth
21 herein; (3) had sales and customer service employees who operated in and/or directed their service
22 into California; and (4) contracted with California drivers to provide delivery service in the state.
23 Grubhub has the requisite minimum contacts with California necessary to permit the Court
24 constitutionally to exercise jurisdiction, and to render that exercise of jurisdiction permissible under
25 traditional notions of fair play and substantial justice.

26 16. This Court has subject matter jurisdiction over the People’s claims for restitution,
27 civil penalties, injunctive relief, and other equitable relief under the UCL and the FAL.

1 17. Venue is proper in Los Angeles County, under California Code of Civil Procedure
2 section 393, because violations alleged in this Complaint occurred in part in Los Angeles County.

3 **FACTS**

4 **I. GRUBHUB DECEPTIVELY ENTICES CONSUMERS TO ORDER AND**
5 **MISREPRESENTS THE TRUE COST OF ITS SERVICE.**

6 18. Grubhub’s pricing amounts to an e-commerce “bait and switch.” The Delivery Fee,
7 an attractively small amount the company teases to get customers in the door, is the only price
8 Grubhub advertises before a consumer reaches the checkout page at the end of the transaction.
9 Grubhub does not intend to provide delivery for that price—the Delivery Fee is just the first in a
10 series of Grubhub delivery charges that Grubhub deceptively subdivides into arbitrary, separate fees.

11 19. Until approximately [REDACTED] Grubhub charged only one fee for delivery: the
12 Delivery Fee. Since that time, Grubhub has charged California consumers multiple, additional
13 fees—including the Service Fee, Small Order Fee, and Driver Benefits Fee—for delivery orders
14 handled by Grubhub’s drivers. Although the Delivery Fee is only a portion of the price of delivery,
15 Grubhub misleadingly advertises it upfront as the entire charge for its delivery service.

16 20. Grubhub does not introduce the other fees until the end of the transaction. This
17 important information thus becomes available only after consumers have chosen their food and are
18 invested in completing the order. Even then, Grubhub obscures these additional delivery charges in
19 a tooltip—a message that appears only when the cursor is positioned over an “i” icon—meaning
20 consumers do not see this information unless they affirmatively seek it out.

21 21. Grubhub’s delivery charges, and its presentation and description of those fees, are
22 the same on both of the company’s Platforms:

23 a. The Delivery Fee is a flat fee (regardless of order size) that varies by
24 restaurant. It typically ranges from \$0.99 to \$7.49 in California, according to the People’s
25 investigation. Grubhub describes the Delivery Fee as paying for Grubhub’s “delivery-related costs.”

26 b. In approximately [REDACTED] Grubhub added a Small Order Fee for
27 delivery orders on its Platforms, including in California. The Small Order Fee is a flat \$2 charge for
28 food orders less than \$10.

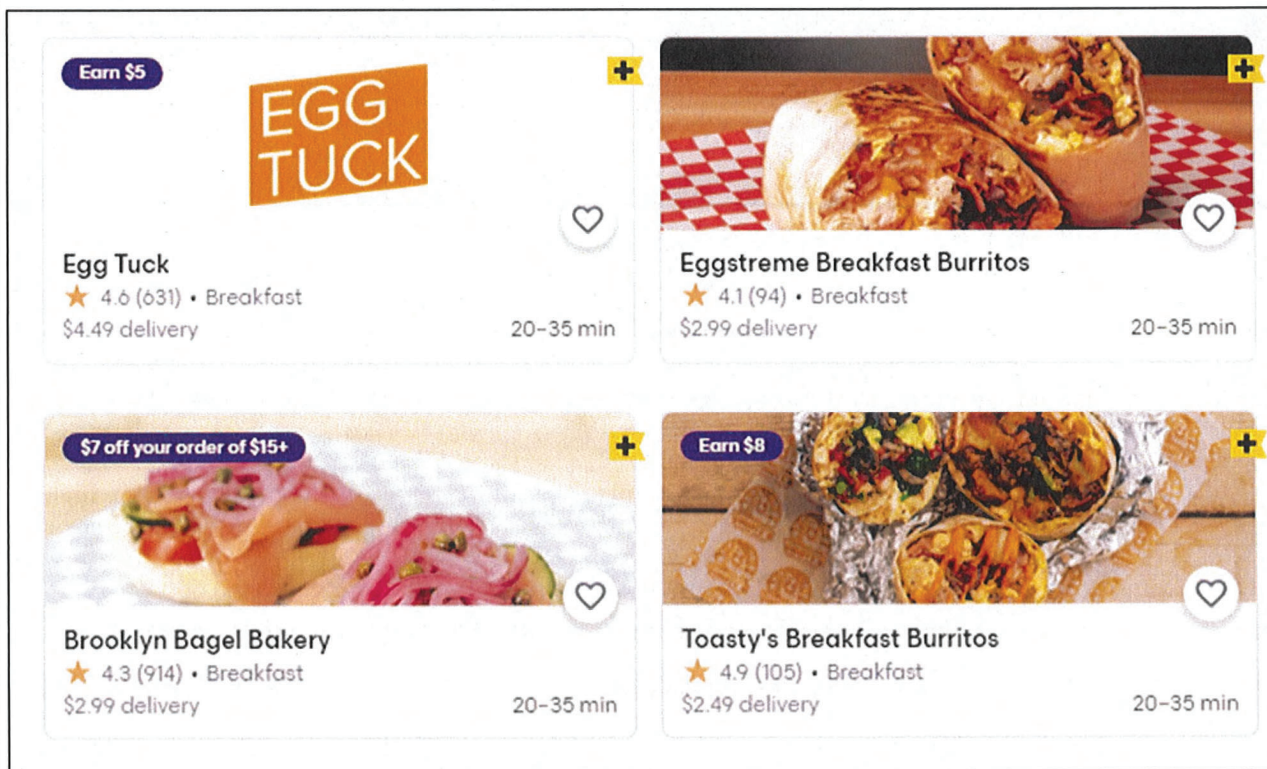
1 c. In approximately [REDACTED] Grubhub added a Service Fee for delivery
2 orders, including in California. The Service Fee is calculated as a percentage of the order subtotal
3 and usually ranges between 10% and 20%, but it is always between \$1.50 and \$9. Grubhub describes
4 the Service Fee as a charge that “helps cover operating costs.”

5 d. Since December 2020, Grubhub has also charged California consumers a
6 Driver Benefits Fee for delivery orders. Since its launch, the fee has ranged from \$1 to \$3.50.
7 Grubhub currently charges consumers a Driver Benefits fee between \$1 and \$3.

8 22. The Delivery Fee is the “bait” in Grubhub’s bait-and-switch pricing scheme. Its role
9 is to lure consumers into beginning a transaction. The Grubhub and Seamless Platforms prominently
10 display the Delivery Fee for each restaurant upfront, on pages displaying restaurants near the
11 consumer.

12 23. For example, on the Grubhub website, a user who searches for breakfast food near
13 200 North Spring Street in Los Angeles would see a screen like this:

14 *Excerpt from Grubhub.com search page*



24. Next to the name of each listed restaurant is the advertised Delivery Fee for that restaurant. With direct and unqualified phrasing, Grubhub conveys that this fee is the amount the consumer will pay for delivery—e.g., “\$2.99 delivery” for Brooklyn Bagel Bakery or “\$4.49 delivery” for Egg Tuck. Grubhub knew, or in the exercise of reasonable care should have known, that this advertising is untrue or misleading because Grubhub tacks on additional charges for delivery.

25. Grubhub’s full charges for a delivery order are the “switch” in Grubhub’s bait-and-switch pricing scheme. Grubhub withholds the existence and amount of the Service Fee, Small Order Fee, and Driver Benefits Fee until checkout. And even at checkout, Grubhub does not clearly disclose these fees, which are not itemized on the checkout screen.

26. Until recently, Grubhub hid its Service and Small Order fees within a line item labeled “Tax and fees,” which combined the amount of the fees with the amount of estimated tax:

Excerpts from Grubhub.com checkout screen

Items subtotal	\$34.97
Delivery fee	\$1.49
Tax and fees ⓘ	\$7.39

Sales tax	\$3.89	\$14.99
Service fee	\$3.50	
This fee helps cover operating costs.		\$34.97
Delivery fee		\$1.49
Tax and fees ⓘ		\$7.39

27. In addition to obscuring the nature and amount Grubhub’s additional fees, the “Tax and fees” label deceptively implied that the fees grouped with taxes were imposed or authorized by the government.

28. While Grubhub no longer combines taxes and fees in a single line item, its mandatory, additional delivery fees (including the Driver Benefits Fee) remain hidden behind the

1 label "Other fees." For example, this is the checkout screen for an order on the Grubhub website
2 from Langer's deli in Los Angeles:

3 *Excerpt from Grubhub.com checkout screen*

4

5 **Your order from**
6 Langer's


7 **Place your delivery order**

8 By placing your order, you agree to Grubhub's terms of use and privacy policy

9 1 Turkey on Rye Half Sandwich \$17.95

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11 **Items subtotal** \$17.95

12  Save \$4.06 now with Grubhub+ **Join today**

13

14 **Delivery fee** ⓘ \$2.99

15 **Other fees** ⓘ \$3.33

16 **Tax** \$2.31

17 **Driver tip** \$1.00

18 **Total** \$27.58

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20 29. To find the Service Fee, Driver Benefits Fee, and Small Order Fee, a consumer must
21 take the affirmative step of clicking on the small "i" icon next to "Other fees." In the example below,
22 an order from TeaMorrow in Los Angeles, the resulting pop-up reveals these fees, totaling \$6.50:

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Excerpt from Grubhub.com checkout screen

Your order from	
Teamorrow	
Small order fee	\$2.00
Save \$2.00 when you add \$4.51 to your order.	
Service fee	\$1.50
This fee helps cover operating costs, but you will never pay more than \$9.00.	
Driver benefits	\$3.00
In support of California's Prop 22, this payment helps guarantee minimum wage and healthcare benefits for our drivers so they don't have to depend on tips.	
Delivery fee	\$5.49
Other fees ⓘ	\$6.50
Tax	\$2.00

13 30. Grubhub’s bait-and-switch pricing scheme is fraudulent and unlawful because
14 Grubhub does not intend to sell its service (delivery of the consumer’s food order) for the advertised
15 price. Recently, in enacting legislation that specifically bars “advertising...a price for a good or
16 service that does not include all mandatory fees,” the California Legislature made clear that “[t]his
17 practice, like other forms of bait and switch advertising, is prohibited by existing statutes.”⁴

18 31. In addition, Grubhub’s pricing scheme reflects several overlapping tactics that are
19 deceptive collectively and in their own right.

20 32. Arbitrarily parceling out the cost of delivery among multiple fees misleads
21 consumers about the nature and purpose of the charges they will pay, shielding Grubhub from
22 consumer sticker shock over the price Grubhub charges for its single service—delivery.

23 33. The Delivery Fee, Service Fee, Driver Benefits Fee, and Small Order Fee are not tied
24 to distinct elements of Grubhub’s service—*i.e.*, consumers do not receive different services in
25 exchange for each fee. Grubhub does not charge any of these fees for pickup orders, yet it charges

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28 ⁴ California Senate Bill No. 478, §§ 1, 3 (enacted Oct. 7, 2023).

1 all four for Grubhub delivery orders. Tellingly, Grubhub refers to these fees as “delivery fees” in its
2 public financial disclosures.

