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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

_____))
City of Chicago,))
))
Plaintiff,) Case No. _____)
))
v.))
))
Grubhub Holdings Inc. and Grubhub Inc.,))
))
Defendants.))
_____)

14605175

COMPLAINT

FILED DATE: 8/27/2021 10:36 AM 2021CH04327

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INTRODUCTION

1. The City of Chicago’s consumer protection ordinances safeguard against business practices that interfere with an honest marketplace in which all participants are presented with accurate information and companies that adhere to the law can succeed. The City brings this action against meal delivery companies Grubhub, Inc. and Grubhub Holdings, Inc. (together, “Grubhub”) for misconduct that violates sections 2-25-090 and 4-276-470 of the Municipal Code of Chicago, as well as the City’s emergency cap on commissions and fees that meal delivery companies may charge restaurants.

2. Grubhub, a Chicago-based technology company, bills itself as a “food-ordering and delivery marketplace” that connects thousands of consumers with the convenience of meal delivery from a wide array of restaurants. Grubhub has built this marketplace through tactics that include deceptive marketing and pricing practices designed to mislead consumers and unfairly harm the same local restaurants Grubhub claims to support. This misconduct has been mounting for years and is especially egregious amid the health and safety emergency of the COVID-19 pandemic. Grubhub capitalized on skyrocketing demand for meal delivery while taking advantage of Chicago restaurants and consumers made more vulnerable by the exceptional circumstances of the pandemic.

3. Grubhub was founded in Chicago in 2004. As of 2020, Grubhub listed thousands of Chicago restaurants across multiple platforms. For the past decade, Grubhub has pursued an aggressive growth strategy that saw it acquire and absorb several other meal delivery enterprises. It now operates not only through the Grubhub app and website (the “Grubhub Platform”), but also

through the app and website of Seamless (the “Seamless Platform”) and the MenuPages website (the “MenuPages Platform”).¹

4. These platforms (collectively, “Defendants’ Platforms”) have a vast footprint in Chicago, where they offer order and delivery from thousands of restaurants. Grubhub also has a pervasive presence on the Internet, where its multiple Platforms and sophisticated search engine optimization (“SEO”) techniques make it a ubiquitous presence in search results for Chicago restaurants—sometimes elevating the Platforms’ presence over that of the restaurant itself.

5. Grubhub’s business depends on two separate revenue streams: Grubhub charges commissions to *restaurants* that contract with Grubhub to process their orders and provide delivery (“Affiliated Restaurants”), and it charges fees to *consumers* ordering meal delivery through the Platforms (“Grubhub’s Service” or “Service”).

6. Grubhub’s restaurant commissions are significant. The company historically has taken as much as one-third of a restaurant’s revenue on each delivery order. It charges Affiliated Restaurants in Chicago two different commissions—a marketing commission, typically 15-20%, on all orders placed through the Platforms, and a delivery commission, typically 10%, on those orders delivered by Grubhub drivers. Grubhub also charges restaurants an order processing fee of 3-6%, depending on the size of the order.

7. Grubhub charges consumers a series of fees—a “Delivery Fee,” “Service Fee,” and “Small Order Fee.” When Grubhub processes customer orders for restaurants with which it has no contract and can charge no restaurant commission (“Unaffiliated Restaurants”), Grubhub fills this revenue gap by increasing the fees it charges consumers.

¹ Seamless acquired MenuPages in 2011, and Grubhub and Seamless merged in 2013.

8. To maximize revenues from its marketplace, Grubhub has deployed a litany of deceptive and unfair business practices, directed at both restaurants and consumers:

a. The Grubhub and Seamless Platforms advertise order and delivery from numerous Unaffiliated Restaurants in Chicago *without their consent*. This tactic creates a variety of problems, provoking the frustration of restaurants and consumers alike. These unauthorized listings misleadingly convey to consumers that Grubhub is providing a Service authorized and approved by these restaurants. Grubhub further misleads consumers by unilaterally “scraping” restaurant menus and other information from the Internet and posting this content on the Platforms without verifying its accuracy. Predictable problems arise when the Grubhub and Seamless Platforms cancel an order because the restaurant is closed or no longer carries a menu item. Grubhub leaves restaurants to contend with the consumer complaints and reputational harm for which Grubhub is responsible. When Unaffiliated Restaurants complain, Grubhub is slow to remove the listings—and sometimes uses a live unauthorized listing to pressure the restaurant into a contract, or a deactivated unauthorized listing to drive traffic from Internet search results to other restaurants on the Grubhub and Seamless Platforms.

b. Grubhub employs a series of subterfuges that exploit unwary consumers to extract additional commissions from its Affiliated Restaurants. To capture commissions on telephone orders, Grubhub publishes a deceptive “routing” telephone number that it misrepresents as the restaurant’s own phone number. Consumers who search the Internet for a restaurant by name and encounter these numbers—in links from search results that often are dominated by Defendants’ Platforms—and until very recently, received no notice that dialing the number will initiate a Grubhub transaction. Grubhub compounds this deception by wrongfully charging restaurants a pricey commission even when the calls do not result in orders—a problem Grubhub

knew about for years but failed to correct. Grubhub also has created and maintained impostor restaurant websites, which feature authentic-looking URLs and appear to be the restaurant's actual website, but route orders to Grubhub.com. These websites deceptively capture consumers and then convey that Grubhub is the only or preferred way of ordering from the restaurant online, interfering with the ability of the consumer and restaurant to connect directly.

c. At the beginning of the pandemic, in the spring of 2020, Grubhub launched deceptive marketing campaigns that took advantage of consumer concern for the survival of local restaurants. Grubhub's "Supper for Support" promotion, which offered consumers \$10 off orders of \$30 or more, entreated consumers to "help save the restaurants we love" by placing orders through the Grubhub Platform. Grubhub misrepresented Supper for Support as a win-win opportunity for consumers and restaurants. In reality, Grubhub required that participating restaurants cover the steep cost of the discount *and* charged them Grubhub's full commission on the pre-discount order price. Grubhub also widely touted its deceptive pledge to "temporarily suspend" the collection of up to \$100 million in restaurant commissions. This pledge misleadingly conveyed to the public that commissions during this period would be forgiven, but the restaurant-facing fine print actually required restaurants to repay Grubhub the full amount within just a few weeks. Even worse, Grubhub required these vulnerable restaurants to re-up their contracts for a full year to qualify for the temporary suspension. Grubhub's scheme was so deceptive that it was forced to issue corrective statements nationally.

d. Grubhub violated the cap on restaurant commissions and fees that the City Council enacted to give emergency relief to struggling Chicago restaurants. Finding that local restaurants "are highly reliant on third-party food delivery services" and that "many local restaurants being charged high fees struggle to remain financially viable," the City Council enacted

an emergency ordinance to restrict the total “fees, commissions, or costs” that meal delivery services could charge Chicago restaurants to 15% of food orders (the “Emergency Fee Cap”). The Emergency Fee Cap was in effect from November 23, 2020 through April 17, 2021, and it was reinstated on June 26. The reinstated Emergency Fee Cap will remain in effect until September 24, 2021. Although Grubhub reduced components of its commissions while the Emergency Fee Cap was in force, Grubhub violated the ordinance because it continued to charge Affiliated Restaurants total fees exceeding 15%.

e. On both the Grubhub and Seamless Platforms, Grubhub engages in an e-commerce update on the traditional bait-and-switch. The Platforms entice consumers by misrepresenting the Delivery Fee, which they advertise as the price of delivery even though Grubhub does not intend to deliver at the advertised price. Instead, the Grubhub and Seamless Platforms tack on more fees for the same delivery service at the end of the transaction. Even then, Grubhub hides these additional fees by grouping them with taxes, suggesting that the fees are government-imposed. The full consumer fees can be as much as *four times* the low Delivery Fee that the Platforms misleadingly quote upfront.

f. Across all Defendants’ Platforms, including the MenuPages Platform, Grubhub also hides from consumers that the menu prices (“Platform Menu Prices”) of Affiliated Restaurants on its Platforms are in many instances higher than the prices available if a consumer were to order directly from the restaurants. This scheme further inflates the cost to consumers, who not only pay the higher menu price but also a higher Service Fee, because the Service Fee is calculated as a percentage of the food order.

9. With the aid of these practices, Grubhub took full advantage of pandemic-necessitated demand for meal delivery, which increased 300% between March and April 2020.

Grubhub's year-end report for 2020 documented that it processed more than 745,000 orders per day, servicing 33 million diners who ordered food from more than 300,000 restaurants in 4,000 U.S. cities. Grubhub's revenue in 2020 was \$1.8 billion, a 39% increase over its 2019 results.

10. As Grubhub has grown during the pandemic, the Chicago restaurant industry has suffered. As of April 2020, approximately half of Chicago's 7,500 restaurants had closed either temporarily or permanently. The Federal Reserve estimated that approximately 44,000 restaurant workers in the Chicago area lost their jobs in 2020. As of January 2021, Chicago's leisure and hospitality industry was employing 158,000 fewer workers than it had pre-pandemic. As part of its investigation, the City collected information from 175 local restaurants. Many described their dire economic straits and the direct role that Grubhub's predatory tactics played in making a bad situation much worse.

11. Grubhub is entitled to operate its marketplace in Chicago, but it must do so lawfully, in a manner that does not mislead consumers or unfairly harm other businesses. The City therefore brings this action, by and through its Corporation Counsel, to permanently enjoin these practices and to secure appropriate restitution and other relief.²

PARTIES

12. Plaintiff, the City of Chicago, is a municipal corporation and a home-rule unit organized and existing under the laws of the State of Illinois.

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

² By including mandatory individual arbitration clauses in its Terms of Use and restaurant contracts, Grubhub frustrates Chicago consumers' and restaurants' ability to seek meaningful redress for this deceptive and unfair conduct through individual and class action litigation.

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

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

16. Grubhub Inc. also owns and operates subsidiaries Slick City Media, Inc. (doing business as MenuPages) and Eat24, LLC.

17. Grubhub Inc. and Grubhub Holdings Inc. (together, “Grubhub”) own and operate Defendants’ Platforms, which provide food ordering and delivery services to consumers in Chicago. Grubhub describes itself as “a leading online and mobile food-ordering and delivery marketplace with the largest and most comprehensive network of restaurant partners.”

18. Grubhub provides its food order and delivery services under a number of Grubhub-owned brands, which operate on mobile app and Internet web platforms. These include Grubhub, Seamless, and MenuPages. Grubhub further operates a website, Allmenus.com, that lists restaurant menus and directs consumers to Grubhub.com for order and delivery. Another Grubhub-owned brand, Eat24, is largely defunct but appears as Grubhub’s trade name on certain restaurant websites maintained by Grubhub, as described in Section II.A.3.

VENUE AND JURISDICTION

19. The Circuit Court has subject matter jurisdiction under Article VI, Section 9 of the Illinois Constitution, which grants Circuit Courts original jurisdiction in all causes other than those specifically enumerated therein.

20. This Court has general personal jurisdiction over Grubhub because Grubhub maintains its corporate headquarters at 11 West Washington Street, Suite 2100, Chicago, Illinois 60602.

21. This Court has specific personal jurisdiction over Grubhub under 735 ILCS 5/2-209 because the causes of action alleged herein arise from the following Grubhub activities: (1) its transaction of business within the City of Chicago and the State of Illinois, including by publishing websites and mobile apps that advertise restaurants and fulfill meal order processing and delivery in Illinois, and by purposely conducting business activities, including restaurant and consumer solicitation, meal order processing, meal delivery, customer service, and marketing activities, in Illinois; (2) its commission of deceptive and unfair trade practices in the City of Chicago and State of Illinois that arise from the business activities outlined above and as set forth below; and (3) its making and performance of contracts and promises substantially connected to the State of Illinois, including agreements with Illinois restaurants, drivers, and consumers relating to the provision of meal ordering and delivery service. Grubhub has the requisite minimum contacts with Illinois necessary to permit the Court constitutionally to exercise jurisdiction, and to render that exercise of jurisdiction permissible under traditional notions of fair play and substantial justice.

22. Venue is proper under 735 ILCS 5/2-101 because the transactions underlying the City's claims occurred in Cook County.

FACTS

I. GRUBHUB LISTS UNAFFILIATED RESTAURANTS WITHOUT PERMISSION AND FALSELY PORTRAYS THEM AS PARTNERS.

23. In 2019, attempting to maintain market share in the face of stiff competition, Grubhub launched a deception on a massive scale: It began listing Unaffiliated Restaurants on its Grubhub and Seamless Platforms *without the restaurants' consent*. Grubhub doubled its national restaurant listings in the space of several months, sweeping in many Unaffiliated Chicago restaurants by gathering their logos, menus, and other information without verification from the Internet. These unauthorized listings misleadingly convey that Grubhub and the restaurant are working together. They also leave restaurants holding the bag on the customer service problems that predictably result.

24. Before Grubhub's change of course in 2019, the Grubhub and Seamless Platforms only listed Affiliated Restaurants—those with which Grubhub has contracts to provide marketing, order, and delivery services. According to Grubhub, its contractual relationships with restaurants give consumers “a ‘direct line’ into the kitchen, avoiding the inefficiencies, inaccuracies and frustrations associated with paper menus and phone orders.”

25. Grubhub was aware of the problems that would result from unauthorized listings. As Grubhub's leadership wrote to shareholders in October 2019, “we believe non-partnered options are the wrong long-term answer for diners, restaurants and shareholders.” Grubhub's leadership acknowledged that listing Unaffiliated Restaurants would result in “a suboptimal diner experience . . . rife with operational challenges.”

26. Two of Grubhub's main competitors, DoorDash and Postmates, did not limit their listings to affiliated restaurants. Witnessing their success with this tactic, Grubhub adopted the

practice of listing Unaffiliated Restaurants on its Platforms without the restaurants' consent— notwithstanding its stated aversion to the practice.

27. Grubhub started by “piloting” unauthorized listings numbering in the “tens of thousands.” In or around October 2019, Grubhub began moving “aggressively” to add Unaffiliated Restaurants to the Grubhub and Seamless Platforms, doubling its total nationwide restaurant listings by adding more than 150,000 restaurants without their consent in just three months. Through its partnership with Yelp, Grubhub also added links to Unaffiliated Restaurants' Yelp listings that directed consumers to Grubhub-powered online ordering pages. Grubhub listed many Chicago restaurants without their consent.³

A. Grubhub's Unauthorized Listings Convey a Business Affiliation and Authorization That Do Not Exist.

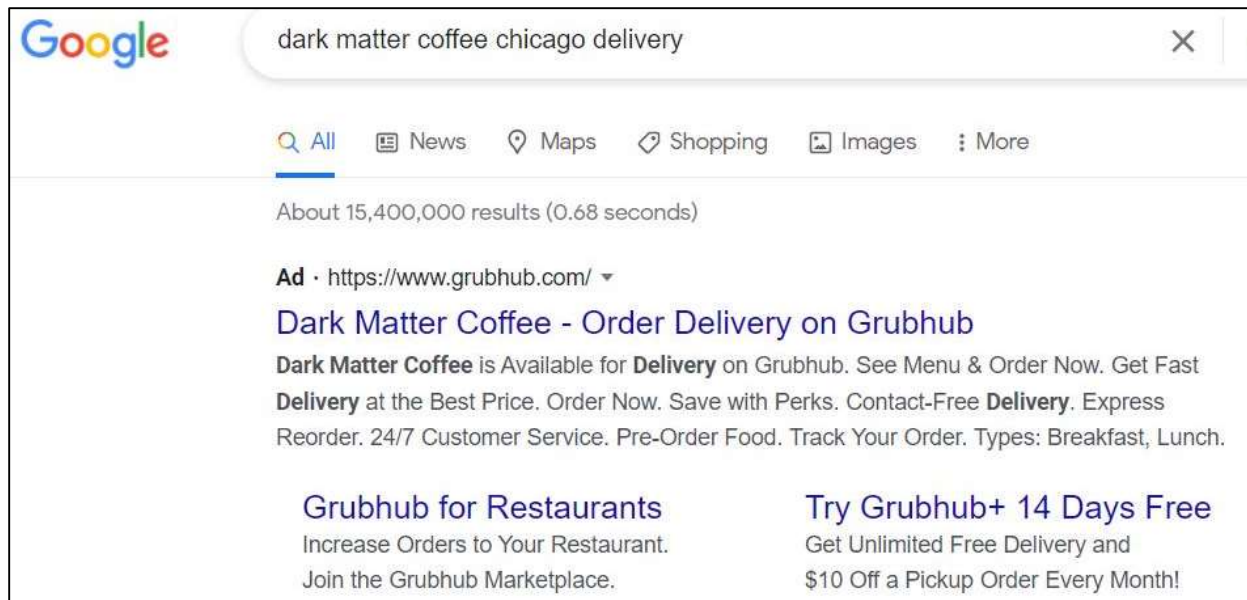
28. Every aspect of Grubhub's unauthorized listings misleadingly implies an authorized business relationship between Grubhub and the Unaffiliated Restaurants, including Grubhub's use of the restaurants' names, logos, menus, and photos, and the ability to place an order to the restaurant through the Grubhub and Seamless Platforms. Grubhub lists Affiliated and Unaffiliated Restaurants in exactly the same way.

29. The impression of a business relationship is reinforced by the links to unauthorized listings on the Grubhub and Seamless Platforms that appear in Internet search results. When consumers use a search engine to find a restaurant by name, the search results often feature one or more links to a landing page for the restaurant on the Platforms, whether or not the restaurant contracts with Grubhub. Grubhub links sometimes appear higher in these search results than the

³ The City identifies in Section I.C., *infra*, several examples of Chicago restaurants that complained on social media, in news reports, and to the City that Grubhub had listed them on its Platforms without consent. Because Defendants' Platforms do not distinguish between Affiliated and Unaffiliated Restaurants, the full list of Chicago Unaffiliated Restaurants listed without their consent is within Grubhub's exclusive knowledge.

link to the restaurant’s own website. A link to the Grubhub Platform or Seamless Platform listing for the Unaffiliated Restaurant also sometimes appears at the top of Internet search results as a Grubhub advertisement. These Grubhub search results and advertisements include the restaurant’s name and address along with the words “delivery” and “order delivery or pickup.”

Google search results excerpt



30. The Grubhub links that appear in Internet search results for Unaffiliated Restaurants divert consumers ordering from Unaffiliated Restaurants onto the Grubhub and Seamless Platforms. Grubhub has told its investors that the search engine results and advertisements for its unauthorized listings “help us acquire new diners” who are “looking online for a specific restaurant.” Once on the Platforms, the restaurant’s name, logo, menu, and pictures suggest that Grubhub is affiliated with the restaurant and that its Service has the restaurant’s approval.

31. Chicago restaurants have complained publicly and to the City about the false impression that Grubhub’s listings create, as illustrated by the examples in Section I.C, *infra*. As the president and CEO of the Illinois Restaurants Association, Sam Toia, has described the practice, unauthorized listings amount to a “hijacking” of a restaurant’s brand.

32. These unauthorized listings misleadingly convey to Chicago consumers that the Unaffiliated Restaurant has given Grubhub permission to list the restaurant, process its orders, and deliver its food—*i.e.*, that Grubhub has a business relationship with the restaurant. Grubhub intends for consumers to rely on this deception when placing orders online.

33. Grubhub’s false representation that it is authorized by the restaurant to provide delivery is material to consumers. They could choose to order directly from the restaurant or through another meal delivery service that the restaurant has chosen, if they know Grubhub is operating without the restaurant’s consent—particularly given the customer service problems that result from these listings, as described in Section I.B. and I.C., *infra*.

B. Grubhub Misleads Consumers about the Accuracy of Its Unauthorized Listings.

34. Grubhub does not verify the information in its unauthorized listings, resulting in Grubhub advertising inaccurate information about restaurant menu offerings, prices, and hours on the Grubhub and Seamless Platforms. When Grubhub posts inaccurate menu and restaurant information, Grubhub is promising consumers a Service it cannot deliver. Grubhub does nothing to notify consumers that menus and operating hours are unverified and may be rife with inaccuracies. As illustrated by the examples in Sections I.C and I.E, *infra*, Chicago restaurants have complained publicly and to the City about the inaccuracies in Grubhub’s listings and the harm the listings cause to the restaurants’ businesses.

35. By their nature, unauthorized listings mean that Grubhub does not obtain the advertised information directly from the restaurant. Grubhub simply amasses that information from available sources online. On information and belief, Grubhub uses automated software tools to extract information about Unaffiliated Restaurants from the Internet in bulk—a technique known as “data scraping.”

36. The inaccuracies in the Grubhub and Seamless Platforms' unauthorized listings mislead consumers about the services Grubhub can actually provide. For example, when Grubhub posts menu items that do not exist or are no longer offered, Grubhub is misrepresenting that consumers can use the Platforms to order those items for delivery or pickup. Similarly, when Grubhub advertises a restaurant as open during hours when it is actually closed, Grubhub falsely represents that consumers can use its Platforms to order from the restaurant during those hours it is closed. Conversely, when Grubhub inaccurately lists a restaurant as closed when it is in fact open, Grubhub falsely represents that consumers cannot order food from the restaurant at all—not only through the Grubhub and Seamless Platforms, but also directly from the restaurant.

37. The City is not aware of any evidence to suggest that Grubhub verifies the restaurant information it scrapes from the Internet before posting it on the Grubhub and Seamless Platforms. Yet, Grubhub intends for consumers to rely on the information it presents on the Platforms. Information about a restaurant's menu items, food descriptions, and operating hours is material to consumers, who might order through another third-party meal delivery company or the restaurant if they knew Grubhub's information was unverified or inaccurate.

C. Grubhub's Unauthorized Listings Unfairly Harm the Reputations of Restaurants.

38. Unauthorized listings create customer service problems that unfairly harm Chicago restaurants without their knowledge or control. In the prophetic words of former Grubhub CEO Matthew Maloney: “[I]t’s a bad experience for diners, it’s a bad experience for drivers, it’s a bad experience for restaurants.”

39. As described in Section I.B, *supra*, Grubhub's reliance on secondhand menu and restaurant information means that its unauthorized listings on the Grubhub and Seamless Platforms regularly contain inaccurate menu items and operating hours.

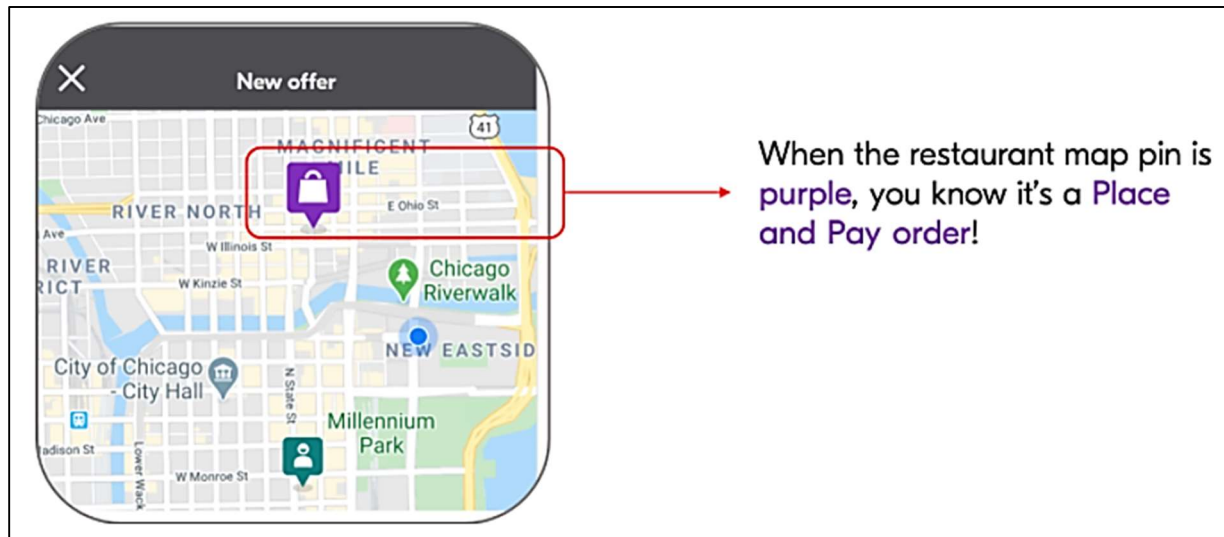
40. When Grubhub drivers attempt to place or pick up these problematic orders, the restaurants sometimes are unable to fill them, resulting in canceled orders that anger consumers and reflect poorly on the restaurants—even though Grubhub, not the restaurant, is the root cause of the problem. Restaurants live or die by the quality of their food, customer service, and reputation; it is patently unfair for Grubhub to disrupt these core functions and leave the restaurant with the consequences.