3 34. In particular, the Delivery Fee and Service Fee—the two main drivers of the delivery
4 price—are fungible. As Grubhub’s CEO explained to investors in 2019, the company manipulates
5 the allocation of Delivery Fees and Service Fees after exhaustive testing to “maximize conversion
6 with a given diner burden.” In e-commerce vernacular, “diner burden” means the consumer’s overall
7 cost, and “conversion” means getting the consumer to take the desired action—*i.e.*, place a delivery
8 order. In other words, Grubhub determines the combination of Delivery Fee and Service Fee
9 amounts that will induce the most consumers to complete an order.

10 35. Records of Grubhub’s internal testing [REDACTED] Grubhub simply [REDACTED]
11 [REDACTED] Grubhub’s description
12 of the purpose of the testing was [REDACTED]
13 [REDACTED]

14 36. Grubhub’s pricing scheme is an example of *partition pricing*, or dividing the full
15 price of a service into parts, and *drip pricing*, or promoting only a portion of a service’s cost upfront
16 and disclosing the rest only as the consumer goes through the buying process. A rule recently
17 proposed by the Federal Trade Commission (“FTC”) recognizes that these practices, which
18 “misrepresent the nature and purpose of fees or charges” and “misrepresent the total costs by
19 omitting mandatory fees from advertised prices,” respectively, are deceptive and unfair.⁵

20 37. As the FTC and other consumer watchdogs have recognized, both practices mislead
21 consumers because separating prices into base prices and surcharges “can lower customers’
22 perceptions of total cost”⁶ and “makes continued search costlier and more complicated.”⁷

23 38. Experts in the design of e-commerce user interfaces have described drip pricing as a
24 “dark pattern [that] exploits the sunk cost fallacy cognitive bias: users are likely to feel so invested
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26 ⁵ 88 Fed. Reg. 77,431, 77,432.

27 ⁶ Johannes Voester et al., Partitioned Pricing: Review of the Literature and Directions for Further Research, 11
28 Rev. Mgmt. Sci. 879, 893 (2017).

⁷ David Adam Friedman, *Regulating Drip Pricing*, 31 Stan. L. & Pol’y Rev. 51, 59 (2020).

1 in the process that they justify the additional charges by completing the purchase to not waste their
2 effort.”⁸ A consumer will “be more willing to complete the purchase rather than have to give up and
3 start all over again with another website.”⁹ An FTC staff report found that drip pricing “costs
4 consumers money,” noting a study that found consumers who were not shown all mandatory fees
5 upfront spent 20% more and were 14% more likely to complete a transaction than those that were.¹⁰

6 39. Finally, by obfuscating the Service Fee, Small Order Fee, and Driver Benefits Fee at
7 checkout, Grubhub increases the likelihood that a consumer will complete the transaction without
8 being deterred by the charges lumped together as “Other fees” (or, previously, as “Tax and fees”).

9 40. Burying these individual fees in a broader, vaguely described category is another
10 dark pattern. It “[h]ide[s] key information ... so users will proceed without fully understanding the
11 transaction.”¹¹ As user interface design experts have recognized, “[t]he primary motivator behind
12 hidden information is the disguising of relevant information as irrelevant.”¹²

13 41. In 2020, Consumer Reports specifically criticized the Grubhub Platform’s “lack of
14 fee itemization” as a “dark design pattern.”¹³ Consumer Reports noted that Grubhub could have, but
15 did not, list taxes and its fees “separately by default, without hidden [user interface] or ‘read more
16 information’ icons.”¹⁴ By requiring consumers to click on the small “i” icon, Consumer Reports

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20 ⁸ Arunesh Mathur et al., *Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites*, Proc. ACM
Hum-Comput. Interact. 81, 13 (2019).

21 ⁹ Harry Brignull, “Types of Dark Pattern: Hidden Costs,” *available at*
22 <https://www.deceptive.design/types/hidden-costs> (last visited December 26, 2023).

23 ¹⁰ *Bringing Dark Patterns to Light*, Federal Trade Commission Staff Report (Sept. 2022), *available at*
24 https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

25 ¹¹ Maximilian Maier and Rikard Harr, *Dark Design Patterns: An End-User Perspective*, 16(2) Human
Technology 170, 179 (2020).

26 ¹² Colin M. Gray et al., *The Dark (Patterns) Side of UX Design*, Proceedings of the 2018 CHI Conference on
Human Factors in Computing Systems 534, 7 (2018).

27 ¹³ Consumer Reports, *Collecting #Receipts: Food Delivery Apps & Fee Transparency* (Sept. 29, 2020) at 6, 13.

28 ¹⁴ *Id.* at 13.

1 observed, Grubhub “creates [for consumers] a level of friction and fee obfuscation to see what they
2 are paying for through the interface automatically.”¹⁵

3 42. The total price of Grubhub’s service is material to consumers. Online ordering and
4 delivery of restaurant meals is available in Los Angeles County from multiple third-party
5 companies, as well as directly from many restaurants. Consumers also have the option to place an
6 order directly with a restaurant for carry-out. Consumers are sensitive to the price they pay for the
7 convenience of delivery; as the price increases, consumers are less willing to complete the
8 transaction.

9 43. The impact of Grubhub’s pricing scheme on the total price consumers pay for
10 delivery is substantial. On a small food order, the Service Fee, Driver Benefits Fee, and Small Order
11 Fee can, together, double or triple the total fees the consumer confronts on the checkout screen,
12 compared to the flat Delivery Fee advertised to the consumer upfront. Because the Service Fee is a
13 percentage of the total food order, the magnitude of this backdoor increase in the cost of Grubhub’s
14 service grows with the size of the order, even without the Small Order Fee. For example, on this
15 order from Mike’s Deli #2, the advertised Delivery Fee was only \$1.49, but the Service Fee added
16 \$8.44, approximately 13% of the subtotal. The Driver Benefits Fee added another \$1.00. This
17 brought the full cost of Grubhub’s Service to \$10.93—a 734% increase on the \$1.49 advertised
18 Delivery Fee.

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¹⁵ *Id.*; see also *id.* at 6 and 21.

Excerpts from Grubhub.com checkout screen

Service fee	\$8.44	\$13.99
This fee helps cover operating costs, but you will never pay more than \$9.00.		
Driver benefits	\$1.00	\$64.95
In support of California's Prop 22, this payment helps guarantee minimum wage and healthcare benefits for our drivers so they don't have to depend on tips.		
Delivery rec.		\$1.49
Other fees ⓘ		\$9.44
Tax		\$7.21
Driver tip		\$1.00
Total		\$84.09

< Modify your order

TOTAL \$84.09

II. GRUBHUB MISLEADINGLY INVITES CONSUMERS TO “ORDER ONLINE FOR FREE.”

44. In addition to misleading consumers with an advertised delivery price that is not the full price of delivery, Grubhub flatly—and deceptively—describes its Service as “free” on hundreds of webpages intended to attract Los Angeles County consumers to the Grubhub Platform.

45. Since at least 2011, Grubhub has advertised to consumers in Los Angeles County that they can “order online for free.” These unqualified statements appear on Grubhub.com webpages as a prompt inviting consumers to search for nearby restaurants.

46. Because they are unqualified, Grubhub’s “order online for free” claims misrepresent to consumers that they can place delivery orders online for free. In reality, they cannot. As described in Section I.A, *supra*, Grubhub charges consumers multiple mandatory fees to place online delivery orders.

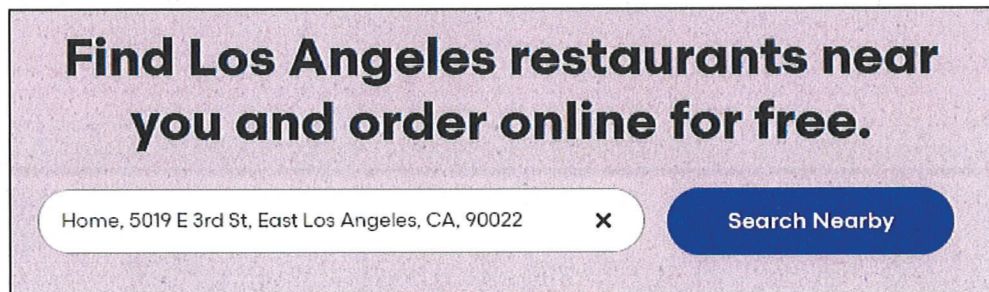
47. Delivery orders made up more than 90% of the orders placed on Grubhub’s Platforms as of January 2020. While consumers ordering online can avoid paying Grubhub’s fees by choosing to pick up the order, rather than having it delivered, those pickup orders made up less than 10% of all Grubhub orders as of the same date.

1 48. The cost of Grubhub’s online ordering service is material to consumers, who can
2 choose to order from another third-party meal delivery service or directly from the restaurant if
3 given accurate, upfront pricing information.

4 49. Nationwide, more than 200,000 Grubhub.com webpages invite consumers to “order
5 online for free,” in search prompts targeting specific cities, zip codes, types of cuisine, and even
6 universities. Hundreds of these webpages specifically target consumers looking for delivery from
7 restaurants in Los Angeles County. Grubhub uses these webpages to boost its placement in Internet
8 search rankings and to compete for consumers searching online for meal delivery. When a consumer
9 searches Google for “Los Angeles delivery,” “Chinese delivery in Long Beach,” “delivery in
10 90022,” or “LA City College takeout,” these Grubhub webpages are among the top results.

11 50. Until recently, on its city-specific webpages, Grubhub told consumers to “Find [city]
12 restaurants near you and order online for free.” For example, Grubhub made this statement on its
13 Grubhub.com Los Angeles webpage, which appears as the first Google search result when
14 consumers search for “Los Angeles delivery,” beginning no later than June 2011.

15 *Excerpt from Grubhub.com’s Los Angeles webpage*

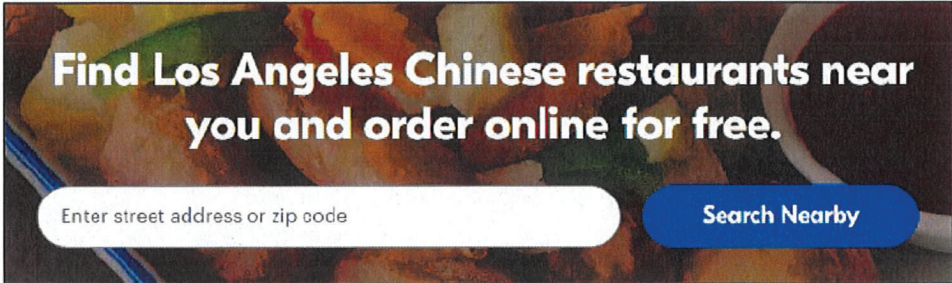


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21 51. On information and belief, Grubhub made the same misrepresentations on 81
22 additional city-specific webpages directed at consumers in other Los Angeles County cities,
23 including Long Beach, Culver City, Burbank, and Santa Monica.