41. Even if the restaurant is open and the listed menu items are available, orders to Unaffiliated Restaurants on the Grubhub and Seamless Platforms are processed differently than those placed to Affiliated Restaurants. Grubhub coordinates with Affiliated Restaurants to send orders through the Platform app, by email, or directly to the restaurant’s point-of-sale system.

42. Grubhub has no such direct connection to Unaffiliated Restaurants. To bridge this relationship gap with Unaffiliated Restaurants, Grubhub instructs its drivers to engage in another deception: personally placing orders with Unaffiliated Restaurants and posing as the customer. Grubhub instructs its drivers to place the order under the customer’s name; to pick up the order from the restaurant’s general takeout area rather than a designated meal delivery pickup spot; and to tell the restaurant they are “picking up an order for [diner’s name].” This misleads restaurants, which are led to believe the Grubhub driver is the actual customer picking up an order for take-out, rather than a driver working for a third-party meal delivery company.

43. To alert drivers that they need to impersonate a customer, Grubhub’s driver-facing mobile app clearly distinguishes between Affiliated and Unaffiliated Restaurants. This is a deliberate choice, as the consumer-facing Grubhub and Seamless Platforms do not show this distinction. On the driver-facing app, orders to Unaffiliated Restaurants are marked in purple and labeled “Place & Pay Orders.”

Excerpt from Grubhub driver support page



44. Even when this ruse is successful, delivery can be delayed because of the significant lag time between when a customer orders on the Grubhub or Seamless Platforms, when a Grubhub driver accepts the assignment, and when the driver places the order with the restaurant—resulting in cold food and unhappy customers.

45. Many restaurants do not want to have a business relationship with Grubhub. Some restaurants do not want to pay the hefty commissions, some do not wish their food to be delivered by a third party, and some may wish to exclusively serve dine-in customers. Delivering meals without a restaurant's knowledge, through a third-party driver who may make multiple delivery stops, also can present food safety issues.

46. Chicago restaurants have protested these unauthorized listings in social media posts directed at Grubhub, in the press, and in complaints made to Grubhub and the City, as the following examples illustrate.

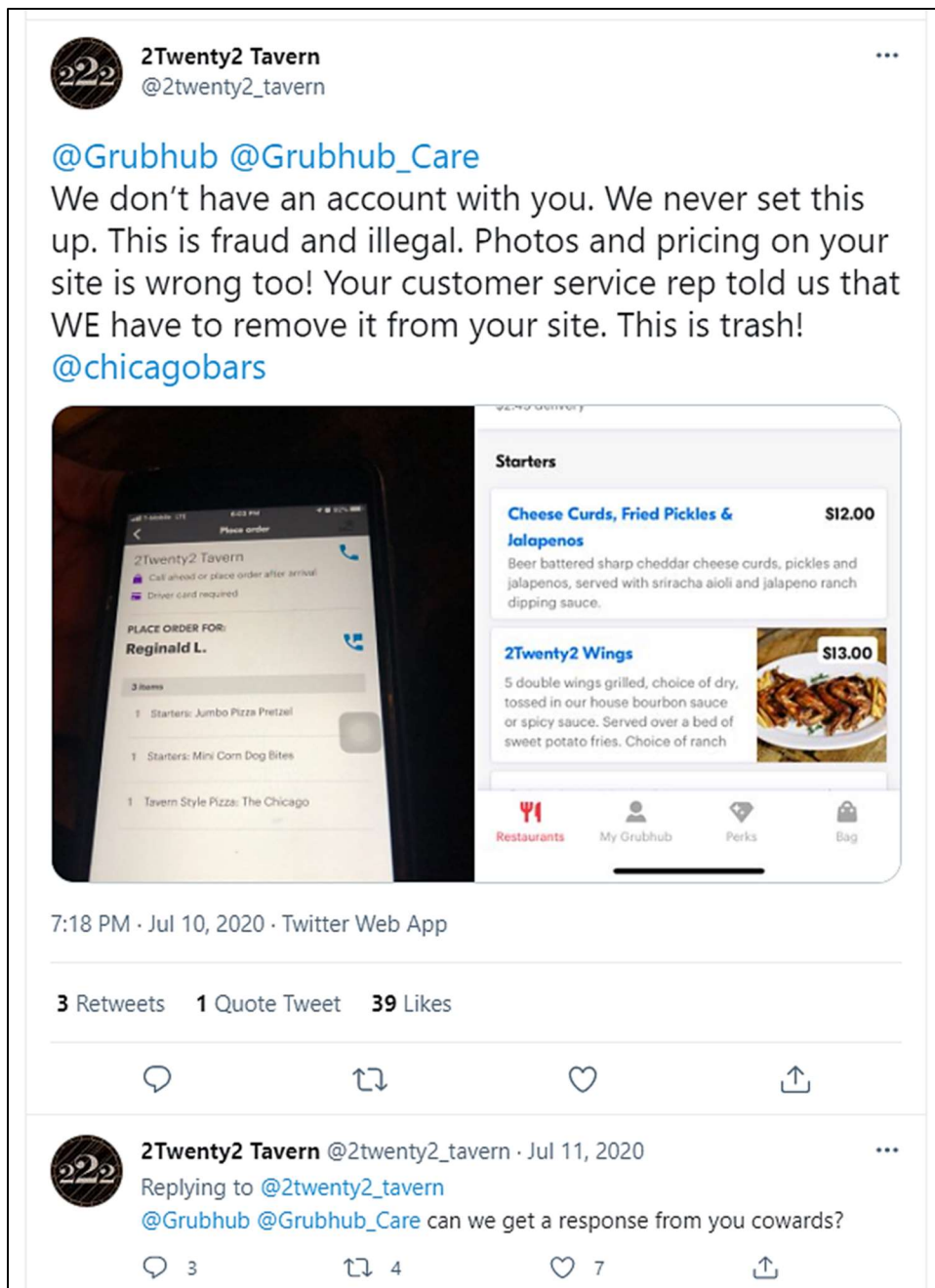
a. The Bridgeport location of sports restaurant Buffalo Wings & Rings took to Twitter to alert consumers and grab Grubhub's attention, after Grubhub listed it without consent:



b. Medici on 57th, the longtime Hyde Park restaurant and bakery, complained on Twitter that it had attempted, multiple times—without success—to get Grubhub to take down the unauthorized listing of the restaurant:



c. 2Twenty2 Tavern, a bar in the Loop, complained on Twitter that Grubhub’s unauthorized listing included incorrect prices and pictures of the food—and that Grubhub unfairly put the onus on the restaurant to fix these errors:



d. Beverly Kim, the chef and co-owner of the Korean-American restaurant Parachute in Avondale, testified at the City’s Council’s May 2020 hearing that she felt “violated”

by Grubhub’s unauthorized listing of her restaurant. She recounted that, when she discovered the listing, she placed an order for delivery to investigate the process. A driver arrived at the restaurant to pick up the order. Because Parachute does not offer food for delivery, the restaurant refused to fulfill the order. When Ms. Kim, posing as the frustrated customer who placed the order, called Grubhub to ask where the food was, Grubhub passed blame to the restaurant, saying the restaurant’s system was down.

e. Lacey Irby, owner of Dear Margaret in Lakeview, complained to Eater Chicago about Grubhub’s listing of her restaurant: “It is absolutely ludicrous to me that third-party ordering platforms like Grubhub can list a restaurant on their website without the restaurant’s consent, let alone take orders based off old, incorrect menus It might as well be called restaurant catfishing—and just imagine how customers must feel after being duped, too!”

f. A Lincoln Park pub complained directly to the City that Grubhub had not only listed it without consent, but also had posted an outdated menu that led to customer service problems.

g. A Logan Square taqueria likewise reported to the City that Grubhub had listed the restaurant without authorization, posting incorrect menu items and prices.

h. An Italian restaurant in Printer’s Row told the City that unauthorized listings on meal delivery sites and apps, including Grubhub’s, were harming its business. The owner complained that menu items and prices were incorrect, resulting in customers getting upset with the restaurant even though it did not create the problem.

i. An Albany Park bakery echoed the complaint that unauthorized listings by Grubhub and others were harming its business, complaining to the City that customer service

problems resulting from this practice had caused it to lose money and negatively affected its hard-earned reputation.

j. A Lincoln Park doughnut shop informed the City that Grubhub had listed it without permission and with incorrect menus and prices. This misinformation resulted in cancellation of orders, making the shop look bad to customers who were unaware that Grubhub was acting without the restaurant's knowledge or permission.

47. These kinds of negative consumer experiences translate to direct financial loss for restaurants. As Grubhub says itself, on the "Grubhub for Restaurants" website: "Canceling [a] customer's orders can create a poor experience for them. In fact, our data shows that when orders are canceled, customers are significantly less likely to order from the restaurant that canceled their order."

48. When dissatisfied customers leave negative online reviews on sites like Yelp, the harm is magnified. In a 2020 survey, 92% of consumers surveyed said that seeing negative reviews made them less likely to use a business.

49. Grubhub knows that listing Unaffiliated Restaurants misleads consumers and harms restaurants. Former Grubhub CEO Matthew Maloney has acknowledged that "the diner experience sucks" when ordering from Unaffiliated Restaurants. As for the impact on restaurants, Maloney said, "The volume is going to be way low, it's not going to be as accurate. . . . There is no way to fix the issues. It's less accurate delivery time." But because Grubhub "need[ed] to eliminate" the gap between its restaurant listings and those of its competitors as quickly as possible, and because "it is extremely efficient and cheap to add non-partnered inventory to our platform," Grubhub went ahead with its unauthorized listings on the Grubhub and Seamless Platforms anyway, aware of the likely and foreseeable harm to consumers and restaurants.

50. Faced with public backlash generated by the harms caused by its unauthorized listings, Grubhub told news publications in late 2019 that “[i]f a restaurant prefers not to be on our marketplace or needs to change any information like menu items or hours, they should reach out to us . . . and we’ll work as quickly as possible to make necessary updates or remove them.” Grubhub also represented that it would remove restaurants that request removal “without hesitation.”

51. Even when followed, this policy—to list restaurants without permission, then remove the listing on request—unfairly puts the onus on restaurants to address the financial, customer service, and reputational problems that Grubhub’s unauthorized listings cause. Chicago restaurants must monitor the Grubhub and Seamless Platforms to see whether Grubhub has listed them without permission. If it has, restaurants then must take the time to figure out how to request removal, make the request, and confirm that Grubhub followed through.

52. Grubhub does not make good on its promise to address removal requests quickly. Grubhub habitually meets requests for removal with inaction and delay, leaving restaurants feeling helpless and frustrated while consumer complaints mount. Fighting these battles is time-consuming, requiring hard-working restaurant owners to redirect valuable time to email correspondence and lengthy phone calls instead of running their businesses. There are plentiful examples, of which these are just a few:

- a. The owner of Medici’s on 57th had to call Grubhub more than eight times and tweet at the company publicly before its unauthorized listing finally was removed.
- b. 2Twenty2 Tavern reported that Grubhub just ignored its removal requests.
- c. In at least one instance, a Chicago restaurant found the only effective method to get a listing removed was to threaten litigation.

53. During the City’s investigation, Chicago restaurants expressed their great frustration that, even when an unauthorized listing is successfully removed, it sometimes reappears. A fine dining restaurant in Printer’s Row described this process as an infuriating game of whack-a-mole, and a local coffee shop chain noted that the recurrent unauthorized listings were a particular problem for restaurants with multiple locations.

D. Grubhub Uses Unauthorized Listings to Deceptively Attract Consumers to Its Platforms.

54. In some instances, Grubhub has continued to use its unauthorized listings—even after the Unaffiliated Restaurant has demanded to be removed—to lure customers searching for that restaurant onto the Grubhub and Seamless Platforms. Instead of removing these listings, Grubhub has responded to the request for removal by continuing to present the restaurant on its Platforms but eliminating the ability to order from the restaurant. When the consumer arrives on the restaurant’s page on the Platform, Grubhub advises consumers that the restaurant does not accept Grubhub orders and redirects the consumer to competitor Affiliated Restaurants. In some cases, Grubhub also falsely lists the Unaffiliated Restaurant as closed.

55. Grubhub has admitted that “we’re going to do what we can to route demand to partnered restaurants where the economics are not so miserable” for Grubhub. In other words, Grubhub further exploits Unaffiliated Restaurants by using unauthorized listings as a vehicle to direct more business toward the Affiliated Restaurants that pay Grubhub a commission.

56. For example, Chicago’s Beacon Doughnuts has requested removal of its unauthorized listing on the Grubhub Platform, but as of August 25, 2021, that listing remains live—and accessible from Google search results for the doughnut shop.

57. In search results, the Grubhub Platform result for Beacon Doughnuts includes the restaurant’s name, the word “Delivery,” and the words “Order delivery or pickup,” despite the fact

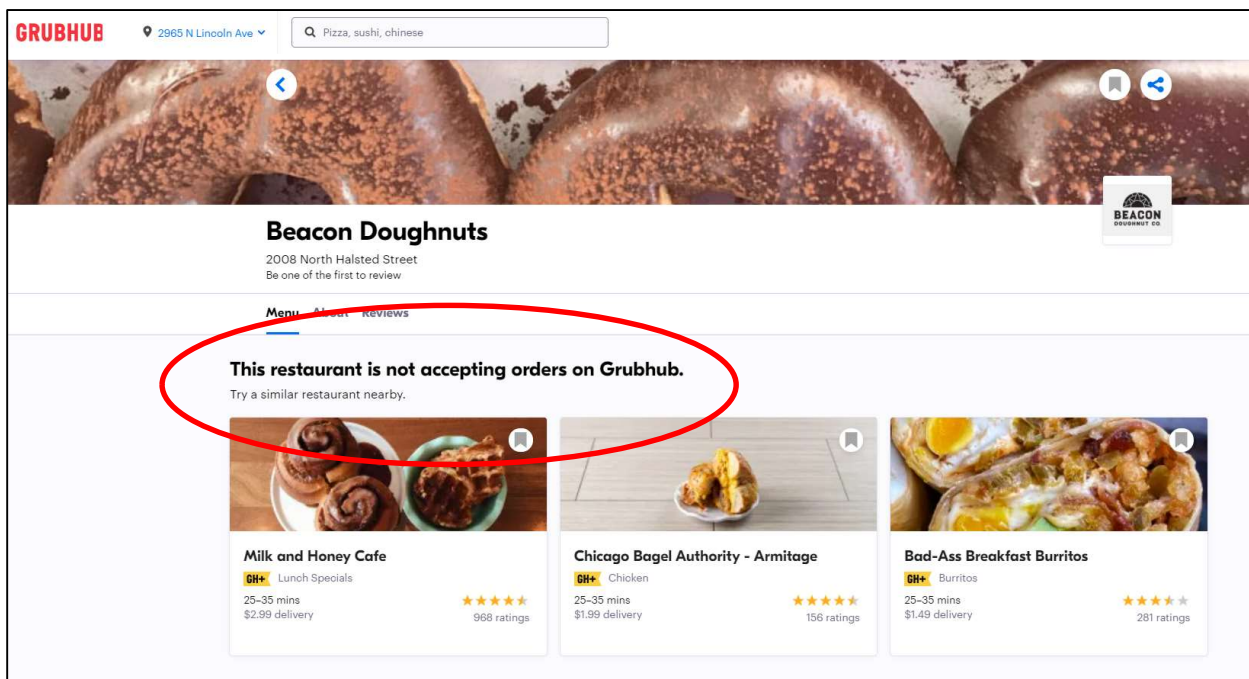
that consumers can no longer use the Grubhub Platform to order either delivery or takeout from the restaurant.

Excerpt from Google search results for Beacon Doughnuts



58. Clicking on the link in this search result takes the consumer to the unauthorized listing for Beacon Doughnuts on the Grubhub Platform. As shown below, the listing reflects that the Grubhub Platform will not take orders for Beacon Doughnuts—contrary to Grubhub’s representation in the search result.


Excerpts from Grubhub.com listing for Beacon Doughnuts



Beacon Doughnuts Menu Info

\$\$\$\$\$

Grubhub charges no commission to this restaurant for delivery services.



2008 North Halsted Street
Chicago, IL 60614
2.54 mi

Hours	
Mon-Fri	Closed
Sat-Sun	Delivery: 7:30am-1:00pm

Hours	
Mon-Fri	Closed
Sat-Sun	Delivery: 7:30am-1:00pm

59. The listing falsely advertises that Beacon Doughnuts is open only on weekends, expressly invites consumers to “[t]ry a similar restaurant nearby,” and directs consumers to alternative breakfast options generated by Grubhub’s algorithm. Yet, according to Beacon Doughnuts’ own website, the shop is open Thursday and Friday as well as the weekend. The listing deceptively and unfairly routes consumers away from Beacon Doughnuts on days and at times when the store is open and able to accept orders directly.

60. This combination of practices misleads consumers about the services that Grubhub provides and unfairly diverts consumers away from restaurants’ own websites. Search results for the restaurant lure consumers to the Grubhub and Seamless Platforms, even though the Platforms will not process an order to that restaurant—and instead direct consumers to other dining options on the Platforms. By deceptively attracting consumers onto its Platforms, and sometimes compounding the deception with false information about the restaurant’s operating status, Grubhub unfairly interferes with a restaurant’s access to consumers who were searching for that restaurant.

E. Grubhub Uses Unauthorized Listings to Pressure Unaffiliated Restaurants to Join Its Roster of Affiliated Restaurants.

61. Grubhub leverages the bad experiences caused by its unauthorized listings to pressure restaurants to join its network and pay commissions.

62. Grubhub admits that its goal is to “convert” Unaffiliated Restaurants into Affiliated Restaurants. On an October 2019 call with investors, Adam DeWitt, then Grubhub’s President and Chief Financial Officer and now the CEO, stated that Grubhub’s long-term strategy for the Unaffiliated Restaurants it lists without permission is to “turn those restaurants into partnered restaurants.” In a shareholder letter, Grubhub said it “will be investing aggressively . . . to support converting as many of these non-partnered restaurants to partnered relationships as quickly as possible.”

63. In a statement to Eater.com, Grubhub’s current Director of Corporate Communications acknowledged: “[W]e’re deploying a sales team to try to convert these [Unaffiliated] restaurants to partners, because it’s a better experience for anyone involved.”

64. Grubhub’s CEO was even more explicit about this strategy, explaining that the company capitalizes on the bad experience it creates for Unaffiliated Restaurants as a way to pitch the benefits of becoming an Affiliated Restaurant:

[W]hy would a restaurant choose to partner when they have a non-partner option, it’s because the diner experience sucks. The volume is going to be way low, it’s not going to be as accurate. I appreciate that. There is no way to fix the issues.

65. Chicago restaurants have confirmed that Grubhub uses the customer service problems and reputational harm it causes Unaffiliated Restaurants to make a hard sell to contract with Grubhub as an Affiliated Restaurant. For example, a Logan Square coffee shop reported to the City that, when it asked Grubhub to correct an outdated menu, Grubhub pushed it to sign a contract as the best way to ensure the problem would not happen in the future.

66. Due in part to these tactics, Grubhub has been successful in increasing the number of Affiliated Restaurants. In February 2020, just after adding more than 150,000 Unaffiliated Restaurants to its Platforms, Grubhub had partnerships with 155,000 restaurants. By the end of the first quarter of 2021, Grubhub's Affiliated Restaurants numbered more than 280,000, an increase of more than 80% from the prior year.

II. GRUBHUB USES DECEPTIVE TACTICS TO PREY ON ITS AFFILIATED RESTAURANTS.

67. Despite claiming to be “steadfast in our support of our restaurant partners,” Grubhub is not a faithful service provider to its Affiliated Restaurants. It uses its superior resources to deceptively siphon away their customers and lure them to Defendants' Platforms, padding its own bottom line at the restaurants' expense. This deception takes two primary forms: stealth tactics that misrepresent Grubhub phone numbers and websites as the restaurants' own, and misleading consumer promotions that claimed to support restaurants during the pandemic but left them footing the bill.

A. Grubhub Uses Stealth Tactics and Consumer Deceptions to Extract Commissions From Restaurants.

68. Grubhub uses deceptive practices to extract commissions from Affiliated Restaurants. First, Grubhub has misled consumers by posting a Grubhub routing telephone number for the restaurant on Defendants' Platforms and on third-party websites, in place of the restaurant's authentic phone number. Second, Grubhub has charged phone commissions for calls that do not even result in orders, saddling restaurants with the burden of seeking refunds for commissions they should never have been charged. Third, Grubhub also captures commissions through impostor websites—sites created and run by Grubhub but designed so that they appear to be the restaurant's own website.

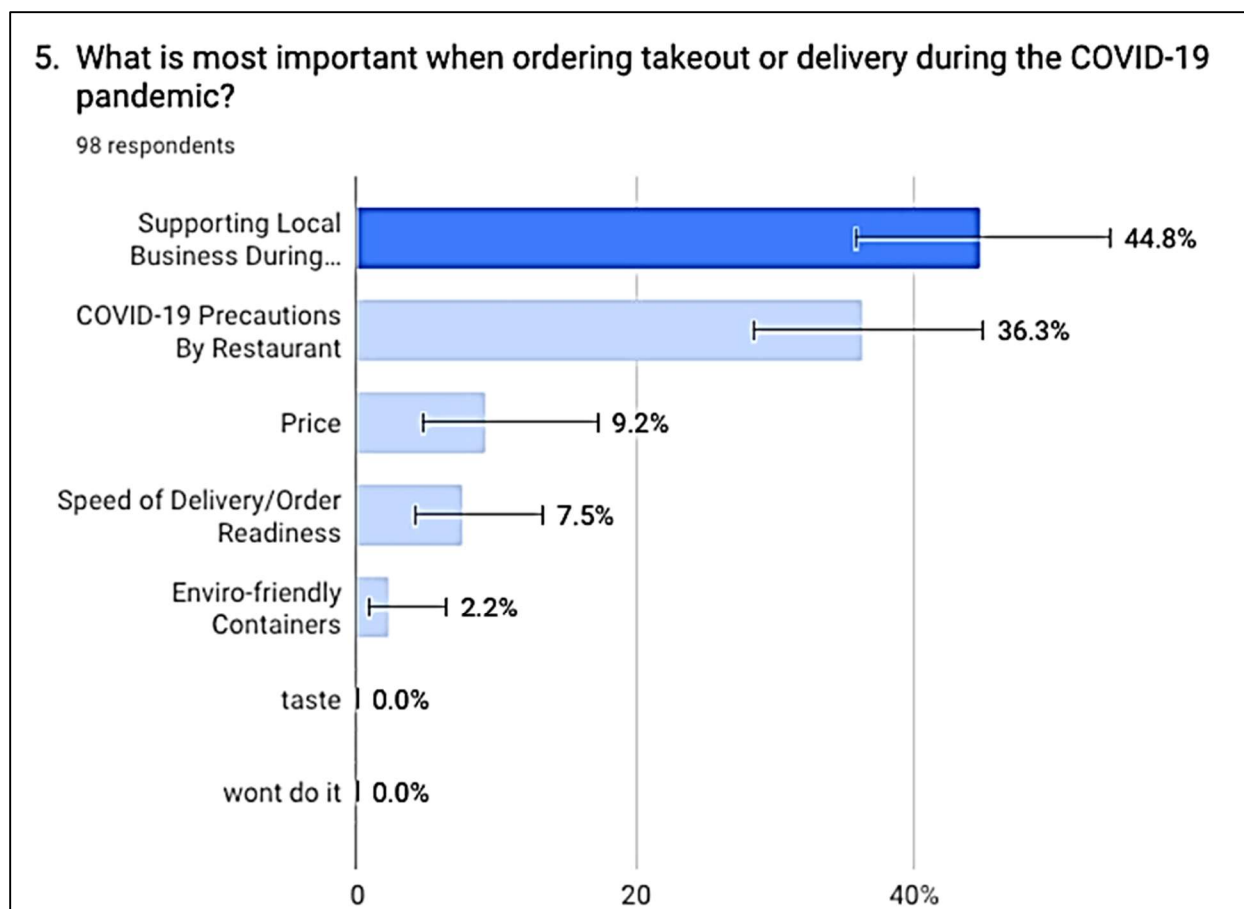
69. The feature common to these practices is that they deceptively insert Grubhub into the relationship between consumers and restaurants. The ability to choose where to direct one's business is material to consumers and fundamental to the operation of a free and fair marketplace. Consumers can choose to order takeout or delivery directly from the restaurant or to order through a third party like Grubhub.