24 52. Although Grubhub removed its “order online for free” misrepresentations from its
25 city-specific webpages in 2023, Grubhub still makes these misrepresentations on webpages that
26 highlight specific cuisines in a given city. On these webpages, Grubhub tells consumers to “Find
27 [city] [cuisine] restaurants near you and order online for free.” This misrepresentation has appeared
28 on Grubhub.com’s city-and-cuisine-specific webpages targeting Los Angeles County since at least

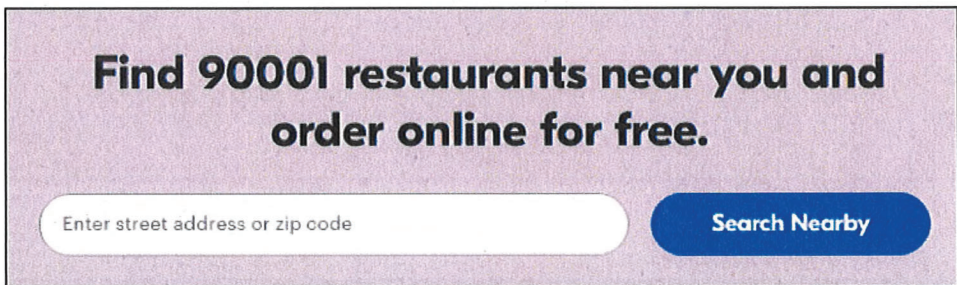
1 June 2011. For example, the following webpage appears in Google search results when consumers
2 search for “Chinese delivery Los Angeles”:

3 *Excerpt from Grubhub.com webpage for Chinese restaurants in Los Angeles*



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9 53. Grubhub also makes these misrepresentations on zip-code-specific webpages. This
10 claim has appeared on Grubhub.com’s zip-code-specific webpages for Los Angeles County
11 restaurants since at least June 2011. For example, the following webpage appears in Google search
12 results when consumers search for “food delivery 90001”:

13 *Excerpt from Grubhub.com webpage for restaurants in zip code 90001*



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19 54. Grubhub makes the same misrepresentations on webpages directed at college
20 students on city- and school-specific pages. Grubhub has made this claim on grubhub.com webpages
21 focused on Los Angeles County colleges and universities since at least May 2011. For example, the
22 following webpage appears in Google search results when consumers search for “LA campus
23 delivery”:
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1 *Excerpt from Grubhub.com webpage for Los Angeles college students*

2
3 **Find Los Angeles restaurants near**
4 **your campus and order online for**
5 **free.**

6 Enter street address or zip code

7 Search Nearby

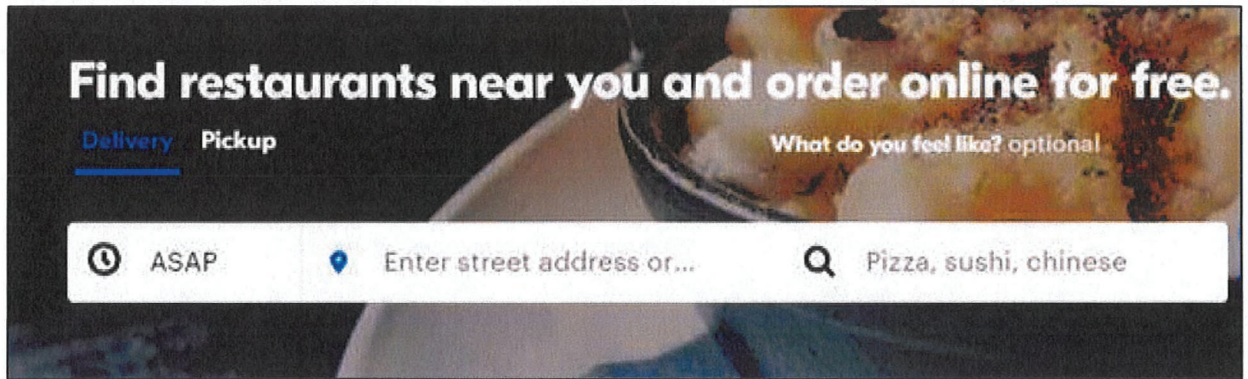
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10 55. In the “About” section of the grubhub.com homepage, Grubhub tells consumers that
11 “you can place your order online . . . free of charge.” The Grubhub.com home page has made this
12 claim to consumers, including Los Angeles County consumers, since at least January 2015.

13 56. Grubhub includes the same language next to prompts to search specifically for
14 restaurants that offer delivery through Grubhub, a further affirmative misrepresentation that
15 consumers ordering delivery can “order online for free.”

16 57. For example, on Grubhub.com’s city-and-cuisine-specific webpages, “order online
17 for free” appears directly above the question, “Want to see which [cuisine] restaurants deliver to
18 you?”

19 58. In another example, on Grubhub.com’s “Restaurants Near Me” webpage, “order
20 online for free” appears directly above the search box when “Delivery” is selected:
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1 *Excerpt from Grubhub.com Restaurants Near Me webpage*



9 59. Grubhub does not disclose that consumers must pay fees to complete an online
10 delivery order anywhere on these webpages.

11 60. The fees applicable to delivery orders do not appear until a consumer reaches the
12 checkout page. Even at checkout, Grubhub’s Service Fee, Driver Benefits Fee, and Small Order Fee
13 are not clearly disclosed, as discussed in Section I.A, *supra*.

14 61. The belated appearance of these fees is inadequate to cure the deception. In addition
15 to remaining obscured behind a tooltip, that Grubhub charges fees on online delivery orders at all
16 contradicts Grubhub’s repeated representation that ordering online is “free” for delivery orders. As
17 the FTC’s guidance on online advertising disclosures states,

18 A disclosure can only qualify or limit a claim to avoid a misleading
19 impression. It cannot cure a false claim. If a disclosure provides
20 information that contradicts a material claim, the disclosure will not
21 be sufficient to prevent the ad from being deceptive. In that situation,
22 the claim itself must be modified.¹⁶

23 62. Waiting to present the fees that apply to online delivery orders until checkout is also
24 misleading because it prevents consumers from effectively comparing the cost of Grubhub’s service,
25 hides material pricing information, and exploits cognitive biases that make consumers less likely to
26 abandon the transaction, as discussed in Section I.A, *supra*.

27 ¹⁶ Federal Trade Commission, .com Disclosures: How to Make Effective Disclosures in Digital Advertising,
28 March 2013, *available at* <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

1 63. Grubhub could easily make these representations non-deceptive by adding a single
2 word: “order *pickup* online for free.” Instead, Grubhub misrepresents the price of its service by
3 advertising, without qualification, that ordering from Grubhub online is “free.”

4 **III. GRUBHUB MISLEADS CONSUMERS ABOUT ITS DRIVER BENEFITS FEE.**

5 64. Proposition 22, a ballot initiative approved by California voters on November 3,
6 2020, mandated that meal delivery companies (including Grubhub) provide all drivers with a wage
7 guarantee, and qualifying drivers with a financial subsidy to defray the cost of purchasing health
8 insurance.¹⁷

9 65. In December 2020, Grubhub began charging California consumers a fee for so-called
10 “Driver benefits” (the Driver Benefits Fee) on every Grubhub delivery order. Since its launch, the
11 fee has ranged from \$1 to \$3.50. Currently, Grubhub charges consumers a Driver Benefits Fee
12 between \$1 and \$3.

13 66. In language Grubhub displays to California consumers in each Grubhub delivery
14 transaction, Grubhub exaggerates the benefits and wages funded by its Driver Benefits Fee,
15 including by using misleading language to falsely convey that all its drivers receive health
16 benefits—including the driver who delivered the consumer’s order.

17 67. Grubhub also pairs the addition of the Driver Benefits Fee with a misleading
18 invitation to consumers: now that you are paying Grubhub more in fees, you can pay your delivery
19 driver less in tips. Grubhub falsely advertises that the addition of “Driver benefits” eliminates
20 drivers’ need for gratuities, deceptively conveying to consumers that they no longer need to tip their
21 driver.

22 **A. Most Grubhub Drivers Are Not Eligible for the Full Range of Prop 22’s**
23 **“Healthcare Benefits.”**

24 68. Prop 22 requires Grubhub to provide qualifying drivers a “healthcare subsidy” to
25 defray the cost of purchasing health insurance on California’s health benefit exchange, called
26 “Covered California.”¹⁸ To qualify, drivers must accrue a certain amount of “engaged time” during

27 ¹⁷ See Cal. Bus. & Prof. Code §§ 7453-7454.

28 ¹⁸ Cal. Bus. & Prof. Code § 7454.

1 a calendar quarter, which is calculated as the average “engaged” hours driven per week.¹⁹ The
2 subsidy is paid to qualifying drivers at the end of each calendar quarter.²⁰

3 69. “Engaged time” is defined by Prop 22 as the time spent driving to pick up and to
4 deliver orders once the driver has been “engaged” to deliver an available order.²¹ Engaged time does
5 not include the time drivers spend waiting for the next delivery assignment, which is substantial. On
6 average, this wait time accounts for approximately one-third of a driver’s total working time.

7 70. To qualify for the lowest-level healthcare subsidy, drivers must average at least 15
8 “engaged” hours per week over the course of the calendar quarter. Drivers who fail to do so receive
9 no healthcare subsidy for that quarter. Drivers must qualify for the subsidy each quarter, meaning
10 that the subsidy disappears any time a driver does not meet the average weekly “engaged hours”
11 threshold for a given quarter.

12 71. Eligibility for the healthcare subsidy is determined by calculating the average
13 number of engaged hours worked for a single company.²² The hours worked for multiple companies
14 in a given quarter are not aggregated.²³ For example, a driver who works a weekly average of 10
15 engaged hours for Grubhub and 10 engaged hours for Uber Eats, totaling 20 engaged hours, receives
16 no healthcare subsidy.

17 72. California drivers who average at least 15, but fewer than 25, engaged hours per
18 week for a calendar quarter will receive a subsidy equal to 41% of the average premium for a
19 California Bronze plan.²⁴ In 2023, that subsidy was equal to \$228 per month.

20 73. Drivers who average 25 or more engaged hours per week for a calendar quarter
21 receive Prop 22’s maximum healthcare subsidy, equal to 82% of the average Bronze plan premium.
22 In 2023, that subsidy was equal to \$455 per month.

23 _____
24 ¹⁹ *Id.* § 7454(a).

25 ²⁰ *See Id.* § 7454(d)(3).

26 ²¹ *Id.* § 7463(j).

27 ²² *Id.* § 7454(a).

28 ²³ *Id.*

²⁴ The premium subsidies provided for under Prop 22 are tied to the average statewide monthly premium for an individual for a Covered California bronze health insurance plan.

1 74. California Bronze plans have the least expensive monthly premiums and the highest
2 out-of-pocket costs of the plans on California’s health benefits exchange. The Bronze Plans impose
3 a \$6,300 medical deductible and a \$500 deductible for prescriptions.

4 75. Industry data indicate that the vast majority of California delivery and ride-share
5 drivers receive no healthcare subsidy. Surveys conducted by driver organizations and gig-work
6 companies covered by Prop 22 have found that only 10-14% of drivers receive any subsidy. Those
7 who do receive a healthcare subsidy may only qualify for the minimum. One ride-share driver in
8 Los Angeles reported that the first time she tried to qualify for the subsidy, she was 13 minutes short
9 of the 25 average engaged hours per week required to qualify for the maximum amount and had to
10 settle for the 41% subsidy.

11 **B. Grubhub Misleads Consumers About the “Healthcare Benefits” Its Drivers
12 Receive.**

13 76. Grubhub deceptively describes its Driver Benefits Fee by conveying that the
14 company provides drivers with healthcare benefits that Grubhub does not actually offer. Moreover,
15 many drivers do not qualify for even the partial health insurance subsidy that Grubhub does offer.

16 77. As discussed in Section I.A, *supra*, the Driver Benefits Fee does not appear until the
17 last step of the transaction, on the checkout page. Even then, it is concealed within the heading
18 “Other fees”:

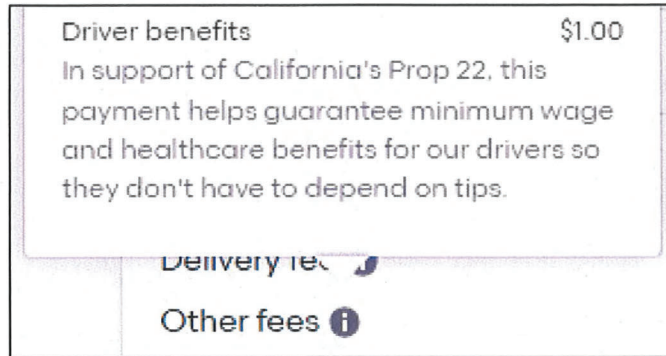
19 *Excerpt from Grubhub.com checkout screen*

20 Items subtotal	\$5.95
21 Delivery fee ⓘ	\$0.99
22 Other fees ⓘ	\$4.50
23 Tax	\$1.09
24 Driver tip	\$1.00
25 Total	\$13.53

26 78. If the consumer takes the affirmative step of clicking on the small information tooltip
27 next to “Other fees,” the Driver Benefits Fee appears. An accompanying description states: “In
28

1 support of California’s Prop 22, this payment helps guarantee minimum wage and healthcare
2 benefits for our drivers so they don’t have to depend on tips.”

3 *Excerpt from Grubhub.com checkout screen*



11 79. This description—that the “Driver benefits” payment “helps guarantee minimum
12 wage and healthcare benefits for our drivers so they don’t have to depend on tips”—is the only
13 explanation of the Driver Benefits Fee that Grubhub offers to consumers during the transaction.

14 80. Grubhub’s description of the Driver Benefits Fee is also deceptive, conveying that
15 all California Grubhub drivers—including the driver delivering the consumer’s order—are
16 “guarantee[d]” “healthcare benefits.” Grubhub knew, or in the exercise of reasonable care should
17 have known, that this advertising is untrue or misleading based on the “benefits” its drivers actually
18 receive.

19 81. In fact, Grubhub’s drivers are not guaranteed to receive the Prop 22 health subsidy.
20 The vast majority of Grubhub’s Los Angeles County drivers [REDACTED] From
21 January 2021 through September 2023, less than █% of █ Grubhub drivers in Los Angeles
22 County [REDACTED]. Even fewer—less than █% [REDACTED].

23 82. Grubhub’s description of the mandated Prop 22 subsidies as “healthcare benefits”
24 also deceptively conveys that Grubhub is providing its drivers with employer-sponsored health
25 insurance.

26 83. The partial healthcare subsidy that Grubhub offers to qualifying drivers is starkly
27 different from, and far less generous than, traditional employer-sponsored health insurance benefits.
28

1 The partial healthcare subsidy is insufficient to cover the cost of even the lowest-premium health
2 plan available on California’s health exchange.

3 84. Furthermore, eligible drivers only receive the subsidy at the end of each quarter. As
4 a result, drivers must front the full cost of their premiums for three months until the subsidy becomes
5 available to partially reimburse the cost. Because Grubhub conditions payment of the subsidy on
6 proof of enrollment in an eligible healthcare plan, drivers who are unable to undertake the financial
7 burden of purchasing health insurance on the exchange are denied the subsidy altogether—even if
8 they have worked enough “engaged” hours to qualify.²⁵

9 **C. Grubhub Misleads Consumers About Tips for Drivers.**

10 85. In addition to misleadingly describing its Driver Benefits Fee, Grubhub is also
11 sending a deceptive message to California consumers about driver tips: now that Grubhub is
12 providing “Driver benefits,” consumers need not tip their driver because drivers no longer depend
13 on tips.

14 86. Grubhub’s description of the Driver Benefits Fee expressly links “Driver benefits”
15 to driver tips, misrepresenting to consumers that the fee helps “guarantee” these driver “benefits”
16 “so they don’t have to depend on tips.” Grubhub knew, or in the exercise of reasonable care should
17 have known, that the claim drivers “don’t have to depend on tips” is untrue or misleading based on
18 the “benefits” its drivers actually receive.

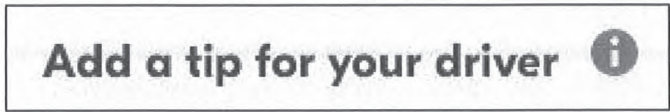
19 87. On or around the same date it started charging the Driver Benefits Fee, Grubhub
20 made a significant change to the default tipping options and accompanying text presented to
21 consumers during checkout.

22 88. Before December 16, 2020, Grubhub presented Los Angeles County consumers with
23 the recommendation to “Add a tip for your driver.”
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27 ²⁵ Further removing this arrangement from a reasonable consumer’s understanding of the term “healthcare
28 benefit” is the fact that drivers must use post-tax dollars to pay for their coverage. In a traditional employer-sponsored
plan, employees are able to use pre-tax wages to pay for employer-sponsored coverage.

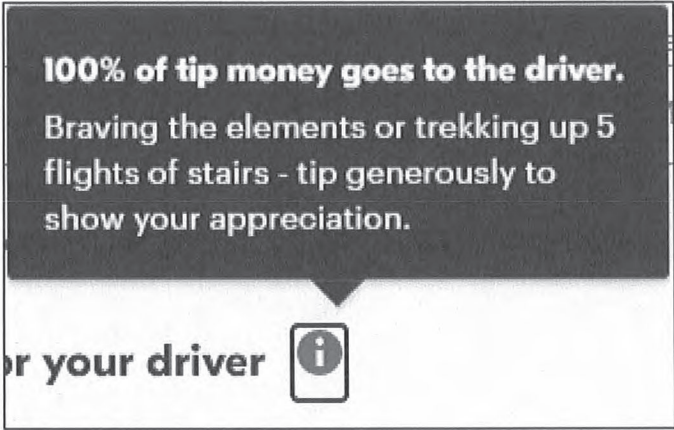
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Excerpt from Grubhub.com checkout screen



89. The text that appeared upon clicking the small information icon stated: “100% of tip money goes to the driver. Braving the elements or trekking up 5 flights of stairs—tip generously to show your appreciation.”

Excerpt from Grubhub.com checkout screen



90. On or around December 16, 2020, Grubhub eliminated this longstanding language and changed the text on the checkout page accompanying the tipping options to read: “Leave an optional tip on top of Driver benefits” (emphasis added). In addition to falsely implying that all drivers receive the so-called “benefits,” the new language deceptively implies that “Driver benefits” are sufficient compensation on their own, making tips “optional.”

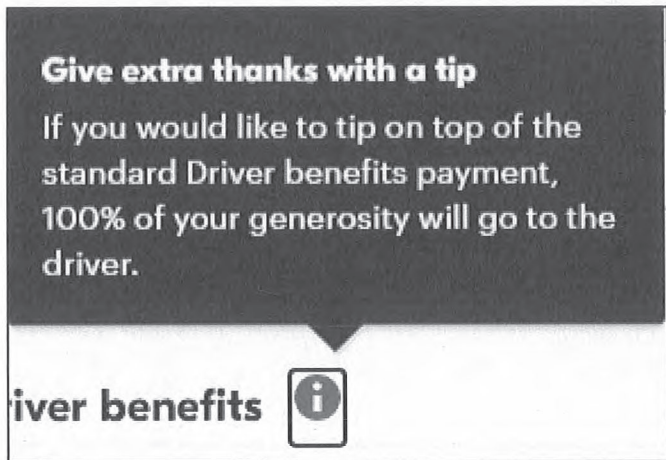
Excerpt from Grubhub.com checkout screen



91. If the consumer clicks on the information icon next to “Leave an optional tip on top of driver benefits,” they are no longer instructed to “tip generously.” Grubhub changed the language in the pop-up to state: “Give *extra* thanks with a tip. *If you would like to tip on top of the standard Driver benefits payment, 100% of your generosity will go to the driver*” (emphasis added). This

1 language, which appeared from at least December 2020 through at least March 2021, again falsely
2 implied that all California drivers receive these “benefits,” and again deceptively implied that these
3 benefits are sufficient compensation on their own, making tips unnecessary.²⁶

4 *Excerpt from Grubhub.com checkout screen*



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13 92. Grubhub’s changes to its suggested and default gratuity amounts reinforce this
14 deceptive messaging, further conveying to consumers that they do not need to tip their driver.

15 93. Before approximately December 16, 2020, Grubhub presented tip options ranging
16 from 15% to 30% of the total cost of an order (including taxes and fees), with 20% selected as the
17 default option. To tip less than the suggested amounts, a consumer would have had to take the
18 affirmative step of clicking “custom tip” and entering a different amount.

19 94. On or around December 16, 2020, Grubhub began presenting the tipping options in
20 dollars, not percentages, and listed options ranging from \$0 to \$1.50, with the default set at zero:

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26 ²⁶ Currently, the language that appears upon clicking the tooltip states, “100% of the tip goes to your driver once
27 the delivery is complete and is paid with their earnings.” This language does nothing to dispel the misleading
28 impression left by Grubhub’s description of the Driver Benefits Fee and the prompt to leave an “optional tip on top of
Driver Benefits.”

1 *Excerpt from Grubhub.com checkout screen*

2 **Leave an optional tip on top of Driver benefits** ⓘ

\$0.00	\$0.50	\$1.00	\$1.50	Custom tip	Amount
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6 95. In or around February 2021, following highly critical press coverage about the
7 negative impact of Grubhub’s tipping changes on driver income, Grubhub adjusted its suggested
8 tipping options. While still described as “an optional tip on top of Driver benefits,” the suggested
9 tipping options now range from \$1 to \$4.

10 96. For some time after this change, the default tip remained \$0, with the “Custom tip”
11 automatically selected and set to zero:

12 *Excerpt from Grubhub.com checkout screen*

13 **Leave an optional tip on top of Driver benefits** ⓘ

\$1.00	\$2.00	\$3.00	\$4.00	Custom tip	0.00
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17 97. Grubhub now sets the default tip to \$1, still far below the previous 20% default.

18 98. Grubhub’s move to set the default driver tip to \$0, and now \$1, is significant. Web
19 design research has shown that most Internet users do not look at, let alone change, default settings.
20 Reasonable consumers are likely to understand the default option as an endorsement, reflecting the
21 recommended or preferred option. Other reasonable consumers may not recognize that they’ve been
22 presented with a choice; still others may not care enough to make their own selection. Technology
23 companies, including—on information and belief—Grubhub, know that default settings are a highly
24 effective way of influencing consumer behavior.

25 99. Adding new fees, like the Driver Benefits Fee, makes Grubhub’s service more
26 expensive for consumers. Grubhub knows that such price increases risk reducing consumer demand
27 for its services—and correspondingly, its market share and profits.

1 100. One way to reduce the total price consumers pay to use Grubhub is to reduce or
2 eliminate tips to drivers. However, tipping is an established and expected part of paying for service
3 in the United States food service industry. This expectation extends to meal delivery drivers.
4 Grubhub’s own “Essential Guide to Tipping Your Delivery Driver,” published on its “blog” in 2019,
5 advises that consumers should “[n]ever tip less than five bucks.” Particularly during the COVID-
6 19 pandemic, when consumers were reliant on meal delivery as a safety feature of their daily lives,
7 consumers became even more mindful about the need to support drivers taking extra risks on the
8 front lines.