70. Consumers' desire to support the restaurants in their community has been heightened during the COVID-19 pandemic. In a national survey taken in August 2020, 88% of respondents agreed that restaurants are an important part of their communities, and 89% said they were concerned their community restaurants may not survive the economic fallout from the pandemic.⁴ In one survey of 2,000 consumers, 59% reported ordering more from local restaurants (rather than large chains) during the pandemic.⁵ Another survey showed that consumers' top priority in ordering takeout or delivery was supporting local businesses.⁶

⁴ National Restaurant Association, "Restaurant sales continued to rise in July, but at a much slower pace," Aug. 14, 2020, *available at* <https://www.restaurant.org/articles/news/restaurant-sales-continued-to-rise-in-july> (last visited Aug. 16, 2021).

⁵ Small Business Trends, "59% of Americans Order from Local Restaurants Exclusively During Pandemic," Sept. 13, 2020, *available at* <https://smallbiztrends.com/2020/09/bid-on-equipment-local-restaurant-survey.html> (last visited Aug. 16, 2021).

⁶ Response Labs, "What's Important to Consumers for Food Takeout/Delivery During COVID-19," April 2, 2020, *available at* <https://www.responselabs.com/2020/04/whats-important-to-consumers-for-food-takeout-delivery-during-covid-19/> (last visited Aug. 16, 2021).



71. At the same time, widespread coverage of the high fees charged by third-party services like Grubhub has increased consumer awareness and disapproval of how much these services are costing restaurants. According to the head of consumer research firm Sense360, “Given all of the conversation that’s been happening around the fees that third-party delivery companies are charging restaurants and the dramatic economic impact of COVID-19 on restaurants in particular, consumers are very sensitive to sharing more of the revenue with the restaurant itself.”

72. Consumer preference for ordering directly from restaurants has been confirmed in multiple surveys. In one April 2020 survey, found 52% of consumers expressed a preference for ordering directly from the restaurant, compared to just 18% who said they preferred ordering from

a third-party provider.⁷ Another consumer survey found that 63% of consumers preferred to order delivery directly from the restaurant, compared to 18% (once again) who preferred ordering from third parties.⁸ In another survey, after consumers were informed that restaurants are charged commissions on third-party delivery orders, 70% said that they would prefer to order directly from a restaurant rather than the third-party delivery provider.⁹

1. Grubhub has unfairly funneled orders through deceptive phone numbers to collect extra commissions.

73. Since at least 2011, and continuing today, Grubhub has funneled phone orders to its Affiliated Restaurants through misleading “routing” phone numbers that are presented as the restaurants’ actual numbers. The routing numbers are posted prominently on the restaurants’ landing pages on Defendants’ Platforms, and the routing numbers are the only phone numbers listed on those pages.

74. When a consumer calls a Grubhub routing number to place an order, Grubhub charges the restaurant a commission on the consumer’s order. Grubhub intends for consumers to use its deceptive routing numbers to place orders.

75. Consumers placed almost 4.8 million orders through Grubhub’s routing phone numbers in 2018 alone. According to Grubhub’s public testimony, phone order commissions increased Grubhub’s revenue by \$30 million in 2018.

⁷ Alix Partners, “COVID-19 Crisis: US Restaurant Consumer Pulse Survey,” May 2020, *available at* https://www.alixpartners.com/media/15013/p_0294_ei-2020-us-restaurant-consumer-pulse-survey-in-brief-tl-letter_v05.pdf (last visited Aug. 16, 2021).

⁸ Sense 360, “Third-party delivery is growing, but restaurant consumers don’t prefer it,” Aug. 19, 2020, *available at* <https://blog.sense360.com/third-party-delivery-is-growing-but-restaurant-consumers-dont-prefer-it> (last visited Aug. 16, 2021).

⁹ Hospitality Technology, “70% of Consumers Prefer to Order Direct from Restaurants, Not Third-Party Services,” May 24, 2018, *available at* <https://hospitalitytech.com/70-consumers-prefer-order-direct-restaurants-not-third-party-services> (last visited Aug. 16, 2021).

76. Prior to August 23, 2021, Grubhub’s phone system transferred calls placed through Grubhub routing numbers to the restaurant. Grubhub recorded the phone call without disclosing its involvement to the consumer. An automated message merely announced that “this call may be recorded for awesomeness,” without revealing that Grubhub was involved in any way. Grubhub made a record of the time the call was placed, the length of the call, and the phone number that placed the call, in order to charge a commission in connection with it. The restaurant handled the phone call and took the order. Nothing alerted the consumer that the call had been routed through Grubhub and then transferred to the restaurant.

77. On or around August 23, 2021, Grubhub changed its automated message to state: “Thank you for calling the assisted ordering center powered by Grubhub.” Additionally, instead of imperceptibly routing consumers to the restaurant to place their orders, Grubhub now routes consumers to a Grubhub call center that takes consumers’ orders and places them with the appropriate restaurant—without the consumer ever speaking to the restaurant. Grubhub’s implementation of this new system occurred after the City’s outreach to Grubhub about its deceptive routing numbers and other unlawful practices.

78. At no point have Defendants’ Platforms indicated that the phone number posted on each restaurant landing page is a Grubhub phone number. Additionally, until on or around August 23, 2021, Grubhub’s automated recordings did not tell consumers who called its routing numbers that they were dialing a Grubhub number or that they were participating in a Grubhub transaction. To this day, Grubhub does not disclose to consumers that Grubhub is charging the restaurant a

significant commission simply because the order is placed through the routing number. This conduct occurs nationally, including in Chicago.

79. Under Grubhub's agreements with Affiliated Restaurants, Grubhub lists the restaurant on Defendants' Platforms in exchange for a percentage of each order placed through the Platforms. Grubhub calls the charges Affiliated Restaurants pay for online orders placed through its Platforms "prepaid order commissions." Affiliated Restaurants also pay Grubhub a commission for orders placed by phone when a consumer calls the "routing" phone number created by Grubhub for each restaurant. Grubhub calls these fees "phone order commissions."

80. Grubhub refers to its prepaid order commissions and phone order commissions together as "marketing fees." Historically, these have ranged from 15% to 20% of the total amount paid for each order placed online or through its routing phone numbers. While the City's Emergency Fee Cap was in effect, Grubhub charged restaurants a range of reduced marketing commissions, including on telephone orders—typically 12% – 15% for pickup orders and 5% for delivery orders. As described in Section III, *infra*, the combination of commissions and fees Grubhub charged restaurants still exceeded the Emergency Fee Cap.

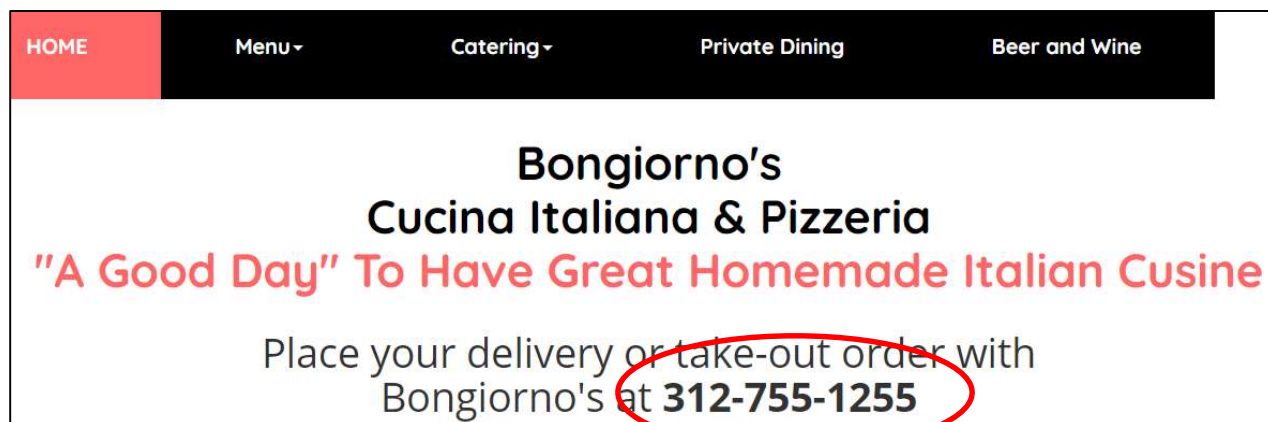
81. Grubhub creates landing pages for each restaurant listed on Defendants' Platforms. On the Grubhub and Seamless websites, these landing pages include a phone number posted in two locations: at the top of the page, immediately under the restaurant's name and beside the restaurant's street address; and in the "About" section, which also includes the restaurant's name, full street address, and operating hours. On the Grubhub and Seamless mobile apps, the routing phone number similarly appears in the "About" section of the page, along with the restaurant's street address and operating hours.

82. Restaurant listings on the MenuPages Platform include a phone number at the top of the page, under the restaurant's name and street address, and in the "Info" section, which also includes the restaurant's street address and operating hours.

83. For the vast majority of Affiliated Restaurants, the only phone number Grubhub lists on Defendants' Platforms is the deceptive routing phone number, which uses the restaurant's local area code, not a universal 800-number or a number identified as belonging to Grubhub. As noted above, the deceptive routing numbers appear alongside the restaurants' real names, street addresses, and operating hours.

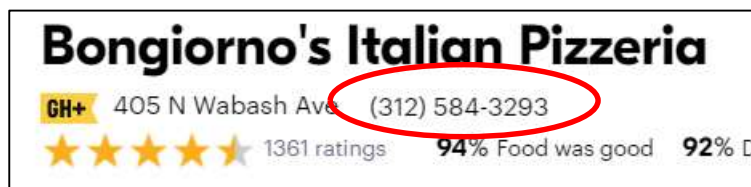
84. For example, the actual phone number for Bongiorno's Cucina Italiana & Pizzeria is (312) 755-1255, as shown on the restaurant's own website:

Excerpts from Bongiorno's Cucina Italiana & Pizzeria's website



85. The Grubhub Platform lists the deceptive routing number, (312) 584-3293, using the same Chicago area code:


Excerpts from Bongiorno's page on Grubhub.com



Bongiorno's Italian Pizzeria Menu Info

Dinner, Italian, Lunch Specials, Pasta, Pizza, Salads, Sandwiches
 \$\$\$\$

This restaurant uses their own drivers for delivery. Grubhub charges no commission to this restaurant for




405 N Wabash Ave
 Chicago, IL 60611
 592.48 mi

(312) 584-3293

Hours
 Today
[See the full schedule](#)

Excerpts from Grubhub mobile app listing



Bongiorno's Italian Pizzeria
 GH+ 405 N Wabash Ave, Chicago, IL
 ★★★★★ 1361 ratings


[About](#) [Reviews \(237\)](#)

Delivery, ASAP (60-70 mins) [Change](#)

[Back](#) **About**

Dinner, Italian, Lunch Specials, Pasta, Pizza, Salads, Sandwiches, \$\$\$

This restaurant uses their own drivers for delivery. Grubhub charges no commission to this restaurant for delivery services.



405 N Wabash Ave
 0.83 miles away

(312) 584-3293

86. Grubhub also lists the deceptive routing number in the contact information for Bongiorno’s on the Seamless Platform, the MenuPages Platform, and the AllMenus website.

87. On the AllMenus website, which lists restaurant menus alongside “Order with Grubhub” buttons that direct to Grubhub’s Platforms, restaurant listings include a phone number

at the top of the page, immediately under the restaurant's name. When Grubhub lists a deceptive routing number for a restaurant on its Platforms, it also lists the same routing number on AllMenus.

88. The City reviewed listings for 50 Chicago restaurants on Defendants' Platforms and found that 39 of them (78%) included the deceptive routing number.

89. Grubhub also created impostor websites for some Affiliated Restaurants, as discussed in Section II.A.3, *infra*. These impostor websites, which present as the restaurant's actual website before redirecting orders to Grubhub.com, frequently list deceptive routing numbers in at least two locations: in the "About" section of the website, beside the restaurant's street address and operating hours, and in the website's "footer," beside the restaurant's name and street address. During its investigation, the City reviewed 50 Grubhub-generated, impostor websites for Chicago restaurants and found that 42 of them (84%) displayed deceptive routing numbers.

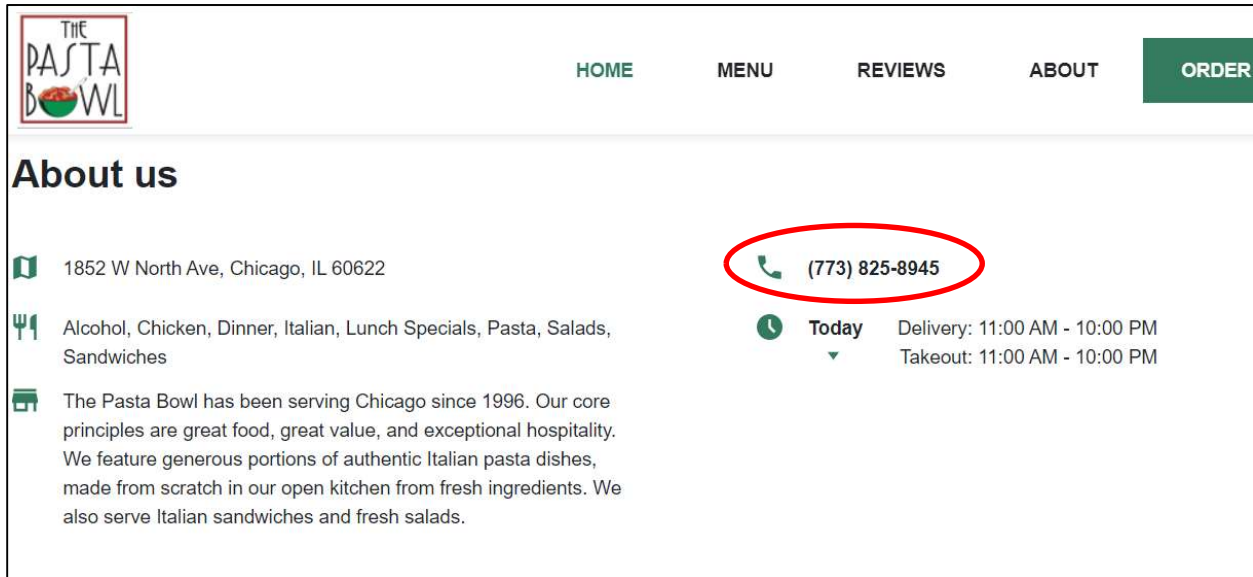
90. For example, The Pasta Bowl in Wicker Park lists its actual phone number prominently on its website, <https://www.pastabowl.com>:

Excerpt from The Pasta Bowl restaurant website

The screenshot shows a website header with a red background. On the left is a logo for 'THE PASTA BOWL' featuring a green bowl of pasta with a fork. To the right of the logo is the text 'THE PASTA BOWL' in a large, bold, serif font, with 'NEIGHBORHOOD KITCHEN AND BAR' in a smaller font below it. Further right is a navigation menu with the items 'MENU', 'SPECIALS', 'ORDER ONLINE', 'CATERING', and 'WHO WE ARE'. A large, white, rounded rectangular button with the text 'ORDER NOW' in red is centered at the top of the page. Below the header is a main content area with a light gray background. On the left side of this area is a photograph of a kitchen interior with shelves holding various items like a white colander, a wooden pepper mill, and a white plate. On the right side of this area is text for the 'WICKER PARK' location. The text reads: 'WICKER PARK' in a bold, red, serif font. Below that is a paragraph of text in a cursive font: 'Great for larger groups and events. Sit up front and enjoy the open-air storefront (at least for about 8 weeks in June and September...) or settle into one of the large cozy booths in back. Lots of screens for enjoying cult classic movies or the big game.' Below the paragraph is the address: '1852 W North Ave', 'Chicago, IL 60622', and the phone number '773-935-2695', which is circled in red. Below the address is the operating hours: 'Sunday - Wednesday: 11am - 10pm' and 'Thursday - Saturday: 11am - 11pm'. At the bottom of the main content area is another white, rounded rectangular button with the text 'ORDER NOW' in red.

91. Below is an excerpt from the impostor website for The Pasta Bowl in Wicker Park, www.thepastabowlchicago.com:

Excerpt from The Pasta Bowl impostor site



92. Grubhub’s deception is magnified by its practice of flooding Internet search results for a restaurant with multiple links to webpages that contain the routing number. In addition to links to the restaurant page on Defendants’ several Platforms and the AllMenus website, search results often also include paid Grubhub ads. These ads also frequently appear in restaurants’ Google business listing, which appears in the right-side column of Google search results and in Google Maps. From October 2018 through late 2019, Grubhub also deployed these deceptive routing numbers on Yelp, with which it had a separate partnership.

93. Grubhub’s outsize presence in Internet search results operates as a force multiplier of these misleading phone listings. Grubhub uses SEO techniques, including by manipulating the “meta tags” it uses on restaurant landing pages, to create links that elevate its Platforms’ pages in search results on Google, Bing, and other search engines.¹⁰ Thus, searching for a restaurant by

¹⁰ A “meta tag” is a small amount of text that describes a page’s content, appears only in the page’s source code, and is not visible on the page itself.

name often yields a first page of results containing multiple links to Grubhub- and Grubhub-affiliated web pages that display the Grubhub routing number.

94. Through this process, Grubhub maximizes the likelihood that a consumer looking for a restaurant's telephone number will first encounter the routing number and believe it is the restaurant's own. This misleading practice deprives consumers of an important choice: to call the restaurant directly and maximize the funds received by the restaurant instead of participating in a third-party transaction. It effectively allows Grubhub to poach orders by customers who searched for the restaurant, not Grubhub, and may have intended to order directly from the restaurant.

95. Chicago restaurants have complained about this business practice. Many pay close attention to their visibility in search results but lack the resources to elevate their listing and authentic phone number over Grubhub's. The owner of a sushi restaurant with multiple Chicago locations complained to the City that Grubhub dominates Google results to such a degree that it misleads consumers into calling the Grubhub number instead of the restaurant directly.

96. On information and belief, some Affiliated Restaurants in Chicago are unaware that Grubhub advertises a routing phone number for their restaurant instead of the restaurant's actual phone number. On information and belief, some Grubhub contracts with Affiliated Restaurants do not disclose or otherwise address Grubhub's use of routing phone numbers or the role the routing numbers play in calculating phone order commissions.

97. Grubhub markets itself as an "online and mobile food-ordering and delivery marketplace" that allows consumers to place food orders "from any internet-connected device." It contrasts its "convenient" online ordering platform with the "inaccuracies and frustrations . . . associated with phone orders." In pitching itself to consumers, Grubhub says, "Using Grubhub, diners do not need to place orders over the phone." Given Grubhub's emphasis on online ordering,

consumers—even those who use Defendants’ Platforms—are less likely to realize that the sole phone number that Grubhub posts in its restaurant listings is actually a Grubhub number, and that using it to call the restaurant requires participating in a Grubhub transaction.

98. The new automated message that Grubhub implemented on or around August 23, 2021, which discloses that the consumer has been routed to a call center “powered by Grubhub,” still fails to divulge that the order will result in Grubhub charging the restaurant a phone commission. This is a material fact that consumers care about in deciding where to spend their money. The new system also does nothing to resolve the fundamental and longstanding unfairness to restaurants, whose direct contact information is drowned out by Grubhub-linked Internet search results. When consumers find the Grubhub routing number—which remains disguised as a local phone number—instead of the restaurant’s actual number, restaurants are forced to involve Grubhub in transactions they could have conducted directly with consumers.

99. By misrepresenting Grubhub routing numbers as restaurants’ actual numbers and failing to disclose its involvement in orders placed by phone, Grubhub has deprived consumers of the ability to choose to support the restaurant directly instead of sharing a significant portion of those proceeds with Grubhub. Supporting the survival of local restaurants by ordering directly from the restaurant—rather than through a third-party delivery service—is material to consumers, as detailed in Section II.A, *supra*.

2. Grubhub has charged restaurants phone commissions for orders that were never placed.

100. Across the nation, Grubhub has used its deceptive routing numbers to charge restaurants expensive phone commissions *even when the phone calls do not result in an order*. This not only violates the terms of its contracts with restaurants; it is a deceptive and unfair business practice that is contrary to Grubhub’s public representations that it only charges

restaurants for orders that Grubhub generates. These wrongfully charged commissions, which could be triggered any time a customer dialed a Grubhub routing phone number and stayed on the line long enough (even if it is just to ask the restaurant a question or confirm something about an existing order), have cost some restaurants thousands of dollars each. When scaled up to reflect the number of wrongful charges to Chicago restaurants over time, the amount could be staggering.

101. Despite knowing for years that it was wrongfully charging phone commissions on orders that were never placed, Grubhub did not implement a system to prevent this from occurring until on or around August 23, 2021. Instead, Grubhub unfairly placed the burden on restaurants to comb through phone records, identify which phone commissions were illegitimate, and then undertake the time-consuming task of seeking refunds for wrongfully charged commissions.

102. On or around August 23, 2021, Grubhub finally eliminated its algorithm-based system for determining when to charge phone commissions. As described in Section II.A.1, *supra*, Grubhub is now using call centers with live customer service representatives to place orders made through Grubhub's routing numbers. Grubhub's announcement and implementation of this new system followed the City's outreach to Grubhub about this and other unlawful practices. The new system does nothing to make whole the restaurants Grubhub wrongfully charged for a decade of inaccurate phone commissions.

103. In its regulatory filings and as part of its sales pitch to engage new Affiliated Restaurants, Grubhub promises that it "only gets paid for the orders [Grubhub] generates." In statements published by national newspapers and other media outlets, Grubhub has publicly asserted that restaurants "only pay a commission to Grubhub when we help generate sales." Grubhub's contracts with restaurants require Affiliated Restaurants to pay Grubhub a commission on "all orders placed through the Systems."

104. These representations were false and misleading given Grubhub's widespread practice of charging phone commissions for calls that do not result in orders. Despite knowing of this serious problem since at least 2014, Grubhub continued to engage in this deceptive business practice for years. In the words of one restaurant owner who discovered that he had been charged wrongful phone commissions during the COVID-19 pandemic, "This is not only unethical, it's predatory and scandalous considering how we are fighting tooth and nail to stay afloat in this crisis." In the words of another restaurant executive, "They know they're wrong and they don't care."

105. This misconduct occurred nationally, including in Chicago. For example, during the City's investigation, the owner of a popular Chicago breakfast restaurant confirmed that Grubhub charged the restaurant commissions for phone calls that did not result in orders, including when customers called to ask about the restaurant's hours or what the soup of the day was. The owner estimated that 50% of the phone commissions Grubhub charged in 2019 were for phone calls that were not orders, and that Grubhub had wrongfully charged her for such non-orders for years. In one 30-day period in 2019, Grubhub incorrectly charged the restaurant more than \$100 for phone calls during which no order was placed. If extrapolated, this would amount to \$1,200 in wrongful charges per year.

106. When consumers use Defendants' Platforms to place an order online, Grubhub collects the payment, keeps the portion subject to its commissions and other fees, and remits the balance to the restaurant. Grubhub "accumulates" this order revenue and remits it to restaurants at least once a month. Grubhub "also deducts commissions for other transactions that go through its Platform"—such as phone orders using its routing numbers—from the proceeds it receives through online transactions.