9 101. Grubhub offsets the added cost of its Driver Benefits Fee by giving consumers
10 permission not to tip their drivers through the use of deceptive language that exaggerates and
11 misrepresents the scope, characteristics, and actual benefits that drivers are receiving from Grubhub
12 pursuant to Prop 22. In reality, the changes mandated by Prop 22 did not replace the income provided
13 by tips.

14 102. Prop 22 requires Grubhub to pay its drivers a minimum of 120% of the applicable
15 state or local minimum wage for “engaged time.”²⁷

16 103. A University of California Berkeley study assessing driver compensation pursuant
17 to the Prop 22 wage guarantee shows just how limited it is. After taking uncompensated wait time
18 into account, along with job-related expenses drivers must pay for themselves, the study concluded
19 that Prop 22’s wage guarantee amounted to just \$5.64 per hour.

20 104. These significant changes to Grubhub’s gratuity options and language have impacted
21 consumer tipping practices to the detriment of California meal delivery drivers. A Los Angeles
22 driver reported that she was making 30-50% less on a daily basis than she previously did driving for
23 Grubhub. Another Grubhub driver in California reported to the Los Angeles Times, “I think
24 customers are being bamboozled into thinking Grubhub is paying us a lot more.”²⁸

25
26 ²⁷ Cal. Bus. & Prof. Code §§ 7453(a) & (d); *id.* § 7463(j).

27 ²⁸ Suhuana Hussain, “Grubhub drivers say app change eats into tips, jeopardizing a usually generous season,”
28 Los Angeles Times, (Dec. 31, 2020), *available at* <https://www.latimes.com/business/technology/story/2020-12-31/grubhub-policy-post-prop-22-discourages-tips>.

1 105. On information and belief, Grubhub was aware that labeling tips as “optional,”
2 reducing the suggested tip amounts, and setting the default tip rate to \$0 or \$1.00 would reduce the
3 tips drivers receive. Grubhub has extensive data on how frequently and how much consumers tip
4 their drivers and has used different default tip rates over time and in different markets.

5 106. This practice shifts the cost of Grubhub’s Driver Benefits Fee onto Grubhub’s
6 drivers, undermining the purpose and violating the spirit of Prop 22’s wage and benefits guarantees.
7 Under Prop 22, California public policy recognizes that “delivery drivers deserve economic
8 security.”²⁹ Prop 22’s express purpose is to “require rideshare and delivery network companies to
9 offer new protections and benefits for app-based rideshare and delivery drivers, including minimum
10 compensation levels.”³⁰

11 107. In effect, Grubhub’s tipping practices shift the cost of providing Prop 22’s health
12 subsidy and wage guarantee onto the drivers the law is designed to help, reducing the tips drivers
13 would otherwise receive and contravening the intent of Prop 22 to create a wage and benefit safety
14 net for drivers. There is an equity dimension to this practice as well, because the Los Angeles County
15 drivers harmed by this misconduct are disproportionately people of color, and more than a third are
16 immigrants.

17 108. This deceptive practice also prevents consumers from accurately comparing the full
18 price of using Grubhub to order their meal—including food price, fees, and a customary tip—to
19 ordering directly from the restaurant or competitors that do not discourage tipping. Grubhub’s
20 misrepresentations also deprive consumers of the ability to make an informed choice about whether
21 and how much to tip their driver.

22 **IV. GRUBHUB DECEPTIVELY USES PAID PLACEMENT IN SEARCH RESULTS**
23 **THAT IT DEPICTS AS ORGANIC AND RELEVANCE-BASED.**

24 109. The search function is a core feature of the Grubhub Platforms and an important way
25 that Grubhub attracts and retains consumers, increasing both the volume of paid delivery orders
26 through the Platforms and Grubhub’s audience for its restaurant marketing services. Grubhub refers

27 ²⁹ Cal. Bus. & Prof. Code § 7449(f).

28 ³⁰ *Id.* § 7450(c).

1 to its search function as “top-of-funnel”—the critical first step in convincing a consumer to complete
2 an order on its Platforms.

3 110. Grubhub affirmatively presents the “search” function on its Platforms as a restaurant
4 search engine that returns results relevant to the consumer’s queries. In reality, search results on the
5 Grubhub Platforms that appear to be “organic,” or naturally arising from the user’s inputs, are
6 ranked, in part, based on undisclosed marketing arrangements—specifically, how much the
7 restaurant pays Grubhub in marketing fees.

8 111. This unlabeled advertising appears in the search results Grubhub generates
9 immediately upon the consumer’s [REDACTED] (hereinafter, the “Default Search”).
10 Once a consumer logged into their Grubhub or Seamless account [REDACTED],
11 Grubhub displays its Default Search results as soon as the consumer [REDACTED]
12 [REDACTED].

13 112. Grubhub’s search rankings are critical to both consumers and the restaurants seeking
14 those consumers’ business. Consumers are far more likely to click on, and order from, top search
15 results. Grubhub’s own data [REDACTED]
16 [REDACTED] in Grubhub’s search results. A study of
17 consumer behavior in Google search results similarly found that consumers click on the first search
18 result nearly twice as frequently as the second result, and more than 10 times as frequently as the
19 tenth result.

20 **A. Grubhub’s Default Search Ranks Restaurants Based on How Much They Pay**
21 **Grubhub.**

22 113. Grubhub ranks its Default Search results to advantage restaurants that pay Grubhub
23 higher marketing fees, leaving restaurants that pay lower fees ranked lower in Platform search
24 results—all while leaving consumers in the dark about this arrangement.

25 114. Grubhub has factored restaurant marketing fees into Grubhub Platform search results
26 since at least February 2014. At the time, Grubhub told investors that “[m]ost of the restaurants on
27 the Company’s platform can choose their level of commission rate ... to affect their relative priority
28 in the Company’s sorting algorithms, with restaurants paying higher commission rates generally

1 appearing higher in the search order than restaurants paying lower commission rates.”³¹ Grubhub
2 implemented the same approach on the Seamless Platform in April 2014.

3 115. Grubhub’s ranking system has taken at least [REDACTED] which have taken
4 restaurant marketing fees into account.

5 116. Before [REDACTED], Grubhub’s Default Search generated results [REDACTED]
6 [REDACTED] based on factors including [REDACTED]
7 [REDACTED]. This [REDACTED] sort boosted
8 the ranking [REDACTED] at the expense of [REDACTED]. Despite [REDACTED]
9 [REDACTED] into the search rankings, Grubhub internally
10 referred to these search results as [REDACTED]

11 117. In [REDACTED], Grubhub [REDACTED]
12 [REDACTED] based, in part, [REDACTED]. The commissions paid by
13 restaurants [REDACTED] Grubhub calls the [REDACTED]
14 which also considers [REDACTED]
15 and can be [REDACTED] including [REDACTED]
16 [REDACTED]³²

17 118. Grubhub’s [REDACTED] had two goals: [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] Grubhub wanted to [REDACTED]
21 [REDACTED] According to
22 Grubhub’s [REDACTED]
23 [REDACTED]

24 119. Whether and how Grubhub factors restaurant marketing fees into its search rankings
25 is material to consumers. As the FTC has recognized, “[k]nowing when search results are included

26 _____
27 ³¹ Grubhub Inc. Form S-1 Registration Statement (Feb. 28, 2014), Securities and Exchange Commission,
28 available at <https://www.sec.gov/Archives/edgar/data/1594109/000119312514075544/d647121ds1.htm>.

³² In the context of its search algorithms, Grubhub refers to restaurant commission rates as [REDACTED]

1 or ranked higher based on payment and not on impartial criteria likely would influence consumers’
2 decisions with regard to a search engine and the results it delivers.”

3 120. For the consumer, the primary utility of a search engine is its ability to impartially
4 translate the consumer’s query into a set of relevant search results. When consumers see that bias
5 from paid advertising is affecting the search results, they are less likely to find those results useful
6 and reliable and less likely to use the search engine in the future. A Pew Research Center survey
7 found that 45% of search engine users would stop using a search engine if it did not make it clear
8 that some results were paid or sponsored.

9 121. Taking restaurant marketing commissions into account in its search rankings reduces
10 the utility of Grubhub’s search function for consumers seeking the best match for their search
11 queries. Consumers are less likely to use a search engine the more “paid placements” it contains,
12 because users perceive these search engines to be less credible and of lower quality.³³

13 122. These consumer preferences create a powerful incentive for Grubhub to depict its
14 search results as organic. Grubhub therefore has misleadingly presented and promoted its search
15 function as a relevance-based search engine while concealing the role marketing fees play in its
16 Default Search rankings.

17 **B. Grubhub Deceptively Presents Its Search Results As Organic While Failing to**
18 **Disclose that Restaurants Pay for Higher Placement.**

19 123. Grubhub’s presentation of its Platforms’ search function affirmatively and
20 deceptively conveys that search results are organic—that is, generated and ranked using impartial
21 criteria based on the user’s input (for Default Search, [REDACTED]). Grubhub never discloses
22 that its Default Search results are tainted by paid advertising.

23 124. Grubhub generates a list of restaurants—its Default Search results—when a
24 consumer [REDACTED] search bar.³⁴ If a consumer has previously [REDACTED]

25
26 ³³ The term “paid placement” is used in the online advertising industry to refer to a search engine or other
27 content provider’s prominent placement of an advertiser’s content—for example, a search result appearing near the
28 top of a screen—in exchange for a fee.

³⁴ The search query functions identically on the Grubhub and Seamless Platforms.

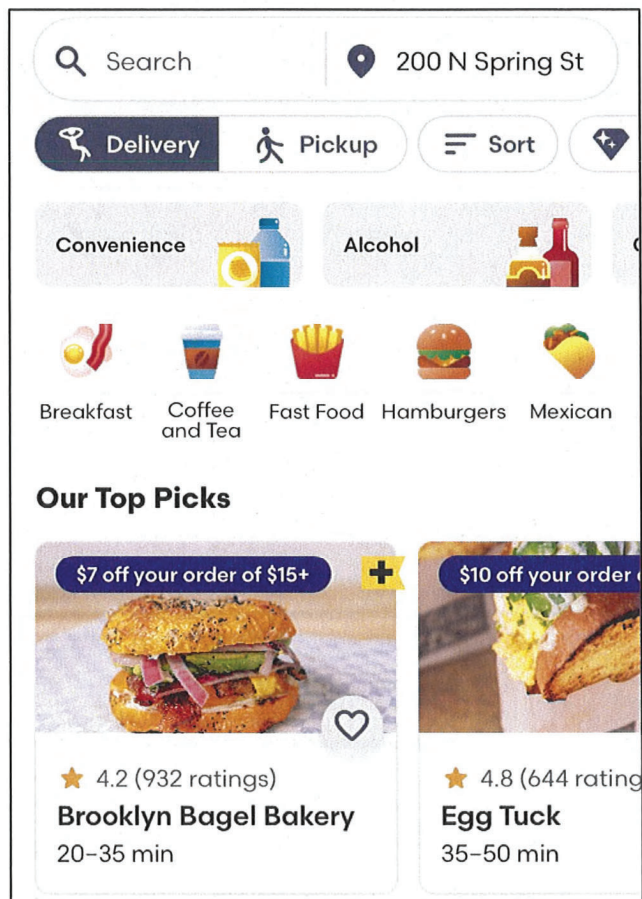
1 [REDACTED], Grubhub presents its Default Search results as soon as [REDACTED]

2 [REDACTED]. Grubhub refers internally to these types of searches and their results as the

3 [REDACTED]

4
5 125. These Default Search results appear below the delivery address search bar and
6 another search bar that allows consumers to search by keyword. In between the search bars and the
7 search results are filtering options that allow consumers to select a particular cuisine.