107. As discussed in Section II.A.1, *supra*, until on or around August 23, 2021, Grubhub's routing numbers forwarded consumers seeking to order directly to the restaurant. The fact that Grubhub did not process phone orders meant it did not know if a given phone call actually resulted in an order, or if a consumer instead called with a question about the restaurant's hours, menu options, the status of an online order, or some other communication.

108. Instead of confirming whether each call to a routing number resulted in an order, Grubhub used an algorithm designed to measure the *likelihood* that a given call resulted in an order. The algorithm was based on the call's duration, the time the call was made, and whether a single phone number called the restaurant multiple times within a short time period.

109. On information and belief, Grubhub deployed a version of this algorithm to determine when to charge phone order commissions nationwide, including in Chicago, no later than 2011. Until on or around August 23, 2021, Grubhub did not use any other means to confirm that each phone commission it charges is tied to an actual order.

110. Mike Evans, Grubhub's co-founder and former COO, publicly asserted that Grubhub's algorithm was able to "predict with a high degree of accuracy which calls are orders or not." In fact, public reports and private lawsuits indicate that Grubhub's algorithm regularly resulted in charging phone order commissions for phone calls in which no order was placed.

111. For example, a survey of 300 New York City restaurants found that more than 62% were charged for accepting phone calls that did not result in orders. At one New York City restaurant, Grubhub charged a phone order commission on 54 phone calls over a three-month period, *only 3 of which actually resulted in orders—an error rate of nearly 95%*.

112. Grubhub has wrongfully charged phone commissions when customers called Grubhub's deceptive routing numbers to make a reservation, ask about menu substitutions, inquire

about ingredients in a particular dish, confirm restaurant hours, and ask whether the restaurant offers delivery. Grubhub has charged wrongful commissions on calls that were transferred to the restaurant's voicemail, and where consumers dialed the wrong number. Grubhub has also charged wrongful commissions when consumers called with questions about an order placed through the Grubhub Platform online (for which the restaurant already pays Grubhub a separate marketing commission). When customers called the deceptive routing number to report concerns about their order or to confirm that the restaurant received their online order, Grubhub's faulty algorithm could result in charging the restaurant two commissions for a single order.

113. Grubhub's phone order commissions are based on the same marketing commission that Grubhub charges for online orders—typically, 15% to 20%, and while the Emergency Fee Cap was in effect, 12% – 15% for pickup orders and 5% for delivery orders. However, because Grubhub did not actually process phone orders until on or around August 23, 2021, the company did not calculate the total price of these orders, just as it did not know whether a given phone call resulted in an order. Grubhub instead calculated the amount to withhold as “phone order commissions” by averaging the commissions charged to the restaurant for online orders. For example, if a restaurant's marketing commissions for online orders averaged \$10 per order, Grubhub would set phone commissions at \$10 *per call*.

114. At one restaurant in a different city, these wrongful phone commissions exceeded \$10,000 over five years; another restaurant owner in the same city estimated that she was owed \$30,000 in phone commission overcharges; a third stated that the wrongful phone commissions amounted to \$2,000 per year; and a fourth estimated the cost at between \$400 to \$900 per month

(\$4,800 to \$10,800 annually). On information and belief, Chicago restaurants have suffered similar economic losses from Grubhub's wrongful charges.¹¹

115. Grubhub requires restaurants to undertake the burden of auditing and contesting Grubhub's wrongful charges. To do this, time- and resource-strapped restaurants must flyspeak every Grubhub phone record, or listen to the recordings, and then dispute any improper charges. Grubhub's co-founder and former CEO Matt Maloney claims: "[T]his is fair." To the contrary, it is an unfair business practice.

116. According to one restaurant owner, "Unless you go on and go through all your phone calls, you get charged. I don't have time for that, but you have to do it. It's nonsense, but it adds up." As another restaurant owner complained to Grubhub, "The fact that you're telling me I need to review each call is insane. How can you place the burden of contesting all these unjustified charges on the [restaurant]?"

117. Compounding the problem for restaurants, Grubhub imposes a short deadline for restaurants to submit refund requests for phone commissions they should never have been charged. Under its original policy, Grubhub refused to issue a refund if restaurants did not contest wrongful charges within 60 days. In August 2019, following public pressure from restaurants and lawmakers, Grubhub extended this "look-back period" to 120 days. Even with the additional 60 days, this is time restaurants, already operating on thin margins and decimated by the pandemic, do not have to give every fiscal quarter—all to cure an error caused solely by Grubhub.

118. After significant backlash for its revenue-stealing misconduct, Grubhub made a change to its phone ordering system nationwide. From January 2020 until on or around August 23,

¹¹ Precisely because Grubhub used its overinclusive algorithm to calculate commissions, and this algorithm is proprietary and confidential to Grubhub, information about the extent of Chicago restaurants' losses is exclusively within the knowledge of Grubhub.

2021, consumers who called Grubhub's deceptive routing numbers heard an automated recording that prompted them to "press 1" if they were calling to place an order and to "press 2" for all other information.

119. If the consumer pressed "1," Grubhub forwarded the call to the restaurant, recorded the call, and applied its overinclusive algorithm to determine whether to charge the restaurant a commission fee, as before. On information and belief, Grubhub took no further action to confirm that an order was actually placed.

120. If the consumer pressed "2," Grubhub forwarded the call but did not charge the restaurant the phone order commission. Grubhub had already put a similar system in place for calls made through Yelp's mobile app but did not use this system on its own Platforms until faced with public pressure.

121. The accuracy of this model depended fully on consumers pressing the right button. If consumers accidentally pressed "1" when they were not calling to place an order, Grubhub's system still charged the restaurant as if an order had been placed, provided the call met the faulty algorithm's requirements. The same restaurant that Grubhub wrongfully charged for nearly 95% of its routing number phone commissions in a three-month period was hit with those charges *after* Grubhub implemented this revised system. Grubhub continued to place the burden of correcting these wrongful fees on restaurants.

122. A 2020 survey of Affiliated Restaurants in New York City indicated that Grubhub also failed to refund restaurants that had been improperly charged. Of 300 restaurants surveyed, more than 91% had not received refunds for wrongfully charged commissions.

123. Grubhub's claim that it only charges restaurants commissions for orders that Grubhub helps generate is false and misleading. Grubhub's public statements assert that

restaurants are only charged commissions on orders actually placed. Grubhub makes similar assertions to restaurants in its sales pitches and partnership agreements.

124. With respect to restaurants whose contracts with Grubhub provide for phone order commissions, Grubhub's wrongful phone order commissions violate established public policy imposing an implied covenant of good faith and fair dealing on every contract. Grubhub's bad-faith refusal to implement a system that only charges phone order commissions when phone calls result in orders was a deliberate act that frustrated the agreed purpose of its contractual agreements. Grubhub's insistence that restaurants shoulder the burden of correcting its systematic breaches further illustrates the deliberate nature of Grubhub's refusal to comply with its obligations.

125. The effect of this refusal, and Grubhub's insistence that restaurants undertake the burden of correcting wrongful charges, was to systematically shift the cost of fulfilling Grubhub's own contractual obligation onto its restaurant "partners."

126. Regardless of whether a restaurant's contract with Grubhub provides for phone commissions, when Grubhub charges commissions on calls that do not result in orders, it is withholding revenue that lawfully belongs to the restaurants. This practice violates established public policy against the wrongful exercise of dominion over property.

127. On information and belief, Grubhub chose to use an algorithm and other automated mechanisms to charge phone commissions to avoid the cost of using human employees or contractors to definitively determine whether phone calls result in food orders. At the same time, Grubhub did not want to forgo the tens of millions of dollars in revenue its phone order commissions generated annually.

3. Grubhub tricks consumers with impostor restaurant websites.

128. From 2010 through 2019, Grubhub created numerous impostor websites—more than 30,000 nationwide—for its Affiliated Restaurants. These websites feature authentic-looking URLs, are presented as if they are the restaurant’s *actual* website, and route consumers to the Grubhub Platform to place an order. The sites deceptively convey that *the restaurant itself* is routing the consumer to the Grubhub Platform, luring in consumers who might otherwise have ordered directly from the restaurant to avoid Grubhub’s added costs.

129. The sites also are deeply misleading and unfair to Grubhub’s Affiliated Restaurants, which contract with Grubhub for legitimate marketing services but do not consent to Grubhub’s stealth tactics to lure customers onto the impostor sites—and away from restaurants’ own websites—as a way to obtain credit for the order and trigger commission payments from the restaurant. As one frustrated restaurant owner in Roscoe Village shared with the City, this practice makes use of the restaurant’s own menu and logos—as well as Grubhub’s superior SEO tactics in search results—to steer to Grubhub consumers who were already seeking out the restaurant.

130. Although an exposé of this practice prompted Grubhub to cease creating new impostor sites around May 2019, some of the impostor sites linger, continuing to deceive consumers and both mislead and unfairly harm restaurants. As with unauthorized listings, Grubhub requires restaurant owners to undertake the burden of demanding that Grubhub remove impostor sites from the Internet. Even where the impostor websites have expired, the damage to restaurants—in contrived Grubhub commissions and lost opportunities to directly connect with their customers—has already been done.

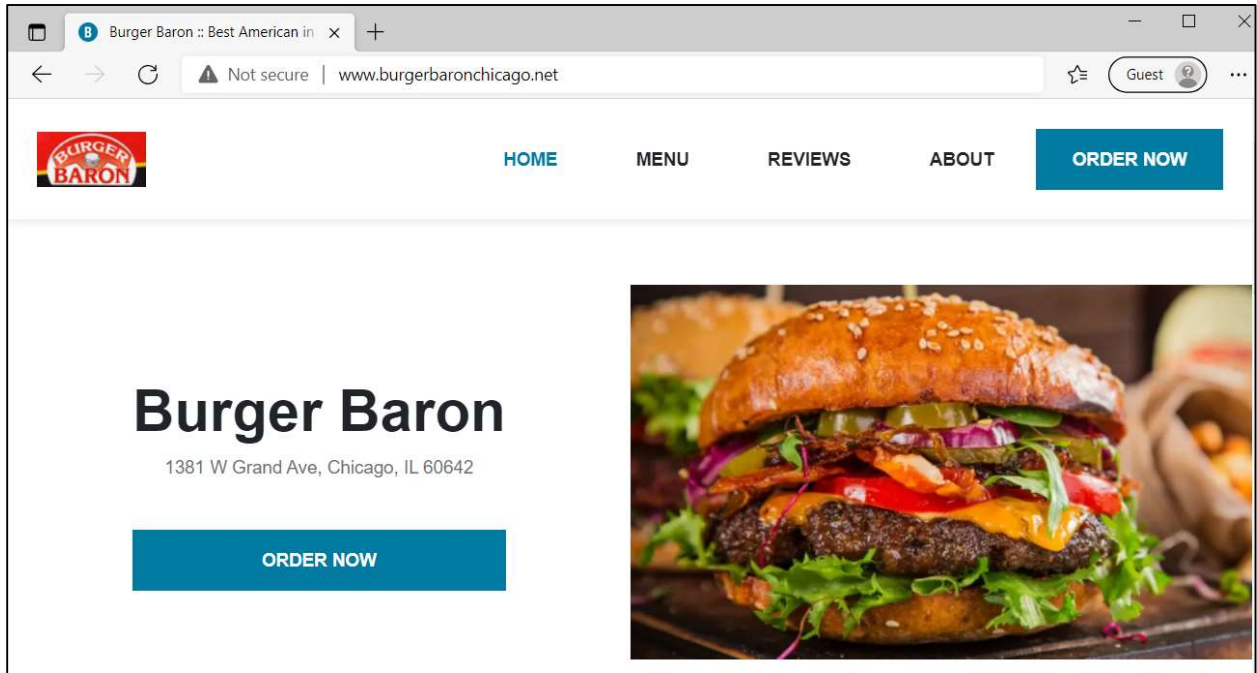
a. Grubhub lures consumers onto websites that look like the restaurants' but are run by Grubhub.

131. On information and belief, Grubhub generated thousands of impostor websites for Affiliated Restaurants in Chicago, before May 2019. Although many of the URLs have since expired, the City's investigation identified at least 166 Grubhub and Eat24 impostor websites for Chicago restaurants that were still operating as of May 2021.¹² The majority of Eat24 impostor websites appear to have been deactivated in June 2021, but more than 120 of the Grubhub sites remain active.

132. Grubhub's impostor websites generally appear in one of two standard design formats. The first, as illustrated by the impostor website for Burger Baron, is common to sites owned by Grubhub itself; the second, as illustrated by the impostor website for Don Pepe, was common to sites affiliated with Grubhub subsidiary Eat24:

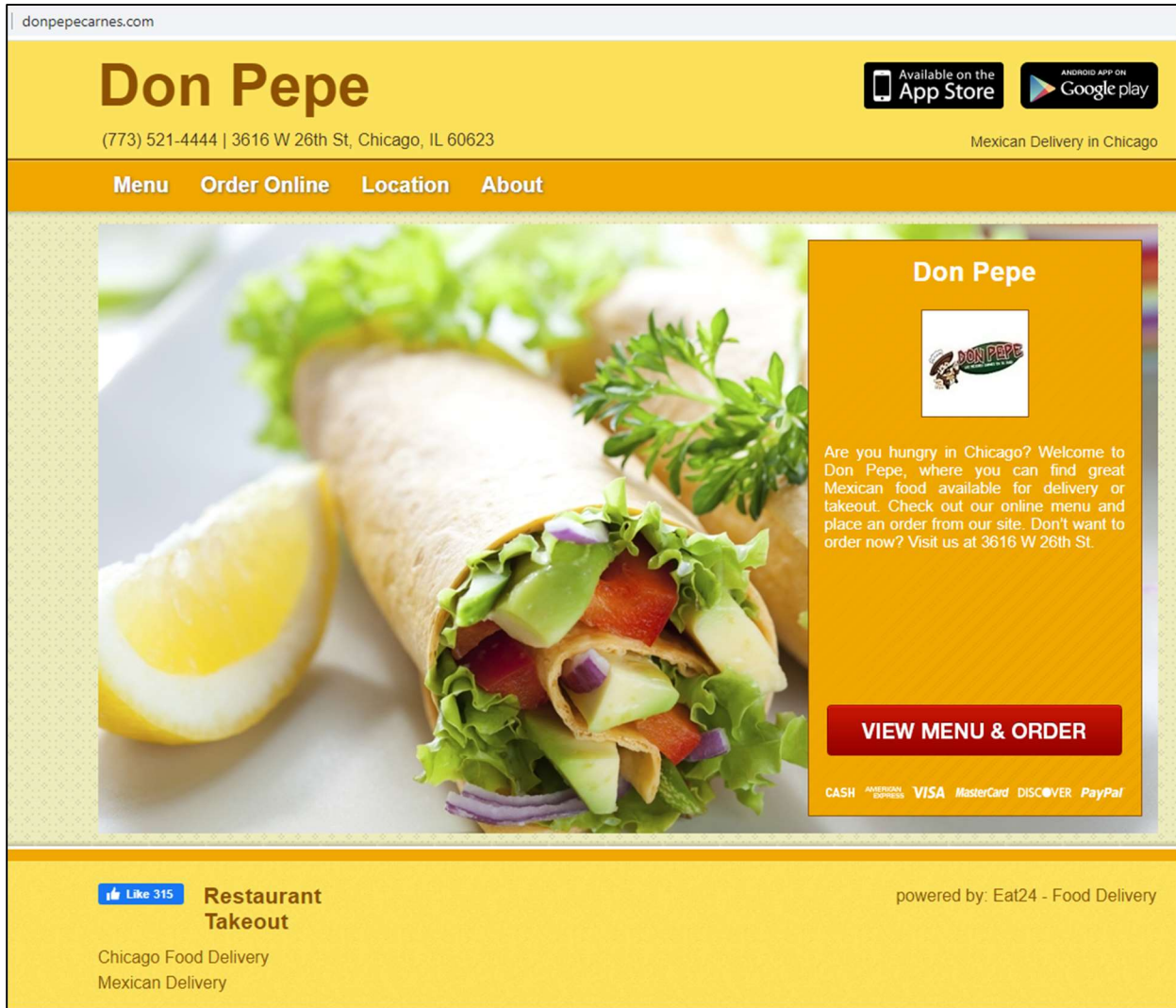
¹² Identifying the full list of impostor websites in Chicago requires the URLs and/or restaurant names. This information is within the exclusive knowledge of Grubhub.

Excerpt from Burger Baron impostor website



FILED DATE: 8/27/2021 10:36 AM 2021CH04327

Excerpt from Don Pepe impostor website



133. Common to both formats are two features that drive Grubhub’s deceptive scheme. First, the sites appear—in search results and on the consumer’s arrival on the webpage—to be the restaurant’s actual website. Second, when the consumer clicks on “Order Now,” “View Menu & Order,” or a food item (specific to the Grubhub impostor sites), the sites divert the consumer to Grubhub.com to complete the transaction. The impostor sites thus misleadingly communicate that the restaurant itself is sending the consumer to order from the Grubhub Platform.

134. The deception begins when the consumer uses an Internet search engine to look up a restaurant by name. On information and belief, based on Grubhub’s extensive use of SEO to elevate its Platforms’ Internet visibility, through at least May 2019 Grubhub used SEO techniques to ensure that links for its impostor sites prominently appeared on the first page of search engine results—near or above the link for the restaurant’s authentic website.

135. The contents of the search result for the impostor website, consisting of the URL and a site description, continue the deception. Grubhub created impostor URLs that do not disclose their Grubhub or Eat24 origin and are at least as intuitive and legitimate-looking as the restaurant’s actual website, as the examples in the chart below illustrate:

Restaurant	Restaurant’s Authentic Site	Grubhub/Eat24 Impostor Site
Burger Baron	burgerbarontogo.com	burgerbaronchicago.net
Arya Bhavan	aryabhavan.com	aryabhavanchicago.net
Bangkok Thai Cuisine	chicagobangkokthai.com	bangkokthaicuisinechicago.com
Papa T’s Pizza	papats.net	papatspizza.com
Northern City	northerncity.com	northern-city.com
Hong Huah	honghuahtogo.com	honghuah.com
Burrito Beach	burritobeach.com	burritobeachchicago.com
Bongiorno’s	bongiornoschicago.com	bongiornoschicago-online.com
Bangkok Belly	bangkokbelly.com	bangkokbellychicago.com

136. The site description accompanying the URL in the search result likewise appears authentic. Compare, for example, the Google search results below for the authentic site of Burrito Beach, a local Chicago chain (top), and Grubhub’s impostor Burrito Beach site (bottom):

Excerpts of Google search results for Burrrito Beach

https://www.burritobeach.com

Burrito Beach

Burrito Beach has great quick Mexican food with several convenient locations in downtown Chicago in or near the Loop. Stop in for a burrito, bowl, tacos or ...

[Menu](#) · [Locations](#) · [Order Now](#) · [Nutrition](#)

http://www.burritobeachchicago.com

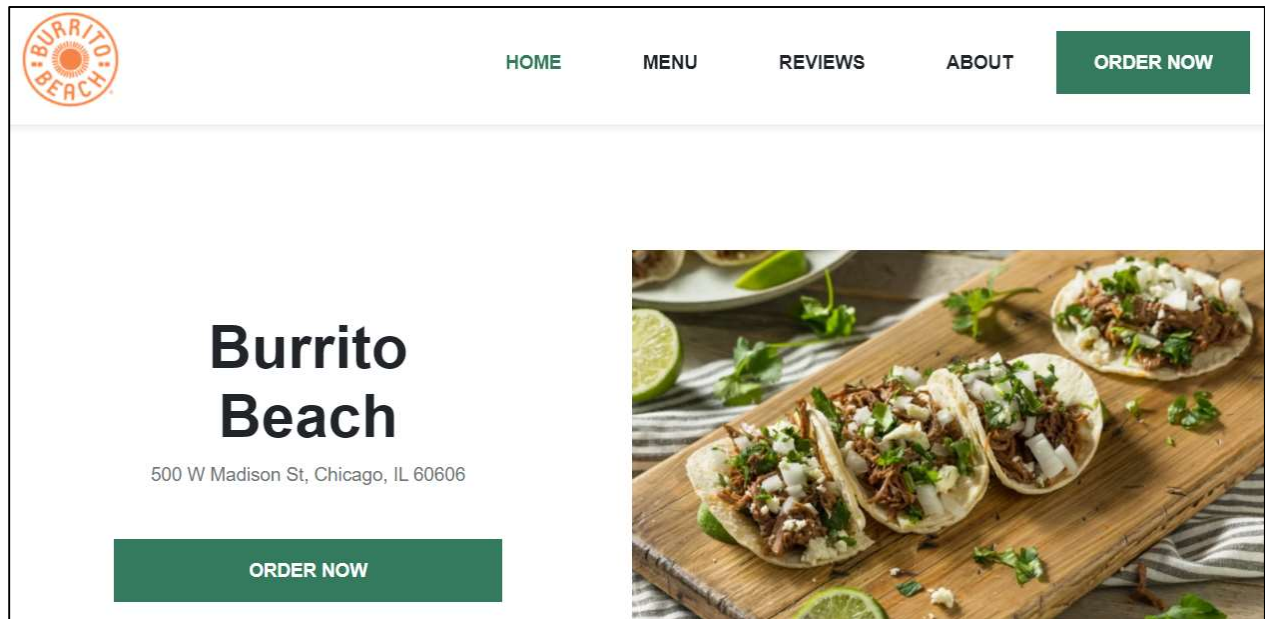
Burrito Beach :: Best Mexican in Chicago :: Order Online

500 W Madison St, Chicago, IL 60606. Burrito Beach is known for its Bowls, Burritos, Healthy, Mexican, Tacos, Tex-Mex, and Vegetarian. Online ordering ...

137. To consumers who search for a restaurant and encounter a search result for a Grubhub or Eat24 impostor site, these search results convey that they will take the consumer to the restaurant's actual website. This practice is the gateway for Grubhub to earn a commission even off orders placed by consumers who searched for the restaurant by name and may have intended to order directly from it.

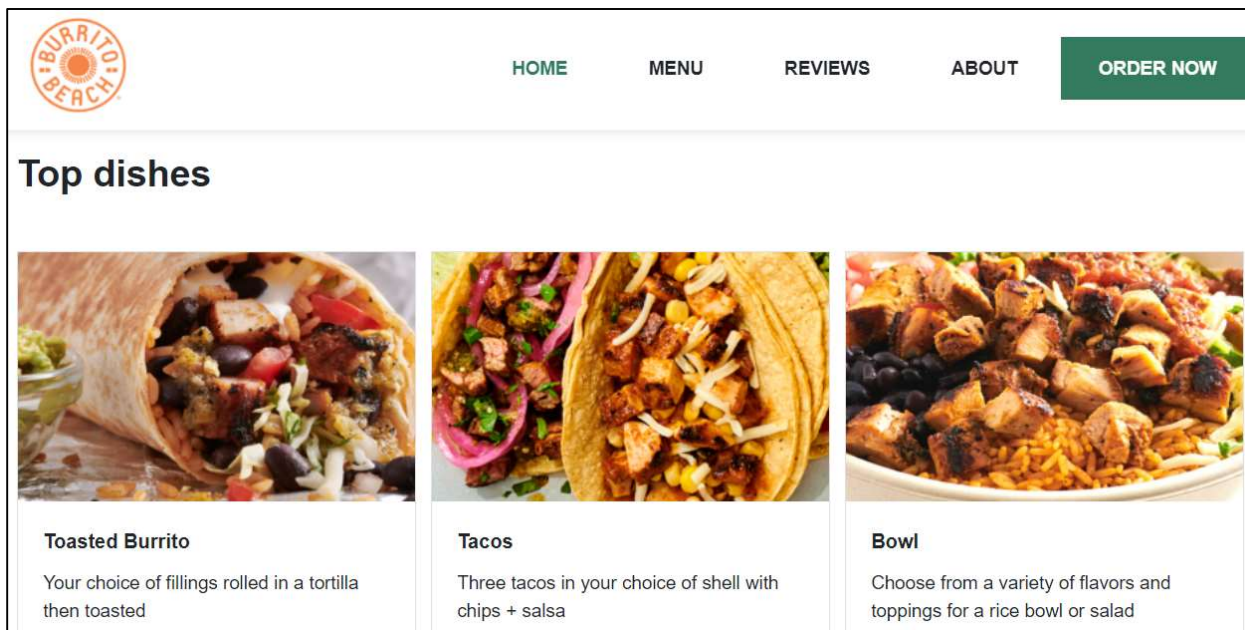
138. Clicking through to the impostor site, the consumer sees a webpage that continues the charade. On Grubhub impostor sites, a screen appears with the restaurant's name and address, its logo, and a picture of a menu item, plus options to look at the menu or order. There are no indicators on this page that the website is run by Grubhub, as illustrated by the Burrrito Beach impostor site:

Initial screen of Burrito Beach impostor website



139. Scrolling down on a Grubhub impostor site, a handful of menu items are accompanied by pictures and descriptions, as well as a link to the full menu. These pictures often are identical to pictures of food on the restaurant’s authentic website. Once again, there is no indication that Grubhub is controlling the impostor site:

“Top dishes” excerpt from Burrito Beach impostor website

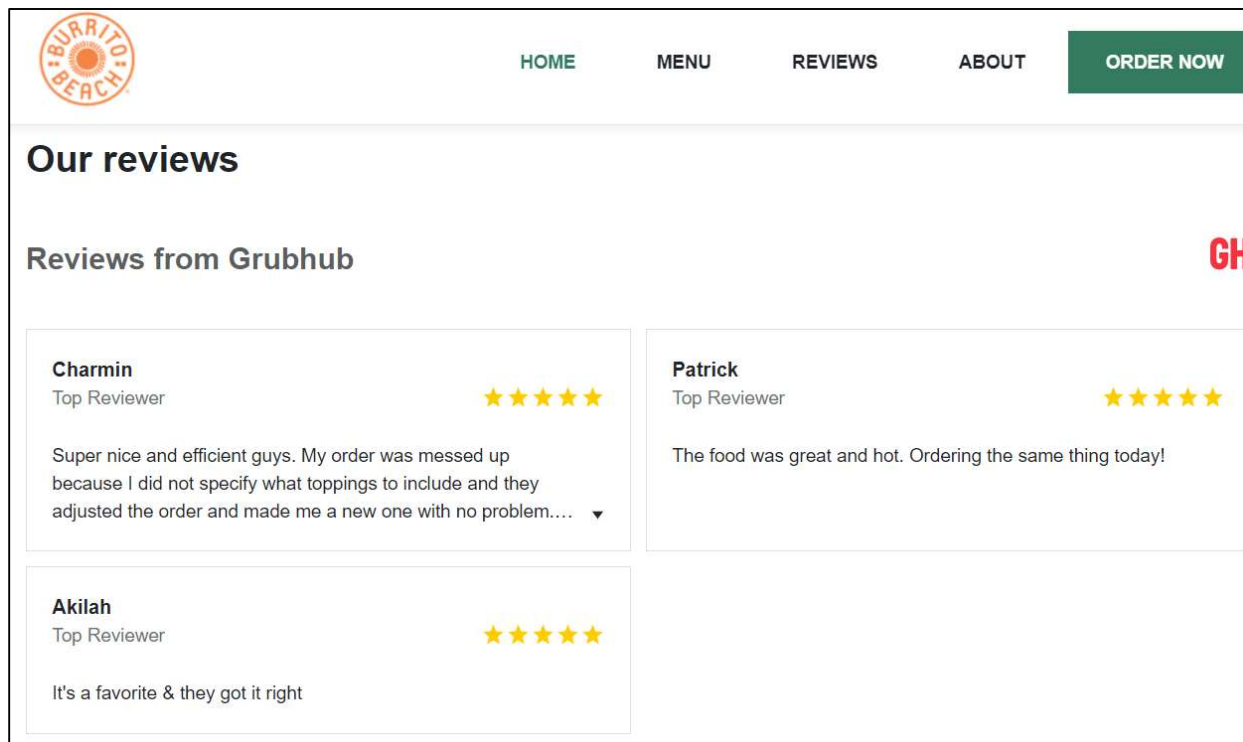


The screenshot shows a website header for 'BURRITO BEACH' with navigation links: HOME, MENU, REVIEWS, ABOUT, and a green 'ORDER NOW' button. Below the header is a section titled 'Top dishes' featuring three food items:

- Toasted Burrito**: Your choice of fillings rolled in a tortilla then toasted
- Tacos**: Three tacos in your choice of shell with chips + salsa
- Bowl**: Choose from a variety of flavors and toppings for a rice bowl or salad

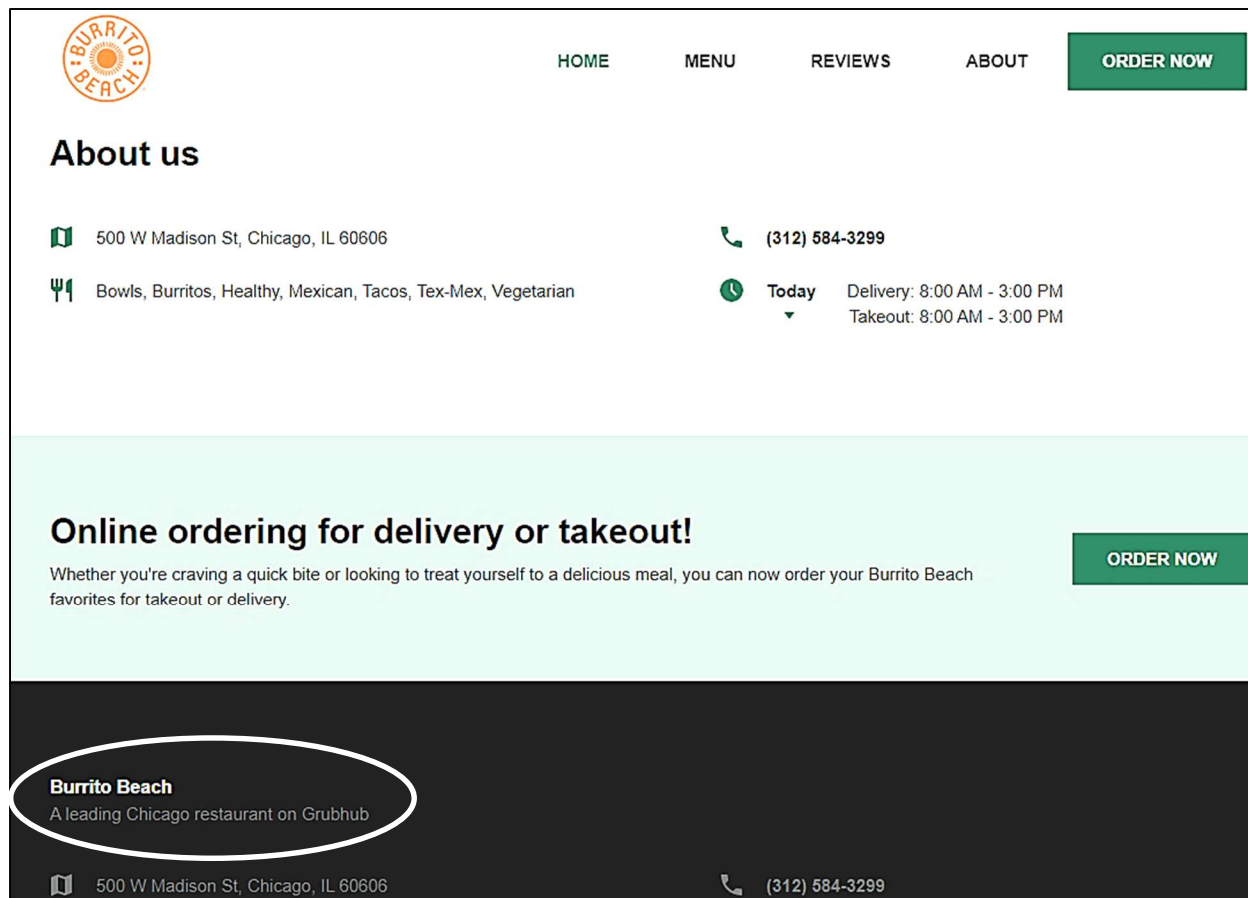
140. Arguably, the first suggestion of Grubhub’s involvement appears further down on this page: sets of “Reviews from Grubhub” and “Reviews from Seamless.com.” However, these reviews focus on satisfaction with the restaurant, not Grubhub or Seamless. They also appear under the heading “Our reviews,” first-person usage deceptively signaling that the site is the restaurant’s, not Grubhub’s:

“Our reviews” excerpt from Burrito Beach impostor website



141. At the bottom of the page on a Grubhub impostor site, contact and hours information appear under the heading “About us”—more first-person language suggesting that the site is the restaurant’s. The Grubhub name appears, in a copyright notice and in the tag line “A leading . . . restaurant on Grubhub,” but only in faint type at the very bottom of the screen that the consumer is unlikely to notice. As discussed in Section II.A.1, *supra*, Grubhub also lists a deceptive routing number that it controls, rather than the restaurant’s actual phone number. In the example below, the impostor site lists the telephone number for Burrito Beach as (312) 584-3299, when Burrito Beach’s actual number is (312) 466-1828.

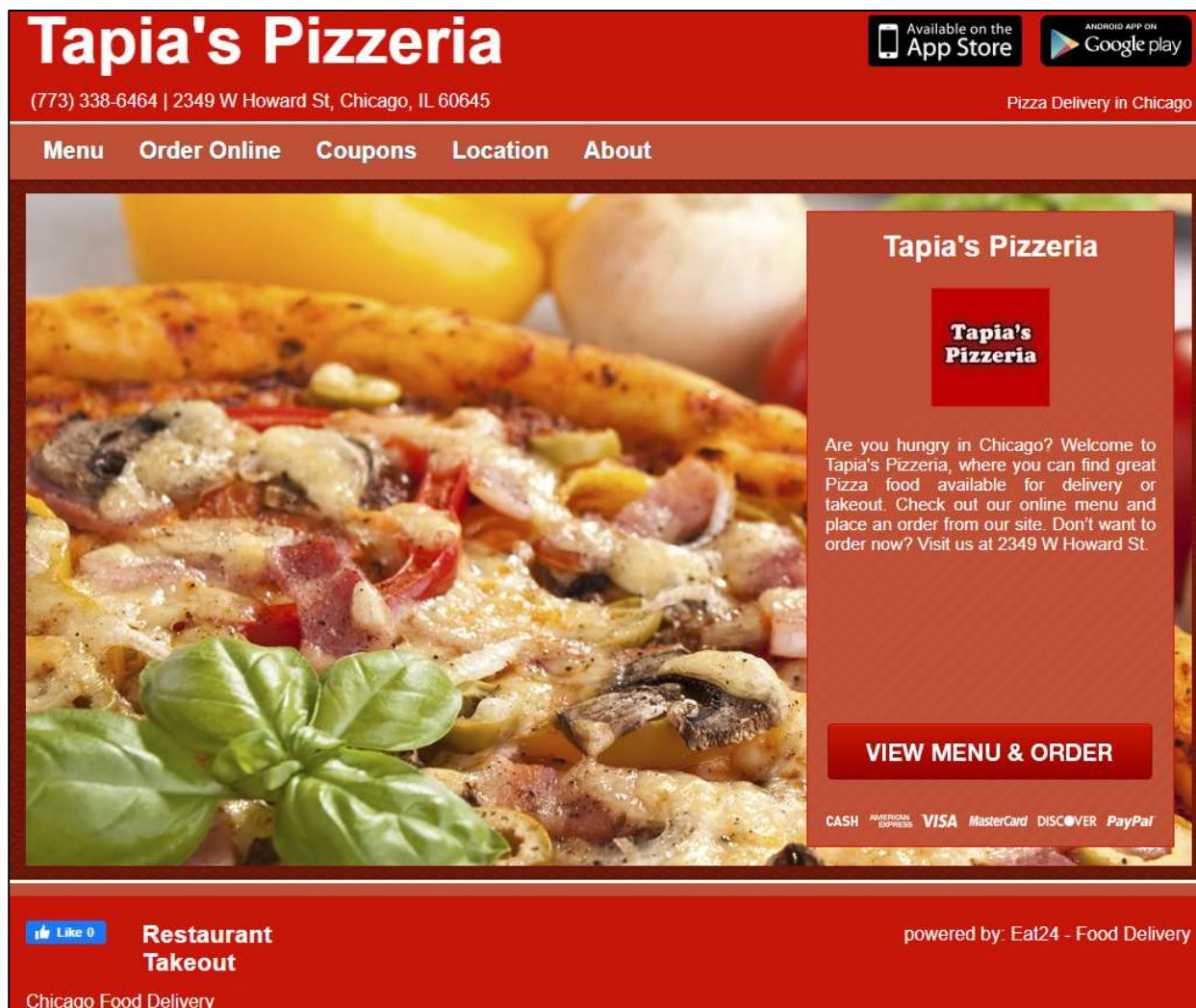
“About us” excerpt from Burrito Beach impostor website



142. Active until May 2021, Eat24 impostor sites had a different format but included most of the same features. The Eat24 sites were more compact, typically appearing on a single screen and presenting no need to scroll down to see more content. The deceptive elements all appeared on this initial screen and in links to other pages.

143. As on the Grubhub impostor sites, the Eat24 sites displayed the restaurant’s name and address, logo, plus options to view the menu and to place an order. Like the Grubhub sites, Eat24 impostor websites also welcomed the customer in first-person language, again suggesting the restaurant was responsible for the content: “Check out our online menu and place an order from our site.” Once again, there were no indicators the sites were Grubhub’s, as illustrated by the site below for Tapia’s Pizzeria (www.tapiaspizzeria.com):

Initial screen of Tapia's Pizzeria impostor website



144. The only tie to Grubhub reflected on the website, up to the point the consumer attempted to order, was the “powered by: Eat24–Food Delivery” tag line at the bottom right of the initial screen. This language did not detract from the impression the website was the restaurant’s own. The phrase “powered by” at most suggests that an entity called Eat24—which a reasonable consumer would not connect to Grubhub—was providing web hosting services.

145. The consumer ultimately is diverted to the Grubhub Platform after clicking on one of the order buttons (or, on the Grubhub impostor sites, a menu item). By that point, the hook is set. The sites have deceptively conveyed that they are the restaurant’s authentic Internet presence

and that the restaurant itself is sending the consumer to the Grubhub Platform to place an order for delivery. Grubhub intends for consumers to rely on this deception when placing orders online.

b. Grubhub’s impostor sites mislead consumers into placing orders that require restaurants to pay Grubhub a “marketing” commission.

146. Although Grubhub created impostor websites only for its Affiliated Restaurants, the difference between ordering from a restaurant’s authentic site and the impostor site is not cosmetic—it determines what commissions a restaurant must pay Grubhub.

147. As described *supra*, Grubhub charges a commission—typically 10%—on all delivery orders, regardless of how they originate. However, Grubhub charges an additional commission—typically as much as 20%—on orders that Grubhub tags as coming through its “marketing” efforts. Grubhub collected this 20% marketing commission on online orders through its impostor websites through at least May 2019.

148. Paying a 20% marketing commission—\$5 on a \$25 order—significantly impacts a restaurant’s profit margin, particularly because the restaurant already is paying a hefty delivery commission. As one restaurant economics expert put it, during the pandemic, “When delivery sales were 5-10% of sales, [meal delivery commissions] took 2-3% of total restaurant revenue. With delivery sales at 70-80% of restaurant sales, the delivery companies are now taking 18-20% of restaurant revenues. When average restaurant profit margins are 8-10%, this makes restaurants no longer viable.” Restaurants do not pay these additional marketing commissions when consumers order delivery directly through the restaurant’s website, *even if* the restaurant then connects the consumer to Grubhub to process the order and/or provide delivery.

149. Although the commission amount has changed over time, Grubhub continues to charge commissions to Chicago restaurants for all orders placed through the impostor sites. For

example, as recently as April 2021, Grubhub was charging a Chicago breakfast restaurant \$1.00 per order routed through Grubhub's impostor website.

150. By passing off Grubhub and Eat24 impostor websites as the restaurants' authentic websites, then by presenting itself on those sites as the restaurants' authorized and preferred vendor for order-and-delivery, Grubhub creates confusion and misunderstanding about its relationship with the restaurants and deceptively interferes with a consumer's choice about where to direct her business.

151. Supporting the survival of local restaurants by ordering directly from the restaurant—rather than through a third-party delivery service—is material to consumers, as detailed in Section II.A, *supra*.

152. Grubhub's practice of creating and maintaining impostor websites is also misleading to Affiliated Restaurants, which have no reason to believe that Grubhub's marketing efforts will compete with the restaurant's own Internet presence. Burrito Beach's marketing manager, for example, was unaware of the impostor website and expressed shock and outrage that Grubhub would create these sites without clearly disclosing that to the restaurant—with which Grubhub was in frequent contact.

153. Grubhub's contracts with restaurants include vague and misleading language that Grubhub "may create, maintain and operate a microsite ('MS') and obtain the URL for such MS on restaurant's behalf." This is at most a partial representation of the facts. The contract discloses neither that Grubhub will present the impostor site as if it were the restaurant's own, nor that it will make use of proprietary photographs and logos and a confusingly similar URL to do so. These are material facts to restaurants, since they indicate a practice designed not to market the restaurant to a broader audience but to intercept consumers who would have found the restaurant anyway—

costing the restaurants commissions and the opportunity to establish direct relationships with customers.

c. Grubhub places an unfair burden on restaurants to demand removal of impostor websites.

154. After Grubhub’s practice of publishing impostor websites was publicly exposed in June 2019, the company scrambled to mitigate the damage. Specifically, it: (1) argued that the practice was appropriately disclosed to restaurants in its contracts; (2) set up a website for restaurants to request that their impostor site be taken down; and (3) claimed that it had already discontinued the practice of setting up impostor sites.

155. In response to the public outcry, Grubhub’s former CEO, Matt Maloney, sent an email to all Grubhub employees outlining these talking points, asserting that “we always hand over the domain name to the restaurant if they request it,” and that “[w]e decided to end the practice after we completed the sale/integration of Eat24 in 2018. We only set up websites or online ordering links at the request of a restaurant.”

156. Although Grubhub claims to have ended the practice of creating impostor websites for new Affiliated Restaurants in 2018, new impostor websites continued to appear until at least May 2019. At neither point did Grubhub remove the impostor sites it created previously—unless a restaurant contacted Grubhub to request this action. Instead, the impostor sites generally remain active until their URL expires.

157. A restaurant can request that Grubhub transfer ownership and control of the impostor website to the restaurant, but initiating this process requires a restaurant to navigate a confusing customer support process and fill out a separate online request form. Many restaurant owners have reported that the process to secure removal of an impostor website is difficult and confusing, sometimes requiring the involvement of lawyers. As a result, while many of the

impostor URLs have expired over time, some are still up and running. The City's investigation identified a total of 166 impostor websites for Chicago restaurants that remained operational, as of May 2021 (125 through Grubhub and 41 through Eat24). On information and belief, at the peak of this practice the total number of active impostor websites for Chicago restaurants was much higher than that. Search results for some Eat24 impostor websites for Chicago restaurants still appeared on the first page of Google search results, sometimes at or near the top of the list and above the result for the restaurant's own website.

158. For example, below are Google search results for Hong Huah, a Sichuan restaurant in Chicago. The first result, www.honghuah.com, is an Eat24 website. Well below that in the search results, www.honghuahtogo.com, is the restaurant's own website. The three hit results between the impostor site and the restaurant's own site are either owned by or affiliated with Grubhub.

Excerpt of Google search results for Hong Huah

The image is a screenshot of a Google search results page for the query "hong huah". The search bar at the top shows the query and the Google logo. Below the search bar, there are navigation links for "All", "News", "Maps", "Videos", "Images", and "More", along with "Settings" and "Tools". The search results indicate "About 375,000 results (0.45 seconds)".

The first result is circled in red. It is for the URL <http://honghuah.com>. The title is "Hong Huah Chinese Restaurant | Chicago | 60639 Food ...". The description includes "Chinese Food in Chicago - Order Food Delivery Online from Hong Huah Chinese Restaurant." and links for "Menu · Order Online · About · Location". It also notes "You've visited this page 3 times. Last visit: 5/7/21".

The second result is also circled in red. It is for the URL <https://honghuahtogo.com>. The title is "Hong Huah | Order Online | Chicago, IL 60639 | Chinese Food ...". The description includes "Chicago, IL 60639 Food Pickup | Order from Hong Huah in Chicago, IL 60639, 773-889-4800." and notes "You've visited this page 3 times. Last visit: 5/7/21".

Other visible results include a Grubhub listing for "Hong Huah Delivery Menu | Order Online | 5924 W Fullerton ..." with a 4.6 rating and a price range of \$\$\$, and a Yelp listing for "HONG HUAH - 46 Photos & 98 Reviews - Chinese - 5924 W ..." with a 4-star rating and a price range of Under \$10.

159. The continued presence of these sites in search results allows Grubhub's deception of consumers and unfairness toward restaurants to continue.

B. Grubhub's COVID-19 Promotions Misleadingly Touted Its Support for Local Restaurants.

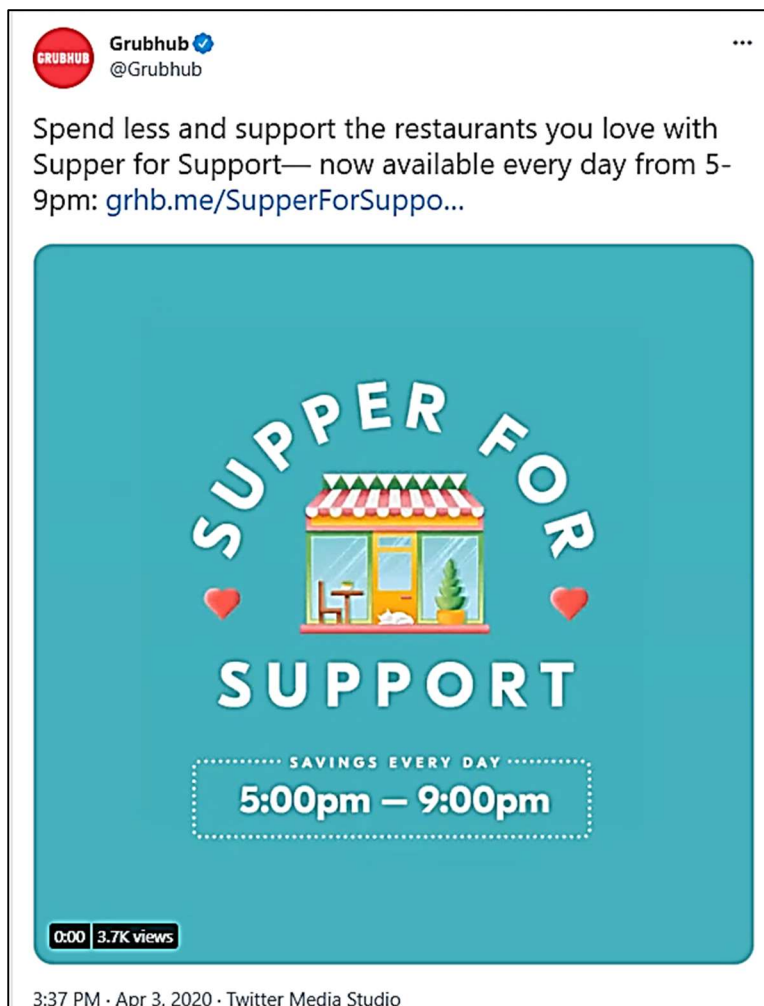
160. At the onset of the COVID-19 pandemic, Grubhub publicly and deceptively advertised several promotions as a win-win method for consumers to support their local restaurants and order meals for delivery. Grubhub took advantage of consumers' concern for struggling local businesses with deceptive language that significantly misrepresented the true qualities and characteristics of these programs. These promotions were designed to accelerate Grubhub's earnings and market share by exploiting consumer concern for the real-world impact on local restaurants battling to survive the pandemic.