8 *Excerpt from Grubhub mobile app*



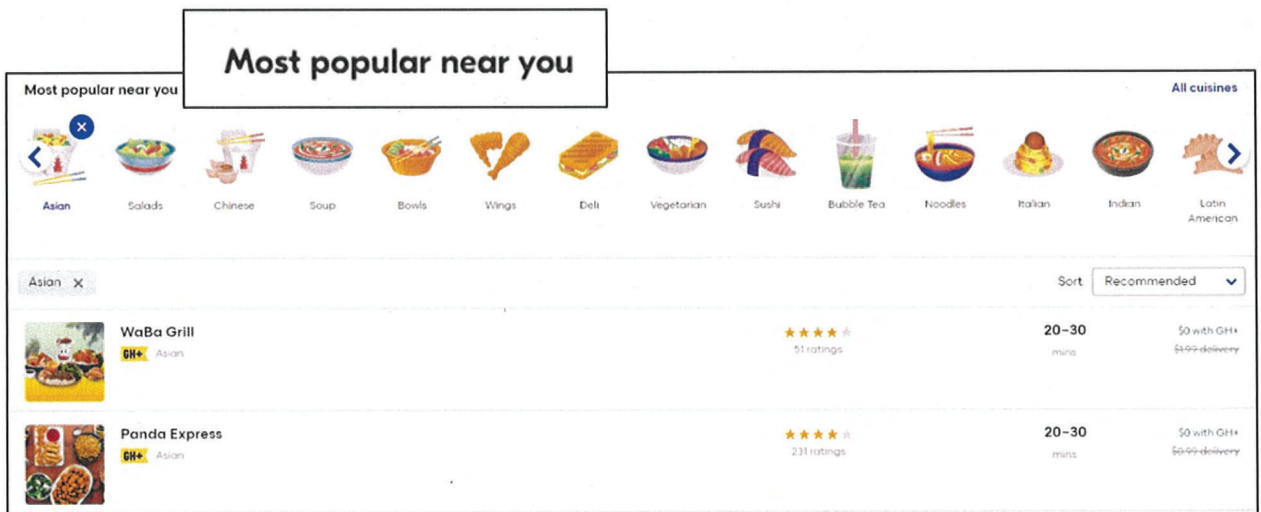
24 126. The Grubhub Platforms' mobile apps also feature sorting options that allow users to
25 sort the search results by price, restaurant rating, distance, and estimated delivery time. In the
26 absence of a clear disclosure regarding the influence of marketing fees on the default rankings, the
27 "Sort" menu misleadingly conveys to a reasonable consumer that all the ranking options—including
28 the "Recommended" ranking that appears automatically—are based on impartial criteria.

1 127. Together, the search, sorting, and filtering design elements convey the misleading
2 impression that Grubhub’s search function, like other online search engines, returns impartial results
3 based on relevance to the consumer’s query—in the case of Default Search, the consumer’s delivery
4 address.

5 128. Grubhub also conveyed that Grubhub’s search results are organic through misleading
6 headings and labels that previously appeared in its Default Search results.

7 129. Until at least March 2023, the Default Search results pages on the Grubhub and
8 Seamless websites used headings that misleadingly conveyed that the listed restaurants were
9 selected and ranked based on the consumer’s inputs and specified relevance criteria. Specifically,
10 the heading “Most popular near you” conveyed that the Default Search results were ranked by
11 distance from the consumer and popularity—neutral factors that reinforced a reasonable consumer’s
12 expectation that Grubhub’s search results were based solely on relevance to their search criteria.

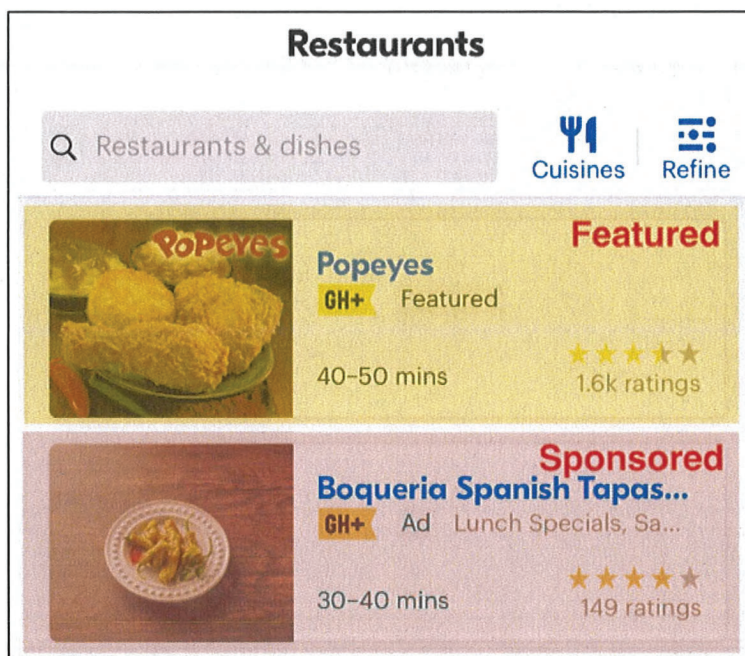
13 *Excerpts from Grubhub.com*



23 130. Additionally, Grubhub applied advertising labels to some paid restaurant search
24 results but not others, misleadingly conveying that the unlabeled results were not influenced by paid
25 placement.

26 131. Grubhub reserved the top spots in its Default Search results for “Featured” [REDACTED]
27 [REDACTED] restaurant listings, which were labeled “Featured” [REDACTED].

Excerpt from Grubhub mobile app



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132. “Featured” listings were given to restaurants that [REDACTED]
[REDACTED] To receive a [REDACTED] listing, a restaurant had
to [REDACTED] How frequently a qualifying restaurant
appeared [REDACTED]
[REDACTED]

133. Additional, unlabeled search results appeared below Grubhub’s “Featured” [REDACTED]
[REDACTED] listings. These apparently organic results, like Grubhub’s [REDACTED],
were also ranked based, in part, on the marketing commissions the restaurants paid to Grubhub, as
described above.

134. At no point has Grubhub disclosed on its search results pages that the unlabeled,
apparently organic results are ranked based, in part, on the marketing fees paid by the restaurant.

135. Grubhub furthers the misleading impression that it generates search results based on
impartial criteria by promoting its Platforms as “restaurant search engine[s].” These statements
misleadingly convey that Grubhub’s search function presents results based only on the impartial
criteria provided by the consumer, like location and type of cuisine. As discussed above, Grubhub’s
Default Search rankings are, in fact, affected by restaurant marketing commissions.

1 136. For example, the Grubhub.com home page tells consumers:

2 Grubhub helps you find and order food from wherever you are. How
3 it works: you type in an address, we tell you the restaurants that
4 deliver to that locale as well as showing you droves of pickup
restaurants near you. Want to be more specific? Search by cuisine,
restaurant name or menu item. We'll filter your results accordingly.

5 137. Similarly, on help pages titled "How do I place an order?" Grubhub tells consumers
6 that its search tool will "present you restaurants near you, but you can search for your favorite
7 restaurant by name or find a new spot when you search by cuisine or menu items."

8 138. Grubhub's representations about its search function go back to its beginnings as a
9 restaurant menu aggregator—*i.e.*, a search engine for finding restaurants that offered their own
10 delivery service—before Grubhub evolved into a full-fledged meal delivery platform.

11 139. Grubhub's website and press releases contained this language as far back as 2006:
12 "Grubhub.com is a Chicago-based free restaurant *search engine* offering delivery options dependent
13 on location" (emphasis added). Grubhub co-founder and former CEO Matt Maloney referred to his
14 early thinking about the Platform as "a Google-like search results form [for] any consumer looking
15 to get delivery food." Contemporaneous media reports also described Grubhub as a search engine
16 for restaurants.

17 140. A 2020 post on the company's blog authored by one of Grubhub's senior data
18 scientists similarly refers to Grubhub as a search engine: "[W]hen a user interacts with the Grubhub
19 search engine, they want to be able to service their request with high precision and recall." A
20 reasonable consumer would not understand a "high precision" "search engine" to include unlabeled
21 paid advertising.

22 141. Grubhub's presentation of its Default Search results contravenes clear FTC guidance
23 on the visual cues and text labels needed to distinguish between "paid placement" search results and
24 organic search results. As the FTC has stated, consumers

25 ordinarily expect that natural search results are included and ranked
26 based on relevance to a search query, not based on payment from a
third party. Including or ranking a search result in whole or in part
27 based on payment is a form of advertising. To avoid the potential for
28

1 deception, consumers should be able to easily distinguish a natural
2 search result from advertising that a search engine delivers.³⁵

3 142. Grubhub is an outlier compared to other well-known companies that offer similar
4 search functions but clearly disclose that search results are influenced by paid marketing
5 arrangements:

6 a. Amazon uses the term “Sponsored” to disclose when a company has paid for
7 its product to receive premium placement in the search results.

8 b. Premium placements in search results on Kayak are labeled “Ad” to
9 demonstrate when search result rankings have been impacted by paid advertising.

10 c. Yelp labels and identifies restaurants and other establishments that have paid
11 for premium placement in search results as “Sponsored Results.”

12 d. Booking.com identifies hotels that “pay us a higher commission if you make
13 a booking” with a “Featured” tag in the listing.

14 **V. GRUBHUB DECEPTIVELY STICKS RESTAURANTS WITH THE BILL FOR
15 CONSUMER REFUNDS.**

16 143. When a Grubhub customer complains about a delivery order, Grubhub must make
17 two decisions: whether to grant the customer a refund, and if so, whether to foot the bill itself or to
18 hold the restaurant responsible. Grubhub has an incentive to keep customers happy, but paying for
19 refunds eats into its revenue.

20 144. Grubhub has resolved this tension by freely issuing customer refunds and making the
21 restaurants pay for them. Grubhub issues these refunds unilaterally, “on the restaurant’s behalf,”
22 without first notifying or obtaining permission from the restaurant. Grubhub also fails to adequately
23 verify that the restaurant was responsible for the reported problem—in part because it makes no
24 attempt to consult the restaurant before issuing the refund. Adding insult to injury, until July 2022,
25 Grubhub strictly limited restaurants’ ability to contest these charges.

26 ³⁵ Exemplar letter from Mary K. Engle, Associate Director, Division of Advertising Practices, Federal Trade
27 Commission to General Purpose Search Engines (June 24, 2013), *available at*
28 <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-consumer-protection-staff-updates-agencys-guidance-search-engine-industryon-need-distinguish/130625searchenginegeneralletter.pdf>.

1 145. Grubhub engages in these practices pursuant to an internal policy that it does not
2 adequately disclose, either before or after restaurants sign up with Grubhub. Without this material
3 information, it is reasonable for restaurants to believe that Grubhub will obtain the restaurant's
4 permission before using the restaurant's money to refund customers and charge restaurants only for
5 refunds reasonably attributable to restaurant error. Grubhub does neither, putting restaurants on the
6 hook for refunds they did not authorize based on problems they did not cause. These fraudulent and
7 unlawful practices directly impact California restaurants' bottom line.