161. As detailed in Section II.A, *supra*, supporting local businesses through purchasing power is a material preference for many consumers. Grubhub intended for consumers to rely on its representations regarding the "support" these programs provided to restaurants when making their purchasing decisions.

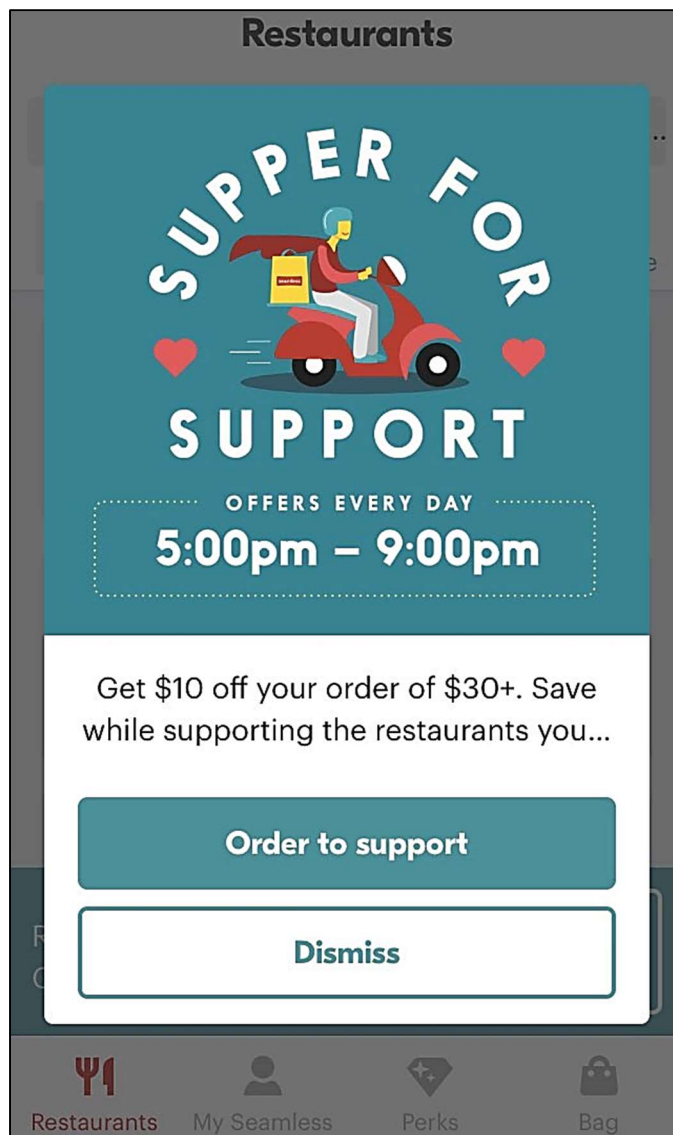
1. Grubhub misrepresented its "Supper for Support" promotion to consumers.

162. On March 27, 2020, Grubhub announced a promotion called "Supper for Support," which ran nationally, including in Chicago, on the Grubhub and Seamless Platforms through at least the end of April 2020. Grubhub publicly promoted Supper for Support as an opportunity for consumers to "support the restaurants you love" and help Grubhub "save" restaurants.

163. For example, as reflected in the tweet below, Grubhub advertised that consumers could "spend less [money] and support the restaurants you love."

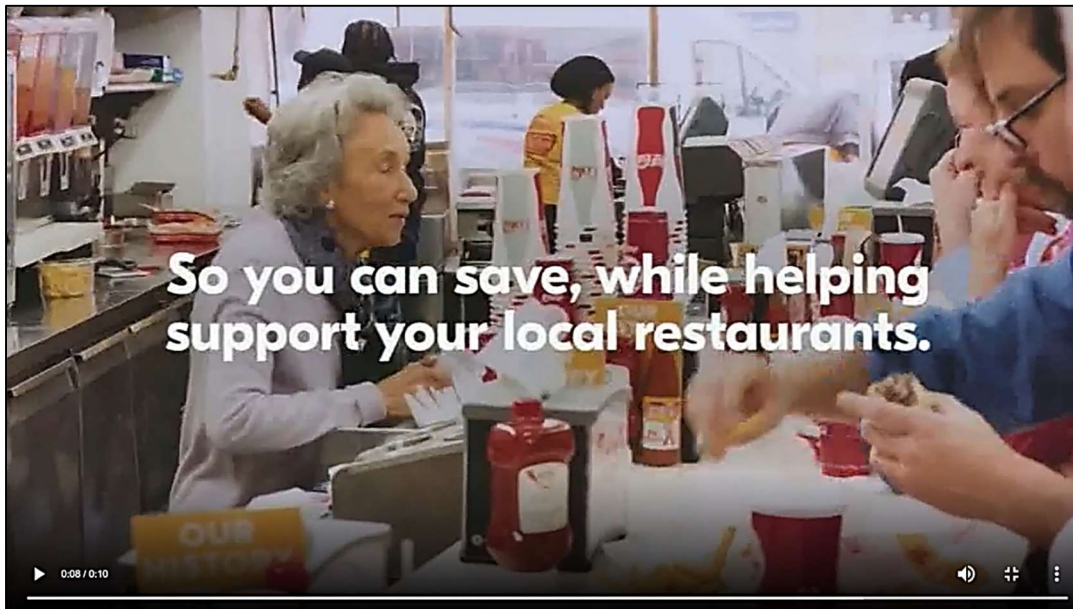


164. Throughout April 2020, Grubhub advertised: “Every day, from 5:00pm–9:00pm, get \$10 off your order of \$30+ . . . while supporting the restaurants you love.” This is what appeared on the Grubhub mobile app, to encourage consumers to participate in the promotion:



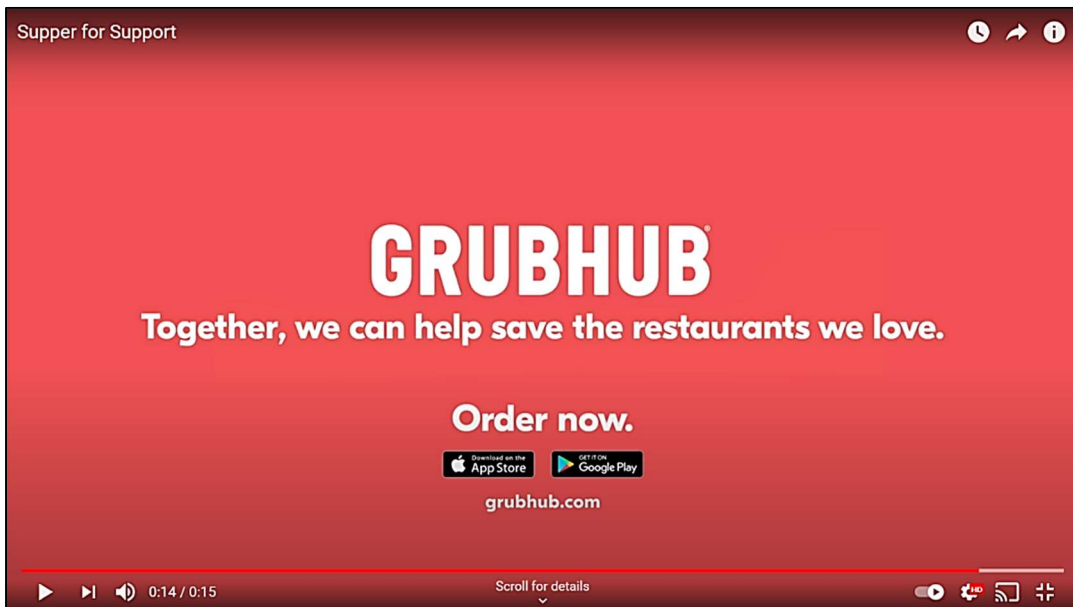
165. Grubhub extensively promoted Supper for Support, including through multiple commercials that aired nationally on social media and internet outlets such as Facebook, Twitter, and YouTube. One commercial played somber piano music while displaying text that emphasized the extent to which consumers' participation in the promotion would help restaurants:

Still frames from Grubhub commercial



166. Another Supper for Support commercial prominently displayed the text, reflected in the screenshots below, “Restaurants need us now more than ever” and concluded with: “GRUBHUB . . . Together, we can help save the restaurants we love. Order now.”

Still frames from Grubhub commercial



167. At the same time, but not advertised or otherwise disclosed to consumers, Grubhub imposed two very significant requirements on all participating restaurants. *First*, Grubhub required restaurants to absorb the full cost of the \$10 discount. *Second*, after reducing the restaurants' proceeds by \$10 for each order, Grubhub required restaurants to pay Grubhub's commission on the *full (non-discounted) price* of the food order.

168. Chicago restaurants participated in “Supper for Support.” Grubhub required participating restaurants to agree to the following terms and conditions: “(a) Restaurant will fund the full cost of redeemed Promotions, and (b) Grubhub commissions may be charged on the non-discounted product total rather than the amount paid by the customer.” If a restaurant later wanted to opt out of the promotion, it had to do so one at a time for each location, and wait two business days for the opt-out to take effect:

Excerpt from “Supper for Support” Terms of Service

determined by Grubhub), and redemptions will be capped at 100 per day. Other details with respect to Supper and Support and the Promotion, including but not limited to terms and conditions applicable to customers, will be determined by Grubhub in its sole discretion. **I also understand and agree that (a) Restaurant will fund the full cost of redeemed Promotions, and (b) Grubhub commissions may be charged on the non-discounted product total rather than the amount paid by the customer.** Promotions funding will be deducted from payments made to Restaurant by Grubhub at Restaurant’s then-current payment intervals. To opt out and cancel Restaurant’s participation in the Promotion, please fill out and submit the opt-out form in the confirmation email that will be sent to you after you opt in and allow up to 2 business days to process the request. Restaurant must complete and submit the opt-out form on behalf of each Restaurant location individually if Restaurant wishes to opt out multiple locations.

169. Grubhub promised restaurants increased “prominence and exposure to diners on the Platform” if they participated in Supper for Support. If a restaurant did not participate in Supper for Support, Grubhub would not advertise the restaurant as part of the promotion. On information and belief, this meant that non-participating restaurants also would slip in visibility on the Grubhub and Seamless Platforms in relation to those restaurants that did participate—potentially costing them orders.

170. The chart below illustrates the stark difference in a restaurant’s gross revenue on a hypothetical \$30 food order, with and without the Supper for Support promotion, as reflected in the terms described above:


Payment / Revenue	No Promotion	Supper for Support Promotion (\$10 off \$30 food order)
Consumer pays restaurant (food only)	\$30	\$20
Grubhub's Commissions (on food)	\$9.00 (30% of \$30)	\$9.00 (30% of \$30)
Gross Revenue for restaurant (on \$30 food order)	\$21.00 (\$30 minus \$9.00)	\$11.00 (\$20 minus \$9.00)

171. Grubhub typically charged a combined 30% marketing and delivery commission, both nationwide and in Chicago.¹³ Based on those charges, without the Supper for Support promotion, the restaurant would collect \$21 in gross revenue on a \$30 food order. With the Supper for Support promotion, the restaurant would collect only \$11 for that \$30 food order.

172. Grubhub advertised that “local restaurants that chose to participate in the optional initiative have, on average, seen a more than 20 percent increase in the number of orders they have received as well as overall sales.” Without Supper for Support, as outlined above, a restaurant would receive gross revenue of \$210 on ten \$30 orders (not accounting for the restaurant’s out-of-pocket costs for food and overhead). With Supper for Support, assuming a 20% increase in volume, the same restaurant would receive gross revenue of \$132 on 12 orders. That amounts to a nearly 40% loss in gross revenue on those orders, even with a 20% increase in the actual number of orders.

173. Chicago restaurants were angry about the unfair terms that Grubhub offered. For example, Coalfire Pizza, an independent pizzeria with West Town and Lakeview locations, tweeted as follows:

¹³ As discussed in Section III, *infra*, Grubhub also charges restaurants an order processing fee on each order. The calculations in this paragraph, and those included in the above chart, do not include the order processing fee.

 Coalfire
@CoalfireChicago

Grubhub is garbage. See attached. I urge restaurants and customers not to use them or any other third party apps.

GRUBHUB FOR RESTAURANTS

By electing to opt in each restaurant location identified, I (i) certify that I am a duly authorized representative of the applicable restaurant(s) (collectively, "Restaurant"), and (ii) authorize Grubhub to offer a \$10 off \$30+ customer promotion to Grubhub customers (the "Promotion") on behalf of Restaurant until Restaurant effectively opts out and cancels its participation in the Promotion. The Promotion may only be available for customers between 5 PM – 9 PM local time each day (or at other times as may be determined by Grubhub), and redemptions will be capped at 100 per day. Other details with respect to Support and the Promotion, including but not limited to terms and conditions applicable to customers, will be determined by Grubhub in its sole discretion. **I also understand and agree that (a) Restaurant will fund the full cost of redeemed Promotions, and (b) Grubhub commissions may be charged on the non-discounted product total rather than the amount paid by the customer.** Promotions funding will be deducted from payments made to Restaurant by Grubhub at Restaurant's then-current payment intervals. To opt out and cancel Restaurant's participation in the Promotion, please fill out and submit the opt-out form in the confirmation email that will be sent to you after you opt in and allow up to 2 business days to process the request. Restaurant must complete and submit the opt-out form on behalf of each Restaurant location individually if Restaurant wishes to opt out multiple locations. Restaurant acknowledges that Grubhub will not match amounts funded by the Restaurant in connection with the Promotion. Grubhub does not guarantee any level of performance with respect to the Promotion. To the extent Grubhub also offers free delivery for Restaurant customers ("Free Delivery") in connection with

4:45 PM · Mar 30, 2020 · Twitter for iPhone

26 Retweets · 7 Quote Tweets · 141 Likes

174. Grubhub misleadingly advertised to consumers that the promotion would help “mom-and-pop shops,” which it encouraged customers to support like “family.” Grubhub deceptively portrayed Supper for Support as a win-win proposition for consumers and the restaurant. As the math makes clear, Supper for Support resulted in extraordinary support for Grubhub but not for struggling local restaurants. When the media and consumers became aware of Grubhub’s scheme, criticism mounted, as reflected in this exemplar tweet from a writer at the *New Yorker*:

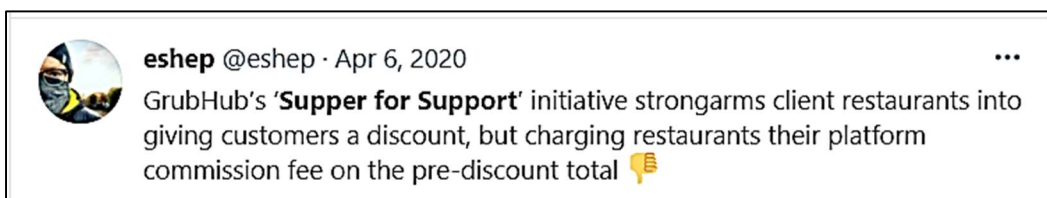


175. In the face of the significant public blowback against Support for Support, Grubhub ultimately gave a small credit of up to \$250 to each restaurant that opted-in—an amount intended to cover the \$10 discount on up to 25 orders made under the promotion. However, Grubhub left

restaurants on the hook to cover the full cost beyond that, and the promotion itself required restaurants to honor up to 100 Supper for Support discounts *per day*.

176. Grubhub benefitted handsomely during this same time frame, thanks in part to promotions like Supper for Support—which Grubhub projected would “help generate at least \$100 million in restaurant sales.” On a national scale, Grubhub reported 647,100 meals ordered daily for the second quarter of 2020, a 32% increase on the year prior, and \$459.3 million in revenue for the same period, a 41% increase on the year prior.

177. Consumers were angered to learn they had been misled by Grubhub’s deceptive advertising, as reflected in these tweets:





178. Grubhub misleadingly conveyed to consumers that they would help to “save” local restaurants by ordering through the Supper for Support promotion, but that was far from true. In reality, the terms of the promotion made it a losing deal for restaurants. The main beneficiary was Grubhub—a multibillion-dollar company that exploited restaurants and the goodwill of consumers amid a global pandemic.

2. Grubhub deceptively promoted a temporary “suspension” of restaurant commissions.

179. Grubhub launched a second deception early in the pandemic, involving a pledge to “suspend commissions” owed by restaurants to Grubhub. On March 13, 2020, Grubhub announced nationally that, from March 16, 2020 to March 29, 2020, it would be “temporarily suspending collection of up to \$100 million in commission payments from impacted independent restaurants nationwide.”

180. Grubhub’s CEO proclaimed: “Independent restaurants are the lifeblood of our cities and feed our communities. They have been amazing long-term partners for us, and we wanted to help them in their time of need.”

181. Grubhub’s press release capitalized on the support the company’s pledge of \$100 million in relief had garnered from major U.S. cities, including Chicago:

Grubhub and Major Cities Across the U.S. Launch Economic Relief Effort up to \$100 Million for Independent Restaurants and Delivery Partners Impacted by COVID-19

03/13/2020

Mayors of Chicago, New York City, San Francisco, Boston and Portland Team with Grubhub to Suspend Fees from Independent Restaurants
Grubhub Sets up Charitable Fund for Impacted Drivers and Restaurants

CHICAGO, March 13, 2020 /PRNewswire/ – In collaboration with the mayors of large cities across the United States who are on the front lines of the COVID-19 response efforts, Grubhub today announced it is temporarily suspending collection of up to \$100 million in commission payments from impacted independent restaurants nationwide.

Grubhub's initiative will provide immediate and substantial cash flow relief to qualified independent restaurants – restaurants that make up the majority of Grubhub's 350,000+ restaurant community and drive more than 80 percent of the company's orders.

182. Grubhub’s self-serving press release went on to describe how the program would provide support to local restaurants and workers, in a manner that was false and misleading:

In Chicago, where Grubhub was founded in 2004 and is headquartered today, there are more than 10,000 restaurants on the platform, and thousands of drivers bringing delicious food from these restaurants to hungry diners. This relief fund will provide support for food industry workers, which are anticipated to become among some of the most impacted by the economic losses due to coronavirus and social distancing practices. This includes residents at small, neighborhood-based businesses like Chicago's Home of Chicken & Waffles, based in Bronzeville.

183. Grubhub’s self-promoting scheme supported neither Chicago restaurants nor their workers. Nowhere in its vast public relations campaign did Grubhub mention the critical fact that this was not a “relief” program providing commission forgiveness; it was a suspension of commission payments that would come due just two weeks after the program concluded.

184. Grubhub’s announcement: (1) misleadingly characterized this as a significant “relief” program, implying that restaurant commissions during this time period would be forgiven (when, in fact, Grubhub was forced to acknowledge that its program required repayments of these commissions to begin just two weeks after the program ended); and (2) misleadingly conveyed that *all* restaurant commissions during this time period would be suspended (when, in fact, it was only suspending *marketing* commissions, and not delivery commissions or order processing fees,

and restaurants would only be eligible for the commission suspension if they agreed to remain on the Grubhub platform for another full year).

185. By attaching a phony “\$100 million” value to suspended commissions, Grubhub actively reinforced the deception that these funds would be forgiven. No reasonable citizen or restaurant would think that Grubhub’s terms would demand repayment of these commissions after two weeks. It was a ruse to deceive the public, exploit the good will of customers who wanted to help local restaurants, and boost Grubhub’s public image, market share, and bottom line.

186. Grubhub *told the public* that it was broadly suspending “commission payments” from impacted independent restaurants nationwide. In the Terms of Use it delivered *to the restaurants*, Grubhub sent a completely different message.

187. First, the Terms and Conditions limited the suspension of commissions to just one part of Grubhub’s commissions: “Subject to these Program Terms, GH will defer Marketing Commissions from Restaurant during the Relief Period.” Marketing Commissions are only one portion of the full commission that restaurants pay to Grubhub for its Service, typically representing 60% of the total commission a restaurant must pay Grubhub. Restaurants also pay delivery commission and processing fees, which were not suspended under the terms of this promotion, and typically account for the remaining 40%.

188. Second, the Terms and Conditions required participating restaurants to extend their existing contracts with Grubhub for a full year from the “commencement date” of their participation in the program.

189. Third, the Terms and Conditions prohibited restaurants from negotiating or taking advantage of lower marketing commissions that might be offered during the one-year period that followed:

Notwithstanding anything to the contrary in the Restaurant Agreement, Restaurant agrees to remain on the Grubhub platform for a period of one year from the Commencement Date, and to maintain at least the same Marketing Commission as was applicable during the Relief Period (the ‘One Year Commitment’). For clarity but without limitation, Restaurant will not have the ability to terminate without cause the Restaurant Agreement for a period of one year from the Commencement Date.

190. The Terms and Conditions revealed another fact that differed significantly from the deceptive language Grubhub was broadcasting to the public: that the relief period would last just two weeks, and that Grubhub could demand repayment of the deferred commissions starting two weeks later: “The ‘Relief Period . . . will end on a date to be determined by GH in its sole discretion, although GH currently anticipates that such date will be no later than March 29, 2020.” The Terms and Conditions provided: “GH will have sole discretion to determine when it will begin collecting Deferred Marketing Commissions and the amount of each withholding. However, GH anticipates that it will not begin collecting before April 13, 2020.”

191. As Scott Weiner, co-owner of Chicago-based Fifty/50 Restaurant Group, told Restaurant Business Magazine about Grubhub’s promotion, “They seemed to be very coy about giving the details . . . They told the press they would be waiving. They corrected it later in the day to say ‘defer.’ They charge restaurants up to 30%. It’s like a bait and switch.”

192. On information and belief, Grubhub did, in fact, begin collecting the deferred commissions soon after the program concluded on March 29, 2020.

193. And, by advertising that it was providing “\$100 million” for “immediate and substantial cash flow relief to qualified independent restaurants,” Grubhub deceptively broadcasted that it was creating meaningful financial relief for restaurants, which it was not.

194. Grubhub exploited consumers’ concern for local restaurants by launching these deceptive advertising campaigns, which were rife with misleading language. Grubhub

misleadingly portrayed the true details of its pandemic promotions in a manner that benefitted the company far more than it “supported” restaurants “in their time of need.”

III. GRUBHUB VIOLATED CHICAGO’S EMERGENCY FEE CAP, CHARGING RESTAURANTS UNLAWFUL COMMISSIONS DURING A TIME OF CRISIS.

195. A state of emergency has existed in Chicago since March 2020, when Chicago—like many cities around the country and globe—began implementing public health measures to curb the COVID-19 pandemic. In the face of this “extraordinarily severe and unprecedented threat to Chicagoans,” the City imposed limits and restrictions on restaurant operations. Restaurants closed to in-person dining and were limited to serving customers outdoors or operating with significant indoor capacity restrictions.

196. During this state of emergency, restaurants have increased their delivery and take-out operations, and as a result, have become more reliant on third-party meal delivery services, like Grubhub, to stay in business. Chicago residents also have depended on these third-party meal delivery services to stay safe and to help stop the spread of COVID-19 by remaining at home. Restaurant employees have depended on ongoing employment with local restaurants to feed and shelter their families.

197. During this same time period, it became apparent that meal delivery companies’ steep commissions were threatening Chicago restaurants’ ability to survive the pandemic. Chicago restaurants were pleading publicly for relief from the commissions. At a City Council hearing in May 2020, Beverly Kim, owner of Parachute Restaurant in Avondale, called the high commissions “unsustainable” for restaurants and warned that “we will go out of business without caps [on meal delivery commissions].”

198. In response, the City Council passed an Emergency Fee Cap on November 23, 2020. In passing the ordinance, the City Council determined it was necessary “for the protection

of the public health, safety and welfare” to enact a temporary limit on the commissions and other fees that delivery services could charge restaurants, effective immediately.¹⁴ The Emergency Fee Cap expired, by its own terms, once restaurants were allowed to seat patrons indoors at 40% or greater capacity for 60 consecutive days, which occurred on April 17, 2021. The City Council reinstated the Emergency Fee Cap on June 26, 2021.¹⁵ The Emergency Fee Cap remains in effect until September 24, 2021, when it will be replaced by a new meal delivery fee ordinance.¹⁶

199. The Emergency Fee Cap prohibited, *inter alia*, any “Third-Party Food Delivery Service”¹⁷ from charging a “Food Dispensing Establishment”¹⁸ any “combination of fees, commissions, or costs for the Food Dispensing Establishment’s use of the Third-Party Delivery Service that is greater than 15 percent of the Food Dispensing Establishment’s monthly net sales processed through the Third-Party Delivery Service.”