8 **A. Grubhub charges restaurants for customer refunds without the restaurant's**
9 **input or consent.**

10 146. Since approximately November 2018, Grubhub has charged California restaurants
11 for customer refunds that Grubhub issues unilaterally, without first contacting or obtaining approval
12 from the restaurant.³⁶ When a customer reports a problem with an order, Grubhub "resolve[s] these
13 issues on the spot" by "issuing restaurant-funded refunds," without calling the restaurant or
14 otherwise conducting a reasonable investigation.

15 147. Grubhub issues unilateral refunds, paid for by the restaurant, when customers report
16 that (a) an item is missing from the order; (b) an item in the order is prepared incorrectly; (c) the
17 entire order is incorrect; (d) there is an issue with food temperature; (e) there is an issue with food
18 quality, such as is the food being overcooked or undercooked; (f) they experienced food poisoning,
19 (g) they experienced food allergies; (h) there was a foreign object in the food, or (i) the order was
20 not consistent with "special instructions" provided by the customer, among other reasons.

21 148. Grubhub notifies restaurants only after it issues the refund and charges it to the
22 restaurant's account.³⁷ Restaurants have no opportunity to determine what (if anything) went wrong,
23 explain why the restaurant was not responsible, affirmatively authorize the refund, or address the
24 customer's issue in another way.

25
26 ³⁶ When Grubhub unilaterally issues a customer refund using restaurant funds, it deducts the amount of the
27 refund from the revenue it remits to the restaurant. Grubhub refers to these deductions as "order adjustments."

28 ³⁷ Grubhub informs restaurants by email, after the fact, that it has issued a customer refund using restaurant
funds.

1 149. In at least some instances, Grubhub not only grants the refund without first speaking
2 to the restaurant paying for the refund, but grants the refund [REDACTED]
3 [REDACTED]. Since no later than [REDACTED], Grubhub has granted restaurant-funded
4 refunds to customers who report problems [REDACTED]
5 [REDACTED]. Instead, Grubhub allows customers to [REDACTED]
6 [REDACTED] by simply [REDACTED] within [REDACTED] of its Platforms.
7 If the complaining customer [REDACTED] Grubhub grants the customer an [REDACTED]
8 [REDACTED]

9 150. Many of the issues for which Grubhub grants restaurant-funded refunds, like missing
10 items and damaged or cold food, can occur after the order leaves the restaurant, during delivery by
11 Grubhub drivers. Others can be falsified by customers looking to abuse the system. Grubhub
12 internally admits that [REDACTED] creating [REDACTED]
13 [REDACTED] Grubhub's refund policy forces restaurants to bear the brunt of Grubhub's predicament.

14 151. Restaurants reasonably expect Grubhub to take steps to determine whether the
15 restaurant was responsible for the reported error before holding the restaurant responsible. One
16 frustrated restaurant owner in Gardena complained to Grubhub, [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 152. As exemplified by Grubhub's [REDACTED] Grubhub fails to adequately
21 verify whether a customer complaint is legitimate and whether the restaurant is responsible for the
22 issue before unilaterally issuing refunds using the restaurant's money.

23 153. This failure creates ripe opportunities for fraud. As third-party meal delivery
24 platforms have gained popularity, restaurants around the country, including in California, have
25 reported an increase in delivery customers fraudulently seeking refunds. As reported by one news
26 outlet in New York, "Dishonest customers have become aware of GrubHub's no questions asked
27 refund policies, and have reportedly begun calling GrubHub looking for a refund by claiming they
28 have not received their delivery, or part of it."

1 154. Grubhub's own customer support records confirm the prevalence of refund fraud in
2 California. In one example, one customer [REDACTED] on an order from a Los Angeles restaurant
3 [REDACTED]. In another, a restaurant in
4 Arcadia reported [REDACTED]
5 [REDACTED] In yet another, a restaurant in Diamond Bar reported a customer [REDACTED]
6 [REDACTED].

7 155. Grubhub's failure to reasonably investigate customer complaints puts restaurants on
8 the hook for problems they did not cause. Grubhub's internal records of restaurant reimbursement
9 requests show that Grubhub frequently [REDACTED] California restaurants [REDACTED]
10 [REDACTED] For example, restaurants have frequently contested refunds based on
11 [REDACTED], often citing
12 [REDACTED]
13 [REDACTED]

14 156. Grubhub has charged California restaurants for customer refunds without first
15 obtaining the restaurant's authorization or conducting enough due diligence to reasonably determine
16 whether the customer's complaint was legitimate and whether the restaurant was at fault. Examples
17 from Los Angeles County, drawn from Grubhub's records of restaurant requests to reimburse refund
18 charges, include:

19 a. According to one Los Angeles restaurant owner, Grubhub charged the
20 restaurant for a [REDACTED] Grubhub
21 did not [REDACTED]. In the restaurant owner's words:

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 b. A Long Beach restaurant complained that Grubhub charged the restaurant for
28 a [REDACTED] even though the restaurant [REDACTED]

1 [REDACTED]. The restaurant expressed [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 c. According to a Northridge restaurant, Grubhub charged the establishment for
7 [REDACTED] Grubhub did not [REDACTED]
8 [REDACTED] The restaurant's [REDACTED]
9 [REDACTED]
10 [REDACTED] also complained that Grubhub had [REDACTED]
11 [REDACTED]

12 157. Grubhub has not always had a policy of granting unilateral refunds charged to the
13 restaurant. Before November 2018, Grubhub followed up on customer complaints by calling the
14 restaurant, giving it an opportunity to respond. This practice allowed restaurants to make their own
15 business decisions about how to resolve customer complaints, including offering concessions short
16 of refunds.

17 158. Grubhub knew [REDACTED]
18 [REDACTED] In an internal document [REDACTED]
19 [REDACTED], Grubhub's [REDACTED] was that restaurants would be [REDACTED] and
20 that some would want to [REDACTED] or even [REDACTED] Grubhub [REDACTED]
21 [REDACTED] documents whose titles included [REDACTED]
22 [REDACTED] and [REDACTED]
23 [REDACTED]

24 159. Grubhub's practices can cost restaurants hundreds of dollars per month in lost
25 revenue. One Los Angeles County restaurant owner estimated that Grubhub's refunds charges ate
26 into as much as a quarter of the revenue his restaurant earned on Grubhub's Platform.

27 160. When Grubhub charges restaurants for refunds, the restaurants lose not only the
28 revenue on each refunded order, but also the cost of food, labor, and packaging associated with each

1 order. Even worse, restaurants still pay Grubhub a marketing commission, a delivery commission,
2 and order processing fees on these refunded orders.

3 **B. Grubhub limits restaurants' ability to challenge its unilateral refunds.**

4 161. Grubhub compounds the deceptiveness and impact of its deceptive refund practices
5 on restaurants by restricting restaurants' ability to contest the refunds Grubhub grants.

6 162. First, Grubhub set unreasonable deadlines for contesting refunds. For years, Grubhub
7 required restaurants to dispute the refund charge within [REDACTED] hours. Grubhub also restricted restaurants
8 to a seven-day window for contesting the refund.

9 163. Second, until recently, Grubhub arbitrarily capped the amount of refund charges
10 restaurants could contest in a 30-day period. Grubhub limited the total amount of refund charges
11 restaurants could dispute to 5% of the marketing commission fees the restaurant paid to Grubhub
12 over the previous 30 days. In other words, even if a restaurant presented unassailable evidence that
13 it was not responsible for the reported problem, Grubhub's policy was to deny the dispute if
14 Grubhub's reimbursements (for refunds Grubhub had charged unilaterally) exceeded 5% of what
15 the restaurant had paid Grubhub in marketing fees.

16 164. Third, until recently, Grubhub's policy was to refuse to reimburse restaurants for
17 refunds issued based on nearly half of the issue categories for which it held restaurants responsible.
18 Under Grubhub's internal policy, Grubhub would not reimburse refund charges if the refund was
19 granted due to (a) a missing item, (b) an included item that was not "correct," (c) the entire order
20 being incorrect, (d) issues with food quality, or (e) special instructions not being followed, among
21 other reasons. Grubhub's internal records of California restaurants' requests to reverse refund
22 charges [REDACTED] that Grubhub [REDACTED] when the refund [REDACTED]

23 [REDACTED].
24 165. Grubhub more recently made what it characterized as "big changes" to its refund
25 policy, including extending the window for contesting its unilaterally granted refunds to 30 days,
26 eliminating the cap on the amount of refunds restaurants could dispute, and removing restrictions
27 on what categories of refund issues restaurants could dispute. However, because Grubhub continues
28 to grant customer refunds without restaurants' consent and without adequately verifying the

1 restaurant is responsible for the reported issue, restaurants still must take on the substantial burden
2 of identifying and contesting Grubhub's unilaterally issued refunds.

3 166. Los Angeles County restaurants have described the significant burden of being
4 required to actively monitor and contest Grubhub's unauthorized refund charges. One restaurant
5 owner reported having to follow up multiple times by phone to fight each of the refund charges
6 Grubhub billed his restaurant for nearly every day. Even when Grubhub support agrees to credit his
7 restaurant for a refund charge, the owner reported that Grubhub does not always provide the agreed
8 credit, forcing him to spend more time following up and monitoring his email to confirm he has
9 been appropriately reimbursed.

10 **C. Grubhub fails to adequately disclose its refund policy to restaurants.**

11 167. Grubhub has implemented its unilateral, unauthorized refund practices through an
12 internal company policy. Grubhub does not adequately disclose this policy to restaurants, either
13 before or after the restaurant enters into a contract with Grubhub.

14 168. Restaurant owners in Los Angeles County have reported that Grubhub did not
15 provide them with any information about Grubhub's refund policy, either verbally or in writing.
16 One stated that Grubhub's sales representative's sales pitch was aimed at getting his restaurant
17 signed up and did not include any information related to refunds.

18 169. Grubhub's records of its communications with California restaurants, including those
19 quoted above, [REDACTED]

20 [REDACTED] One Gardena restaurant asked, [REDACTED]

21 [REDACTED] A Long Beach restaurant owner [REDACTED]

22 [REDACTED]
23 [REDACTED] A restaurant in Los Angeles County [REDACTED]

24 told Grubhub, [REDACTED] and directed that [REDACTED]

25 [REDACTED] After being [REDACTED]

26 [REDACTED] a Los Angeles restaurant told Grubhub [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 170. While Grubhub claims to issue customer refunds “on the restaurant’s behalf,”
2 Grubhub’s restaurant contracts do not authorize it to grant customer refunds unilaterally, at the
3 restaurant’s expense.

4 171. Grubhub’s restaurant contracts mention [REDACTED]
5 [REDACTED]. This provision states only that
6 Grubhub [REDACTED]
7 [REDACTED] The contracts do not
8 specify [REDACTED]
9 [REDACTED]

10 172. Other places that restaurants reasonably could expect such material terms to appear
11 also do not address customer refunds. Authority to issue refunds using restaurant funds, and the
12 conditions under which such refunds may be issued, appear nowhere in either (a) the Grubhub
13 Restaurant Terms, which contain the fine print governing Grubhub’s relationship with restaurants
14 and are incorporated by reference into its restaurant contracts; or (b) the “Grubhub for Restaurants”
15 Terms of Use, which govern restaurants’ use of Grubhub’s online restaurant portal and are
16 incorporated by reference into the Restaurant Terms.