200. The only restaurants excluded from this cap on fees, commissions, and costs were “Chain Restaurant[s],” defined as “any group of businesses licensed as a Food Dispensing

¹⁴ Journal of Proceedings of the City Council of Chicago, Ill., Nov. 23, 2020, pp. 23875-79.

¹⁵ Journal of Proceedings of the City Council of Chicago, Ill., June 25, 2021, pp. 31925-31

¹⁶ City of Chi. Ord. 2021-2862 (passed July 21, 2021), *available at* <https://chicago.legistar.com/LegislationDetail.aspx?ID=4994300&GUID=95F149A9-CDB5-4AE8-A648-79EC3A349803&Options=&Search=>.

¹⁷ “Third-Party Food Delivery Service” is defined as “any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the delivery or pick-up of food and beverages from, no fewer than 20 Food Dispensing Establishments located in the City that are each owned and operated by different persons.” Journal of Proceedings of the City Council of Chicago, Ill., Nov. 23, 2020, pp. 23875-79. Grubhub is a Third-Party Food Delivery Service.

¹⁸ “Food Dispensing Establishment” is defined as “any fixed location where food or drink is routinely prepared and served or provided for the public for consumption on or off the premises with or without charge. Such establishments include, but are not limited to, restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, taverns, bars, cocktail lounges, nightclubs, industrial feeding establishments, take-out establishments, private institutions or organizations routinely serving food, catering kitchens, commissaries or any other eating or drinking establishment or operation.” Journal of Proceedings of the City Council of Chicago, Ill., Nov. 23, 2020, pp. 23875-79; *see also* MCC § 4-8-010.

Establishment in the City with ten or more locations and operating under a common business name.”¹⁹

201. While the Emergency Fee Cap was in force, Grubhub nonetheless continued charging Affiliated Restaurants commissions, fees, and/or costs—including delivery and marketing “commissions” and an “order processing fee”—in excess of the limits imposed by the Emergency Fee Cap.

202. During the pendency of the Emergency Fee Cap, Grubhub typically charged Chicago restaurants a 10% delivery commission, a 5% marketing commission on delivery orders, and a 12-15% marketing commission on pickup orders. Grubhub also charged an order processing fee of 3-6% on both delivery and pickup orders.²⁰ The result was total restaurant charges approaching 20% for both delivery and pickup orders.

203. For example, in December 2020, Grubhub charged a Lakeview bagel shop nearly 20% of monthly net sales in a combination of marketing, delivery, and order processing fees and commissions. Likewise, in January 2021, Grubhub charged a restaurant on Michigan Avenue a similar rate of nearly 20% in combined marketing, delivery, and order processing fees and commissions.

204. Although Grubhub’s marketing and delivery commissions, together, typically amounted to 15% of monthly net sales, Grubhub’s order processing fee pushed the total fees well past 15%—combined charges expressly prohibited by the Emergency Fee Cap.

¹⁹ Journal of Proceedings of the City Council of Chicago, Ill., Nov. 23, 2020, pp. 23875-79.

²⁰ The order processing fee is 3.05% plus \$0.30, meaning the total percentage is higher on smaller orders. On a \$100 order, the fee amounts to 3.35%. On a \$10 order, the total percentage is 6.05%.

IV. GRUBHUB USES A DECEPTIVE ORDERING EXPERIENCE TO ENTICE CONSUMERS AND OBSCURE THE TRUE COST OF ITS SERVICE.

205. Grubhub offers consumers convenience in the form of a marketplace where consumers can search for local restaurants and place orders for pickup and delivery. This convenience comes at a deceptive cost: fees and prices that Grubhub hides from and misrepresents to consumers.

206. On the Grubhub and Seamless Platforms, the fee scheme is an e-commerce update on the traditional “bait and switch.” The Platforms advertise a flat *Delivery Fee* up front, an attractively small amount the company teases to get customers in the door. But Grubhub does not intend to provide delivery for that price. Grubhub misrepresents the Delivery Fee as the entire charge for delivery; however, it is merely the first in a series of charges that pay for the same thing: ordering a restaurant meal for delivery. Grubhub deceptively subdivides the full price of its Service into arbitrary and separate charges. Only at the end of the ordering process, after the consumer has put in time and effort building the order, do the Platforms reveal the *Service Fee* and—for some orders—the *Small Order Fee*. Even then, these fees are not clearly identified unless the consumer seeks clarification.

207. On a single food order under \$10, a Chicago consumer can pay Grubhub a Delivery Fee of up to \$6, a Small Order Fee of \$2, and a Service Fee of between 5.25% and 20% of the food order. The City’s investigation revealed that consumers pay Grubhub fees that can add up to more than 400% of the initial delivery fee that Grubhub deceptively advertised. Meanwhile, Chicago restaurants receive none of this money and, in fact, pay Grubhub substantial additional commissions on each order.

208. Not even the full slate of fees, belatedly disclosed, reflects the entire cost to the consumer of using Grubhub rather than ordering directly from the restaurant. That is because,

across Defendants' Platforms, yet another cost lurks in the *Platform Menu Prices* themselves, which are often marked up 10-25% or even more. Although Grubhub presents these as prices from the restaurant's menu, in many instances these prices include a markup on *each menu item*—a further, concealed charge that is never disclosed to the consumer.

A. The Grubhub and Seamless Platforms Manipulate Fees to Entice Consumers into Completing Orders.

209. Since at least 2019, the Grubhub and Seamless Platforms have charged Chicago consumers both a Delivery Fee and a Service Fee,²¹ on top of the commissions Grubhub charges restaurants for its Service.²² These Platforms also charge Chicago consumers a Small Order Fee on food orders less than \$10. The Delivery Fee is only a portion of the price of delivery but is presented as the entire charge upfront to lure consumers into ordering; only at the end of the transaction are the Service Fee and Small Order Fee ambiguously introduced. This important information is revealed, and never clearly explained, *after* consumers have made their choices and are invested in completing the order.

210. The Grubhub and Seamless Platforms use Delivery Fees, Service Fees, and Small Order Fees in the same way and describe them with the same language.

a. The Delivery Fee is a flat fee (regardless of order size) that the Grubhub and Seamless Platforms have charged from their inception. The Grubhub and Seamless Platforms

²¹ Because the Platforms are dynamic, many pages within these sites—including the ordering process and shopping bag—cannot be archived, and records of the historical versions of these pages do not exist through publicly available sources. The dates that the Platforms began charging these fees in Chicago are information within the exclusive knowledge of Grubhub.

²² Based on the City's investigation, Grubhub charges both a Delivery Fee and a Service Fee on the majority of delivery orders. Although Grubhub generally applies a Service Fee to all takeout and delivery orders, there are some limited instances in which the Service Fee is absent. For example, in some instances where Grubhub advertises "Free Delivery," it sometimes will not impose either a Delivery or a Service Fee. In other instances, however, Grubhub *does* deceptively charge a Service Fee when it advertised free delivery.

describe the Delivery Fee in general terms as a charge for Grubhub’s “delivery-related costs.” Although it is a flat fee, the amount of the Delivery Fee varies by restaurant. In Chicago, it typically ranges from \$0.99 to nearly \$6, based on evidence acquired during the City’s investigation. As a promotion, the Grubhub and Seamless Platforms offer “free delivery” on orders from certain restaurants or by particular consumers, such as those with new Grubhub accounts.

b. The Service Fee—which the Grubhub and Seamless Platforms introduced in or around 2019—is calculated as a percentage of the order subtotal and usually ranges between 10% and 15%. The Grubhub and Seamless Platforms vaguely describe the Service Fee as a charge that “helps cover operating costs,” without further detail.

c. The Small Order Fee—which the Grubhub and Seamless Platforms have charged since at least 2019—is a \$2 charge for food orders less than \$10. These Platforms charge this fee unless the restaurant, at its option, has set a minimum order amount (typically at \$10 or higher).

211. In reality, the Delivery Fee, Service Fee, and Small Order Fee are fungible. They are not tied to distinct elements of the overall Service that the Grubhub and Seamless Platforms provide to consumers. Consumers do not receive different “services” in exchange for each fee. For example, the Grubhub and Seamless Platforms do not charge any of these fees for pickup orders, yet usually charge all three—the Delivery Fee, Service Fee, and where applicable, the Small Order Fee—for delivery orders. In fact, Grubhub refers to all these fees under the single label “delivery fees” in its public financial statements.

212. Grubhub’s choice to charge consumers three separate fees for its Service, rather than one all-inclusive fee, is an integral part of its deceptive strategy nationwide and in Chicago.

213. As Grubhub’s CEO explained to investors in 2019, the company manipulates the allocation of Delivery Fees and Service Fees after exhaustive testing to “maximize conversion with a given diner burden.” In the parlance of e-commerce, “diner burden” means the consumer’s overall cost, and “conversion” means getting the consumer to take a desired action—*i.e.*, buy food for delivery. In other words, Grubhub determines the combination of Delivery Fee and Service Fee amounts that will induce the most consumers to start and complete an order.²³

214. Arbitrarily parceling out the true cost of the Service among the so-called Delivery Fee, Service Fee, and Small Order Fee on the Grubhub and Seamless Platforms misleads consumers by allowing Grubhub to avoid the sticker shock of the real price Grubhub is charging for its Service.

215. This practice also reflects the manipulative techniques of *partition pricing*, or dividing the full price of a service into parts, and *drip pricing*, or promoting only a portion of a service’s cost upfront and disclosing the rest only as the consumer goes through the buying process. As the Federal Trade Commission and other consumer watchdogs have recognized, both practices mislead consumers because separating prices into base prices and surcharges “can lower customers’ perceptions of total cost”²⁴ and “makes continued search costlier and more complicated.”²⁵

216. The total price of Grubhub’s Service is material to consumers, who have options when ordering a restaurant meal. Ordering and delivery of restaurant meals is available in Chicago

²³ On information and belief, Grubhub utilizes an algorithm that varies the fees charged and discounts offered for particular orders, based on the time of day, restaurant, restaurant and delivery locations, user profile, and potentially other factors.

²⁴ Johannes Voester et al., *Partitioned Pricing: Review of the Literature and Directions for Further Research*, 11 *Rev. Mgmt. Sci.* 879, 893 (2017).

²⁵ David Adam Friedman, *Regulating Drip Pricing*, 31 *Stan. L. & Pol’y Rev.* 51, 59 (2020)






from multiple third-party companies, as well directly from many restaurants. Consumers also have the option to place an order directly with a restaurant for carry-out. Consumers are sensitive to the price they pay for the convenience of delivery; as the price increases, consumers are less willing to complete the transaction.

1. The Grubhub and Seamless Platforms misleadingly present the Delivery Fee as the amount a consumer will be charged for the Service Grubhub provides.

217. The role of the Delivery Fee in Grubhub’s scheme is to entice consumers into the transaction—the “bait” in the bait-and-switch. The Grubhub and Seamless Platforms prominently display the Delivery Fee for each restaurant upfront, on the Platform home page and on search pages.

218. For example, on the Grubhub website, a user who searches for breakfast food to be delivered to the address 121 North La Salle Street in Chicago would see a screen like this:

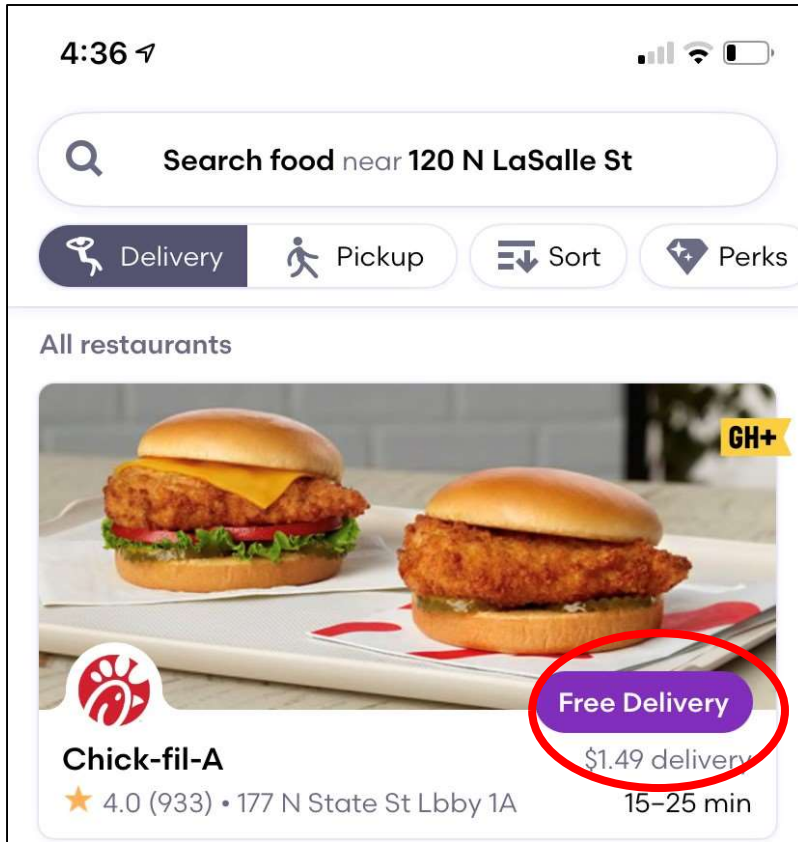
Excerpt from Grubhub.com search page

	Standard Chicago Ad GH+ Dessert New	Be one of the first to review	30–40 mins	\$1.49 delivery
	Café Margo Ad GH+ Sandwiches New	Be one of the first to review	30–40 mins	\$3.49 delivery
	Maharani Indian Cuisine Ad GH+ Chicken New	Be one of the first to review	30–40 mins	\$2.99 delivery
	The Breakfast Club and Grill GH+ \$5 off your order of \$50+	★★★★★ 1384 ratings	30–40 mins	\$2.49 delivery
	Golden Apple Grill & Breakfast House GH+ Alcohol	★★★★★ 6227 ratings	40–50 mins	\$4.49 delivery

219. Located next to the name of each nearby restaurant is the advertised Delivery Fee for that restaurant. With direct and unqualified phrasing—*e.g.*, “\$2.99 delivery” for Maharani Indian Cuisine or “\$4.49 delivery” for Golden Apple Grill & Breakfast House—Grubhub communicates to consumers that this is the amount a consumer will pay for delivery. That message is deceptive because Grubhub later adds a Service Fee and, in some instances, a Small Order Fee.

220. Grubhub’s promotional offers of “free delivery” on the Grubhub and Seamless Platforms are similarly deceptive. For example, in the Grubhub app search shown below, the user is shown a promotional offer of free delivery—available as a “perk” that the user can redeem instead of paying a \$1.49 Delivery Fee—from a Chick-fil-A location in the Loop. Yet, Grubhub will not deliver orders from this restaurant for free; on “free delivery” transactions, too, Grubhub belatedly tacks on a Service Fee and/or Small Order Fee.

Excerpt from Grubhub app search page



221. Grubhub intends for consumers to rely on the artificially low Delivery Fee—or the promise of “free delivery”—in choosing to proceed with a transaction. By structuring its fees in this way, Grubhub deprives consumers of material information about the price of Grubhub’s Service.

222. If Grubhub did not want to mislead consumers, it could specify the full price for its Service at this stage on the Grubhub and Seamless Platforms, including by disclosing the Service Fee percentage, the threshold price trigger for a Small Order Fee, and the amount of that fee. Alternatively, Grubhub could notify consumers more generally that additional charges will be included on the checkout screen. On information and belief, Grubhub does not do so because it knows that presenting the full cost of its Service upfront would reduce orders, *i.e.*, diner “conversion.”

2. The Grubhub and Seamless Platforms hide the Service Fee and Small Order Fee until the end of the transaction.

223. The Service Fee and Small Order Fee are the bookend to the Delivery Fee in the consumer experience—the “switch” in the bait-and-switch.

224. Grubhub withholds the existence and percentage amount of the Service Fee on the Grubhub and Seamless Platforms until the checkout screen—and, even at checkout, does not clearly disclose the fee. By obfuscating and delaying the reveal of these fees—until after the consumer has invested time and energy to build a meal order—Grubhub increases the likelihood that a consumer will not fully understand the cost of Grubhub’s Service and—as a result—complete the transaction without being deterred by the fees.

225. Experts in the design of e-commerce user interfaces describe this tactic as a “dark pattern [that] exploits the sunk cost fallacy cognitive bias: users are likely to feel so invested in the process that they justify the additional charges by completing the purchase to not waste their effort.”²⁶ A consumer will “be more willing to complete the purchase rather than have to give up and start all over again with another website.”²⁷ The practice is also emblematic of the “drip pricing” model of sales, in which “customers may be ‘locked in’ and not able to switch at a later stage in the sales process”²⁸ because “they feel that they already own the product, so they are more inclined to pay not to lose it.”²⁹

²⁶ Arunesh Mathur et al., *Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites*, Proc. ACM Hum-Comput. Interact. 81, 13 (2019).

²⁷ Harry Brignull, “Types of Dark Pattern: Hidden Costs,” available at <https://www.darkpatterns.org/types-of-dark-pattern/hidden-costs> (last visited Aug. 16, 2021).

²⁸ *Behavioural Economics and its Impact on Competition Policy*, Prepared for the Netherlands Authority for Consumers and Markets, at 26 (2013).

²⁹ *Id.* at 23.

226. On the Grubhub and Seamless Platforms, even when the Service Fee is finally revealed, it is not clearly labeled or defined. For example, this is the checkout screen for an order through Grubhub.com from Golden Apple Grill & Breakfast House:

Excerpt from Grubhub.com checkout screen

Your order from	
Golden Apple Grill & Breakfast House	
1	2222 Breakfast Sunny Side Up, 2 Buttermilk Pancakes
	\$13.69
1	New York Strip Steak and Eggs with Grits Medium Rare, Sunny Side Up, White Toast
	\$22.79
1	Chocolate Chip Pancakes
	\$12.89
Items subtotal:	
	\$49.37
Delivery fee: ⓘ	
	\$1.49
Tax and fees: ⓘ	
	\$10.25
Driver tip:	
	\$12.22
Total:	\$73.33
< Modify your order	
TOTAL: \$73.33	

227. The Service Fee does not appear anywhere by name or amount on this screen. Grubhub hides the Service Fee by including it as a portion of the \$10.25 vaguely ascribed to “Tax and fees,” failing to provide appropriate transparency to the consumer.

228. The Small Order Fee likewise is not clearly labeled or defined. For example, this is the checkout screen for an order through Seamless.com from the restaurant So Mac:

Excerpt from Seamless.com checkout screen

The screenshot shows a checkout summary for an order from 'So Mac'. It lists one item, 'Tomato Basil Soup' for \$5.00. Below the item list, it shows 'Items subtotal: \$5.00', 'Delivery fee: \$0.99', and 'Tax and fees: \$3.24'. A note says 'No tip'. The total is \$9.23. At the bottom, there is a button to 'Modify your order' and a dark bar with 'TOTAL: \$9.23'.

Your order from	
So Mac	
1 Tomato Basil Soup	\$5.00
<hr/>	
Items subtotal:	\$5.00
Delivery fee: ⓘ	\$0.99
Tax and fees: ⓘ	\$3.24
No tip	
Total:	\$9.23
< Modify your order	
TOTAL:	\$9.23

229. The Small Order Fee of \$2, which applies because the food subtotal for this transaction is under \$10, does not appear anywhere by name or amount on this screen. Along with the Service Fee, it is a portion of the \$3.24 ascribed to “Tax and fees.”

230. Concealing the Service Fee and Small Order Fee in this manner reinforces Grubhub’s deception that the services covered by these fees are somehow distinct from those covered by the Delivery Fee. The Grubhub and Seamless Platforms also mislead consumers by implying that the fees grouped with taxes fall into a different category of charges imposed or authorized by the government.

231. Burying the Service Fee and Small Order Fee in a broader, vaguely described category is another dark pattern because it “[h]ide[s] key information . . . so users will proceed without fully understanding the transaction.”³⁰ As user interface design experts have recognized, “[t]he primary motivator behind hidden information is the disguising of relevant information as irrelevant.”³¹ The design of the transaction conceals from consumers the relevant information that Grubhub has tacked on additional charges for its Service.

232. To unearth the Service Fee and Small Order Fee line items, a consumer must take the affirmative step of clicking on the small “i” icon next to “Tax and fees.” In the example below, featuring an order from Chicago chain Meli Café, that click brings up a pop-up box that reveals the Small Order Fee, the elusive “Service Fee,” and the amount—in this case, \$1.00:

³⁰ Maximilian Maier and Rikard Harr, *Dark Design Patterns: An End-User Perspective*, 16(2) *Human Technology* 170, 179 (2020).

³¹ 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).

Excerpt from Seamless.com checkout screen

The screenshot shows a checkout summary for Seamless.com. It lists various fees and taxes, including a service fee and a small order fee. A green message indicates a \$2.00 discount for adding \$0.05 to the order. The total amount is \$15.61. A button to 'Modify your order' is visible, and a dark bar at the bottom displays the total amount.

Your order from	
Sales tax	\$1.17
Small order fee	\$2.00
Save \$2.00 when you add \$0.05 to your order.	
Service fee	\$1.00
This 10.00% fee helps Seamless cover operating costs.	
Delivery fee:	\$1.49
Tax and fees: ⓘ	\$4.17
No tip	
Total:	\$15.61
< Modify your order	
TOTAL:	\$15.61

233. Following an investigation of Grubhub and the other large meal delivery companies in 2020, Consumer Reports specifically criticized Grubhub.com’s “lack of fee itemization” as a “dark design pattern.”³² Consumer Reports noted that Grubhub could have, but did not, list the taxes and Service Fee “separately by default, without hidden [user interface] or ‘read more information’ icons.”³³ By requiring consumers to click on the small “i” icon, Consumer Reports

³² Consumer Reports, *Collecting #Receipts: Food Delivery Apps & Fee Transparency* (Sept. 29, 2020) at 6, 13.

³³ *Id.* at 13.

observed, Grubhub “creates [for consumers] a level of friction and fee obfuscation to see what they are paying for through the interface automatically.”³⁴

234. This practice is misleading to consumers. Grubhub intends to conceal the Service Fee and Small Order Fee so that consumers will not be deterred from completing their orders. In so doing, Grubhub deprives consumers of material information they need to adequately compare the value of the Grubhub and Seamless Platforms to alternatives.

235. The impact of Grubhub’s fee scheme on the total price consumers pay for delivery is substantial—even before the invisible Platform Menu Price markups, described *infra*. On a small food order, the Service Fee and Small Order Fee can, together, double or triple the total fees the consumer confronts on the checkout screen, compared to the flat Delivery Fee advertised to the consumer upfront. Because the Service Fee is a percentage of the total food order, the magnitude of this backdoor increase in the cost of Grubhub’s Service grows with the size of the order, even without the Small Order Fee. For example, on this order from Golden Apple Grill & Breakfast House, the advertised Delivery Fee was only \$1.49 on the Grubhub homepage, but the Service Fee adds 10% of the order total to that fee, which was another \$4.94. This brought the full cost of Grubhub’s Service to \$6.43—or a 332% increase on the \$1.49 advertised Delivery Fee.

³⁴ *Id.*; *see also id.* at 6 and 21.