17 173. If Grubhub believed that it was too burdensome to consult the restaurant before
18 issuing each refund, it could have contracted for a different process. It did not.

19 174. Grubhub also fails to adequately disclose its refund policy on its “Grubhub for
20 Restaurants” website, get.grubhub.com, where it markets its services to restaurants. A restaurant
21 cannot learn about Grubhub’s refunds policy on the Grubhub for Restaurants main page, on the
22 “Solutions” webpages that describe Grubhub’s restaurant services, in the FAQs, on the Resources
23 webpage, or in Grubhub’s restaurant-facing blog.

24 175. For years, Grubhub’s refunds policy appeared nowhere on Grubhub’s restaurant-
25 facing marketing website. A partial description of Grubhub’s refund policy now appears in one place
26 on that site: an out-of-the way webpage titled “Grubhub Restaurant Policies.” Introductory language
27 indicates that the information set out on this webpage, including the description of Grubhub’s refund
28

1 policy, was not previously disclosed: “To provide more transparency into how we resolve issues
2 through our Care team, we’ve included the following policies and procedures.”

3 176. This webpage is not directly accessible from the “Grubhub for Restaurants”
4 homepage. To find it, a restaurant would have to navigate to the Grubhub for Restaurants homepage,
5 find a “Help” link in the webpage footer or among several options in the “Resources” menu, and
6 then navigate through five pages of Help article links. Once at the Restaurant Policies webpage, a
7 viewer still must scroll more than halfway down the page to find information about Grubhub’s
8 refund policy.

9 177. None of this is intuitive or designed to be user-friendly. One Los Angeles County
10 restaurant owner said he had never seen or heard of this Restaurant Policies webpage, and that in all
11 of his calls with Grubhub support representatives to dispute refund charges, no one had ever pointed
12 him to the webpage or otherwise explained Grubhub’s refund policies.

13 178. Even if a restaurant were to find this information, it would not inform the restaurant
14 that Grubhub issues customer refunds unilaterally, without first consulting and obtaining permission
15 from the restaurant. The description on the Restaurant Policies webpage states only that Grubhub
16 “may refund a Diner on the restaurant’s behalf” and “will notify the restaurant when action is taken.”

17 179. A restaurant reading this language on the Restaurant Policies webpage would
18 reasonably expect Grubhub to seek input and permission from the restaurant before issuing the
19 refund. A restaurant reading this information also would reasonably expect Grubhub to take steps—
20 to include consulting the restaurant—to determine whether the restaurant was responsible for the
21 reported error.

22 180. Grubhub’s failure to consult and obtain permission from the restaurant before issuing
23 refunds, and to reasonably limit refunds to problems within the restaurant’s control, is a material
24 fact about its service to restaurants that Grubhub fails to disclose.

25 181. If Grubhub clearly disclosed these practices, restaurants could choose not to contract
26 with Grubhub and to contract with another third-party order-and-delivery service instead. One Los
27 Angeles County restaurant owner reported that Grubhub’s practice had prompted him to end the
28 restaurant’s relationship with Grubhub. As one irate restaurant owner operating in Los Angeles

1 County told Grubhub after [REDACTED]

2 [REDACTED]

3 **FIRST CAUSE OF ACTION**
4 **Violation of Unfair Competition Law**
5 **(Cal. Bus. & Prof. Code § 17200, *et seq.*)**

6 182. All preceding paragraphs are incorporated by reference as if fully stated herein.

7 183. The UCL prohibits “any unlawful, unfair, or fraudulent business act or practice and
8 unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I (commencing
9 with Section 17500) as Part 3 of Division 7 of the Business and Professions Code.” Bus. & Prof.
10 Code § 17200.

11 184. Grubhub has engaged, and continues to engage, in business acts or practices that are
12 unlawful. As alleged herein, these acts or practices include but are not limited to the following:

13 a. Advertising a delivery price (the Delivery Fee), “free delivery,” and/or
14 “order[ing] online for free” with intent not to provide the Service at the advertised price on the
15 Grubhub Platforms, in violation of the Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code
16 § 1770(a)(9);

17 b. Advertising the Delivery Fee as the price of its Service, which Grubhub
18 knew, or in the exercise of reasonable care should have known, was untrue or misleading because
19 the Delivery Fee was only a portion of the price of the Service, in violation of the FAL, Bus. & Prof.
20 Code § 17500;

21 c. Advertising that Grubhub provides its drivers healthcare benefits, which
22 Grubhub knew, or in the exercise of reasonable care should have known, was untrue or misleading
23 because Grubhub does not actually provide those benefits and/or many of its drivers do not qualify
24 for those benefits, in violation of the FAL, Bus. & Prof. Code § 17500;

25 d. Advertising that because Grubhub provides benefits to its drivers those
26 drivers no longer depend on tips, which Grubhub knew, or in the exercise of reasonable care should
27 have known, was untrue or misleading because the benefits mandated by Proposition 22 do not
28 replace the driver income provided by tips, in violation of the FAL, Bus. & Prof. Code § 17500; and

1 e. Misrepresenting to consumers that Default Search results are generated using
2 impartial criteria based on the user's input (an address), when in fact the results reflect the
3 sponsorship of or an affiliation with the restaurant, in violation of the CLRA, Cal. Civ. Code
4 § 1770(a)(9).

5 185. Grubhub has engaged, and continues to engage, in business acts or practices that are
6 fraudulent because they are likely to deceive a reasonable consumer. As alleged herein, these acts
7 or practices include but are not limited to the following:

8 a. Misrepresenting the Delivery Fee to consumers as the full price of its Service
9 on the Grubhub Platforms, or misrepresenting to consumers that delivery is "free," or
10 misrepresenting to consumers that they can "order online for free," when the actual price of the
11 Service is higher;

12 b. Misleading consumers by conveying that the Delivery Fee is the full cost of
13 its Service on the Grubhub Platforms, while failing to disclose, suppressing, and/or concealing the
14 existence and/or amount of the Service Fee, Small Order Fee, and/or Driver Benefits Fee;

15 c. Misleading consumers by conveying that they can "order online for free,"
16 while failing to disclose, suppressing, and/or concealing that the consumer must pay mandatory fees
17 to order online for delivery on the Grubhub Platforms;

18 d. Misleading consumers by conveying that Grubhub provides its drivers
19 healthcare benefits that Grubhub does not actually offer and/or for which many of its drivers do not
20 qualify;

21 e. Misleading consumers by conveying that because Grubhub provides benefits
22 to its drivers, those drivers no longer depend on tips;

23 f. Misrepresenting to consumers that they can order for delivery "online for
24 free" on the Grubhub Platforms;

25 g. Misleading consumers by representing that they can "order online for free"
26 on the Grubhub Platforms, while failing to disclose, suppressing, and/or concealing that consumers
27 cannot order for delivery "online for free";
28

1 h. Misrepresenting to consumers that Default Search results are generated using
2 impartial criteria based on the user's input (an address);

3 i. Misleading consumers by representing that Default Search results are
4 relevance-based, while failing to disclose, suppressing, and/or concealing that Default Search results
5 are based, in part, on the marketing commissions paid by restaurants; and

6 j. Misleading restaurants by failing to disclose, suppressing, and or concealing
7 that Grubhub grants customer refunds using restaurants funds without first (i) seeking input from
8 the restaurants and/or (ii) otherwise reasonably assessing whether the customer complaint is
9 attributable to restaurant error.

10 186. "Any person who engages, has engaged, or proposes to engage in unfair competition
11 shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each
12 violation, which shall be assessed and recovered in a civil action brought in the name of the people
13 of the State of California ... by a county counsel of any county within which a city has a population
14 in excess of 750,000 ... in any court of competent jurisdiction." Bus. & Prof. Code § 17206(a).

15 187. Grubhub is a "person" as defined by Bus. & Prof. Code § 17201, which includes
16 "natural persons, corporations, firms, partnerships, joint stock companies, associations and other
17 organizations of persons."

18 188. The People, by and through County Counsel, therefore are entitled to an injunctive
19 order requiring Grubhub to cease the fraudulent and unlawful acts or practices alleged herein,
20 including Grubhub's false and misleading advertising; to pay restitution to all victims of such acts
21 or practices; and disgorge profits acquired by means of such acts or practices, pursuant to Bus. &
22 Prof. Code § 17203.

23 189. The People further seek an appropriate civil penalty under Bus. & Prof. Code
24 § 17206(a) of up to \$2,500 for each violation of the UCL, consistent with the purpose of the UCL
25 and Bus. & Prof. Code § 17206(b), to hold Grubhub accountable for its unlawful and fraudulent acts
26 or practices and to deter further violations of the UCL.

1 e. Advertising to consumers that Grubhub's search results are relevance-based,
2 which Grubhub knew, or in the exercise of reasonable care should have known, was untrue or
3 misleading because Grubhub's Default Search results are based, in part, on the marketing
4 commissions paid by restaurants.

5 194. The People, by and through County Counsel, therefore are entitled to an injunctive
6 order requiring Grubhub to cease the false and misleading advertising practices alleged herein
7 pursuant to Bus. & Prof. Code § 17535.

8 195. The People further seek an appropriate civil penalty under Bus. & Prof. § 17536 of
9 up to \$2,500 for each violation of Bus. & Prof. Code § 17500.

10 **PRAYER FOR RELIEF**

11 196. WHEREFORE, the People pray for the following relief:

12 a. That Grubhub be permanently enjoined from engaging in the fraudulent and
13 unlawful practices alleged herein, pursuant to Bus. & Prof. Code § 17203;

14 b. That Grubhub be permanently enjoined from making the false and misleading
15 statements alleged herein, pursuant to Bus. & Prof. Code § 17535;

16 c. That Grubhub be ordered to pay restitution of the money acquired by means
17 of the fraudulent and unlawful practices alleged herein, pursuant to Bus. & Prof. Code § 17203;

18 d. That Grubhub be ordered to make restitution to all victims of the fraudulent
19 and unlawful practices alleged herein, pursuant to Bus. & Prof. Code § 17203;

20 e. That Grubhub be ordered to make restitution to all victims of its false and
21 misleading statements alleged herein, pursuant to Bus. & Prof. Code § 17535;

22 f. That Grubhub be ordered to disgorge profits obtained from the fraudulent and
23 unlawful practices and false and misleading statements alleged herein, pursuant to Bus. & Prof.
24 Code §§ 17203 and 17535;

25 g. That Grubhub be ordered to pay a civil penalty of up to \$2,500 for each
26 violation of the UCL and FAL, pursuant to Bus. & Prof. Code §§ 17206 and 17536;

1 h. That Grubhub be ordered to pay an additional civil penalty of up to \$2,500
2 for each violation of the UCL perpetrated against a senior citizen or disabled person, pursuant to
3 Bus. & Prof. Code § 17206.1(a)(1);

4 i. That the People, by and through County Counsel, recover their costs of
5 investigation and suit; and

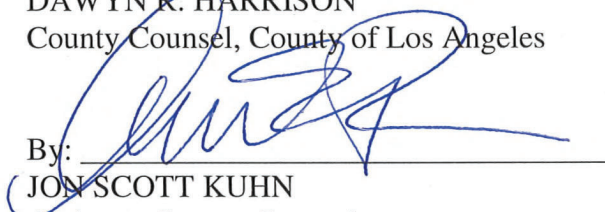
6 j. That the People, by and through County Counsel, be granted such other and
7 further relief as this Court may deem to be just and proper.

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Respectfully submitted,

DAWYN R. HARRISON
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