Excerpts from Grubhub.com checkout screen

Your order from	
Golden Apple Grill & Breakfast House	
1	2222 Breakfast \$13.69 Sunny Side Up, 2 Buttermilk Pancakes
1	New York Strip Steak \$22.79 and Eggs with Grits Medium Rare, Sunny Side Up, White Toast
1	Chocolate Chip \$12.89
	Sales tax \$5.31
	Service fee \$4.94 This 10.00% fee helps Grubhub cover operating costs.
	Delivery fee: \$1.49
	Tax and fees: ⓘ \$10.25
	Driver tip: \$12.22
Total:	\$73.33
< Modify your order	
TOTAL:	\$73.33

B. Grubhub Hides the Widespread Markups of Menu Prices On Its Platforms.

236. Chicago consumers not only pay deceptive fees beyond what the Grubhub and Seamless Platforms advertise for delivery; on all of Defendants' Platforms, including MenuPages, consumers also pay invisible upcharges for the food itself. Since at least January 2020—and, on information and belief, dating back years earlier—the Platform Menu Prices on Defendants' Platforms frequently have been inflated above the price offered by the restaurant on its own

website.³⁵ Yet, Grubhub presents menus on its Platforms as the restaurants' own and fails to disclose to Chicago consumers that its versions of the menus contain price markups. Heightening the impact of the deception is the fact that consumers pay twice for this practice: first, through higher menu prices, and second, through the resulting increase in the Service Fee. Combined with Grubhub's bait-and-switch fee scheme, these markups dramatically and deceptively increase the cost of Grubhub's Service.

1. Defendants' Platforms deceptively depict inflated Platform Menu Prices as if they are the menu prices available from the restaurant.

237. Grubhub depicts the Platform Menu Prices on its platforms as the *restaurants'* menu prices, without qualification. Grubhub presents these charges exactly the way they would appear on each restaurant's menu: on a "menu page," one price next to each item, often accompanied by a picture (typically the same photo the restaurant uses) and description of the food item.

238. Grubhub intends for consumers to rely on the Platform Menu Prices as those available from the restaurants themselves. Grubhub's Platforms, as well as its AllMenus site that redirects to Grubhub.com, invite consumers to peruse menus as if they were the restaurant's authentic menu. Grubhub's website promises consumers they can "[f]ind great meals fast with lots of local menus." Seamless invites consumers to "[c]heck out menus from popular local restaurants." MenuPages identifies itself as "your source for restaurant menus." AllMenus also tells consumers they can "[f]ind every restaurant menu here" and "browse restaurant menus in top cities." On information and belief, and since at least 1999 for Seamless, 2002 for MenuPages, 2004

³⁵ Because the Platforms are dynamic, historical versions of their contents and transaction flow are not preserved on the Internet; hence, when Platform Menu Price markups began to be widespread on the Platforms is information within the exclusive knowledge of Grubhub.

for Grubhub, and 2011 for AllMenus, each of these platforms has promoted its ability to connect consumers to the restaurant's actual menu.

239. In some instances, Grubhub has initiated these undisclosed price increases unilaterally. These instances include inflating the menu prices of Unaffiliated Restaurants that Grubhub advertises on its Grubhub and Seamless Platforms without consent—a practice Grubhub widely engages in throughout Chicago, as described in Part I, *supra*. In these circumstances, Grubhub places the order, pays the restaurant its published (uninflated) menu price, and, on information and belief, pockets the rest.

240. In other instances, Grubhub permits Affiliated Restaurants to mark up the Platform Menu Prices from those featured on their own menus. Grubhub passes this revenue onto the restaurant. Grubhub benefits, however, through its Service Fee, which is calculated as a percentage of the food subtotal and is based on the marked-up prices.

241. Restaurant owners in the Chicago area have explained that the reason they permit inflated prices on Defendants' Platforms is to offset the punishing commissions—up to 30%—that Grubhub charges to provide order and delivery service. Multiple restaurant owners have lamented that consumers would have to pay more for the same food simply because they ordered through Grubhub. For example, the owner of a Mexican restaurant with multiple locations in Chicago complained to the City that meal delivery companies such as Grubhub put restaurants in a bad spot—they are forced to raise prices to account for high commissions, but appear to consumers to be price-gouging.

242. Whether initiated unilaterally by Grubhub or by the restaurant to help defray the cost of Grubhub's hefty commissions, these markups are a significant and undisclosed charge for ordering through Defendants' Platforms. Grubhub quietly has acknowledged the nature of these

menu price markups, slipping the following clause into its Platforms' Terms of Use in January 2020: "Grubhub . . . reserves the right to consolidate or otherwise incorporate fees and/or surcharges into the prices listed for restaurant food and beverage items."

243. The total upcharge on Defendants' Platforms is material to consumers, who are not provided with sufficient information to weigh the cost and benefit of using Defendants' Platforms, or to comparison-shop against other delivery options, without it. Yet, Grubhub actively conceals the markups reflected in the Platform Menu Prices by presenting its menus as the restaurants' own.

244. Nowhere in the transaction does Grubhub disclose to consumers that the Platform Menu Prices contain markups—not on the menu pages, not in the virtual "bag" that collects the order in progress, and not on the checkout screen. Grubhub could easily add to any of these screens a prominent notice that the displayed Platform Menu Prices are higher than those available on the restaurant's website, but it does not do so.

245. Nor do Grubhub's Terms of Use give consumers sufficient notice that certain Platform Menu Prices they view on Defendants' Platforms are higher than the prices for those items on the restaurant's website. Before 2020, the Terms of Use for Defendants' Platforms were silent on the nature of Platform Menu Price markups. The language Grubhub added in January 2020—that Grubhub may "consolidate or otherwise incorporate fees and/or surcharges into the prices listed for restaurant food and beverage items"—is merely a general reservation of rights. Even if consumers read it, they receive no insight into whether the particular menus they are interested in feature menu prices with added fees for Grubhub's Service.

246. Moreover, a reasonable consumer is unlikely to read this language. To see it, a consumer would have to find the link for the Terms of Use at the very bottom of Platform pages, choose to navigate there, and then sift through more than 11,000 words to find this single clause.

Obscuring disclosures in lengthy terms of use is yet another example of the dark design practice of “hid[ing] key information . . . so users will proceed without fully understanding the transaction.”³⁶

247. It is well-understood that “[g]eneral terms and conditions are often not read, and agreement is typically made automatically and quickly,” providing “an opportunity to fill general terms and conditions with dark ingredients.”³⁷ The Federal Trade Commission has advised companies that “[n]ecessary disclosures should not be relegated to ‘terms of use’ and similar contractual agreements,” because “it is highly unlikely that consumers will read disclosures buried in ‘terms of use.’”³⁸

248. Grubhub intends consumers to rely on its failure to disclose the Platform Menu Price markups and proceed with orders on its Platforms. If it did not so intend, it could include a clear and prominent disclosure that Platform Menu Prices are higher than those available ordering online directly from the restaurant—something it has chosen not to do.

2. Grubhub routinely presents inflated menu prices on its Platforms.

249. Grubhub widely engages in the practice of marking up Platform Menu Prices in Chicago, both affirmatively misrepresenting the nature of the Platform Menu Prices and failing to disclose the price increases.

³⁶ Maximilian Maier and Rikard Harr, *Dark Design Patterns: An End-User Perspective*, 16(2) Human Technology 170, 179 (2020).

³⁷ Christoph Bösch et al., *Tales from the Dark Side: Privacy Dark Strategies and Privacy Dark Patterns*, Proceedings on Privacy Enhancing Technologies 2016(4), 237, 245 (2016).

³⁸ Federal Trade Commission, *Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising*, at 18 (March 2013), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

250. The City reviewed the menus of more than 50 Chicago restaurants across Grubhub.com, Seamless.com, and MenuPages.com and compared them to the menus posted on the restaurants' own websites. On each platform, more than 60% of the menus contained undisclosed price markups—typically, with an increase on all or nearly all items on the menu.


251. For example, La Mexicana Grill charges between \$16.49 and \$19.49 for fajitas on its own website:

Excerpt from La Mexicana Grill's website

FAJITAS

Recommend
Sign Up

Corn or flour tortillas, grilled veggies, sour cream, cheese, pico de Gallo, lettuce & guacamole




Chicken Fajitas

(Price \$16.49)

Add item

SERVED : M, TU, W, TH, SU : 11:00 AM - 11:59 PM
F, SA : 11:00 AM - 3:00 AM




Steak Fajitas

(Price \$19.49)

Add item

SERVED : M, TU, W, TH, SU : 11:00 AM - 11:59 PM
F, SA : 11:00 AM - 3:00 AM



Shrimp Fajitas

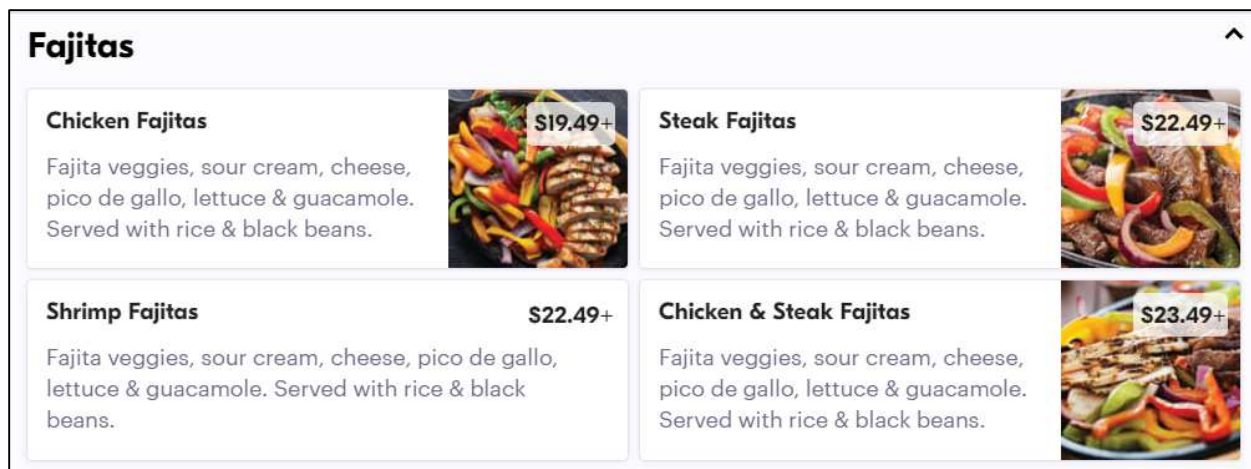
(Price \$18.49)

Add item

SERVED : M, TU, W, TH, SU : 11:00 AM - 11:59 PM
F, SA : 11:00 AM - 3:00 AM

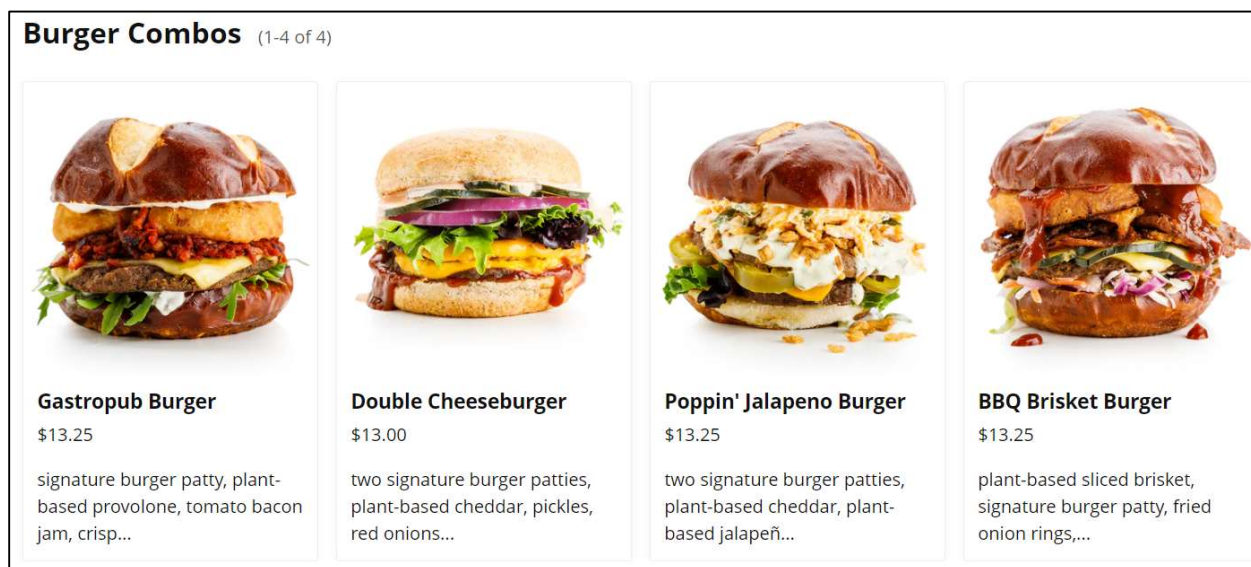
252. For the exact same fajitas, Seamless.com charges \$19.49 – \$22.49, a 15-22% markup on each item:

Excerpt from La Mexicana Grill page on Seamless.com



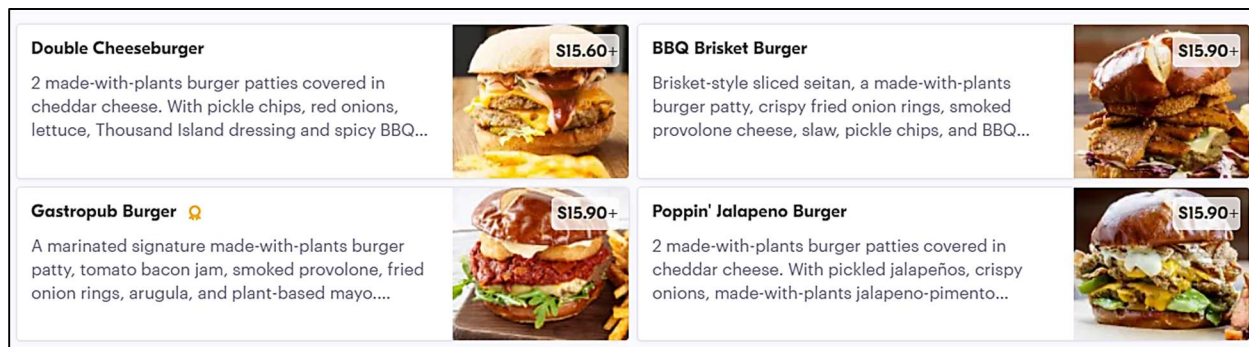
253. As another example, these are the “burger combos” on the menu of Chicago’s Native Foods:

Excerpt from Native Foods’ website



254. These are Grubhub.com’s prices for those same menu items, showing a 20% markup:

Excerpt from Native Foods page on Grubhub.com



255. Based on the City’s investigation, the Platform Menu Price markups on Defendants’ Platforms vary from restaurant to restaurant but typically range from 10% to 25%. In some instances, the City has observed prices of lower-priced entrees, sides, and appetizers inflated as much as 35-40%.

256. These menu price comparisons also illustrate how Grubhub deceptively collects consumers’ money through an inflated Service Fee. Even when the restaurant sets, and retains the money recouped through, the Platform Menu Price markup—often, as described *supra*, as an offset to Grubhub’s high commissions—Grubhub’s Service Fee increases proportionally because that fee is set as a percentage of the total food order.

257. Added to the Delivery Fee quoted upfront, the Platform Menu Price markups and Service Fee—inflated by those markups—dramatically and deceptively increase the cost to consumers.

258. The example from Native Foods is representative. In that example, Grubhub promises the consumer delivery for a Delivery Fee of \$0.99.³⁹

³⁹ In this example, Grubhub offers “\$0” delivery if the consumer joins GH+, the Grubhub monthly subscription service. Although the Delivery Fee is waived for GH+ subscribers, they typically still must pay the Service Fee and Small Order Fee.

Grubhub.com search result for Native Foods

Native Foods
 GH+ American
 ★★★★★ 3695 ratings
 20–30 mins \$0 with GH+
 \$0.99 delivery

\$0 with GH+
~~\$0.99 delivery~~

259. When the consumer selects menu items, the consumer is unwittingly purchasing food that has a 20% markup on each menu item, amounting to \$9.95 extra for the food prices alone:

Excerpts from Native Foods website (left) and Grubhub.com checkout screen (right)

Your Order ×
 ASAP (37 mins est.)

1 Chicken Wings - Small	\$7.25	×
Buffalo Crispy		
1 Double Cheeseburger	\$13.00	×
Seasoned Fries (Side)		
1 Chicken, Bacon & Avo Club	\$12.00	×
Seasoned Fries (Side)		
1 Cauliflower Chickpea Shawarma Bowl [gf]	\$12.50	×
1 Oatmeal Creme Pie	\$5.00	×

May We Suggest ∨

Subtotal	\$49.75
Delivery Charge i	\$6.99
Tax	\$5.35

Checkout \$62.09

Your order from
 Native Foods

1 Chicken Wings	\$8.70
Small, Crispy, Buffalo Sauce	
1 Double Cheeseburger	\$15.60
Seasoned Fries (Gluten Free)	
1 Chicken, Bacon & Avocado Club	\$14.40
Seasoned Fries (Gluten Free)	
1 Cauliflower Chickpea Shawarma Bowl	\$15.00
1 Oatmeal Creme Pie	\$6.00

+ [Add more items](#)

Items subtotal:	\$59.70
Delivery fee: i	\$0.99
Tax and fees: i	\$11.42
No tip	
Total:	\$72.11

< [Modify your order](#)

TOTAL: \$72.11

260. The consumer sees the price jump, on the checkout screen, with the insertion of a hidden additional fee of \$5.00 (the Service Fee). But the consumer never sees that the Service Fee itself has been inflated by the deceptive Platform Menu Price Markup:

Excerpt from Grubhub.com checkout screen

Sales tax	\$6.42	
Service fee	\$5.00	
This fee helps cover operating costs.		\$59.70
Delivery fee:		\$0.99
Tax and fees: ⓘ		\$11.42
No tip		
Total:		\$72.11
← Modify your order		
TOTAL:		\$72.11

261. All told, the consumer ends up paying \$14.95 in fees and markups for order and delivery that Grubhub advertised at \$0.99—a nearly *14-fold* increase. The impact of Grubhub’s deceptive scheme in a single consumer transaction is eye-popping; aggregated across all orders on Defendants’ Platforms in Chicago, the amount of money Grubhub collects from this conduct is staggering.

FIRST CAUSE OF ACTION

Violation of MCC § 4-276-470

262. All preceding factual statements and allegations are incorporated herein by reference.

263. Section 4-276-470(1) of the Municipal Code of Chicago (“MCC”) forbids any person “to act, use or employ any deception, fraud, false pretense, false promise or misrepresentation, or to conceal, suppress or omit any material fact with intent that others rely

upon such concealment, suppression or omission, in connection with the sale, for cash or on credit, or advertisement of any merchandise.”

264. MCC § 4-276-470(5) forbids any person: “to make false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions, or engaging in any other pricing conduct causing confusion or misunderstanding.”

265. MCC § 4-276-470(6) forbids any person “to represent that merchandise or services are those of another, when in fact they are not.”

266. MCC § 4-276-470(7) forbids any person “to cause confusion or misunderstanding concerning the source, sponsorship, approval or certification of merchandise or services.”

267. MCC § 4-276-470(8) forbids any person “to cause confusion or misunderstanding or false or deceptive representation concerning affiliation, connection or association with, or certification by, another.”

268. MCC § 4-276-470(9) forbids any person “to represent that merchandise or services have sponsorship approval concerning the source of or certification of merchandise or services when in fact they do not have such approval or sponsorship.”

269. MCC § 4-276-470(10) forbids any person “to fail to state a material fact, if such failure tends to deceive or mislead.”

270. Grubhub is a “person” as defined by MCC § 1-4-090(e), which includes “any natural individual, firm, trust, partnership, association, joint venture, corporation or other legal entity.”

271. Grubhub has engaged, and continues to engage, in practices that violate one or more of the foregoing provisions of MCC §4-276-470. Specifically, Grubhub has violated MCC § 4-726-470 by:

- a. misrepresenting to consumers that it has a business relationship with or is otherwise authorized to list Unaffiliated Restaurants on the Grubhub and Seamless Platforms;
- b. concealing, suppressing, and/or failing to disclose to consumers that it does not have a business relationship with Unaffiliated Restaurants on the Grubhub and Seamless Platforms and/or that it is not authorized by Unaffiliated Restaurants to list them on those Platforms;
- c. causing confusion or misunderstanding regarding Unaffiliated Restaurants' approval of unauthorized listings on the Grubhub and Seamless Platforms and/or regarding the Platforms' affiliation, connection, or association with Unaffiliated Restaurants;
- d. misrepresenting to consumers that they can order delivery from Unaffiliated Restaurants on the Grubhub and Seamless Platforms, when in fact those Platforms' listings for the restaurants do not permit consumers to order or obtain delivery;
- e. concealing, suppressing, and/or failing to disclose to consumers that it has not verified the menus, operating status, and other information it lists for Unaffiliated Restaurants on the Grubhub and Seamless Platforms;
- f. misrepresenting to consumers that it will provide its Service with respect to menu items that Unaffiliated Restaurants do not offer, and/or during times Unaffiliated Restaurants are not open, on the Grubhub and Seamless Platforms;

- g. misrepresenting Grubhub-created routing telephone numbers to consumers as restaurants' own phone numbers;
- h. concealing, suppressing, and/or failing to disclose to consumers that restaurant routing telephone numbers belong to Grubhub and not the restaurants, and/or that using the routing numbers to place orders will cause restaurants to owe commissions to Grubhub;
- i. concealing, suppressing, and/or failing to disclose to restaurants that Grubhub will use Grubhub-created routing telephone numbers in listings of the restaurants on its Platforms, and/or that consumers' use of the routing numbers to place orders will cause the restaurants to owe commissions to Grubhub;
- j. misrepresenting to restaurants the circumstances under which the restaurants will pay Grubhub commissions for telephone calls placed to Grubhub-originated routing numbers;
- k. concealing, suppressing, and/or failing to disclose to restaurants that calls to Grubhub-originated routing telephone numbers may cause the restaurants to owe commissions to Grubhub even if no order is placed;
- l. misrepresenting its impostor websites to consumers as the restaurants' own websites, and/or misrepresenting to consumers that restaurants endorse or approve routing consumers from impostor sites to Grubhub.com to complete their orders;

- m. concealing, suppressing, and/or failing to disclose to consumers that impostor websites are operated by Grubhub, and/or that ordering through an impostor site will cause the restaurant to owe a commission to Grubhub;
- n. concealing, suppressing, and/or failing to disclose to restaurants that Grubhub will create an impostor website and present it to consumers as the restaurant's own website;
- o. misrepresenting to consumers that the "Supper for Support" promotion would help restaurants offset lost revenue and stay in business;
- p. concealing, suppressing, and/or failing to disclose to consumers that restaurants were required to pay for the "Supper for Support" consumer discount and pay commissions to Grubhub on the full (non-discounted) price of the food;
- q. misrepresenting to consumers that its commission "suspension" program included all restaurant commissions, that the commissions would be forgiven or waived, and/or that the commission "suspensions" had meaningful monetary value to restaurants;
- r. concealing, suppressing, and/or failing to disclose to consumers that its commission "suspension" program did not include all restaurant commissions, that the suspended commissions must be repaid, that restaurants could take advantage of the suspension only if they agreed to continue on Defendants' Platforms for one full year, and/or that the commission "suspensions" had no meaningful monetary value to restaurants;

- s. misrepresenting the Delivery Fee to consumers as the full price of its Service on the Grubhub and Seamless Platforms and/or advertising “free delivery,” when the actual price of the Service is higher;
- t. concealing, suppressing, and/or failing to disclose to consumers the full price of its Service on the Grubhub and Seamless Platforms;
- u. concealing, suppressing, and/or failing to disclose to consumers the existence, amount, and/or source of the Service Fee and Small Order Fee on the Grubhub and Seamless Platforms;
- v. misrepresenting Platform Menu Prices on Defendants’ Platforms as those available from restaurants’ menus on their own websites; and
- w. concealing, suppressing, and/or failing to disclose to consumers that Platform Menu Prices on Defendants’ Platforms contain markups from the prices available on restaurants’ menus on their own websites.

272. The MCC provides that any person who violates “any of the provisions of Section 4-276-470 shall be fined not less than \$50.00 nor more than \$2,000.00 for each offense.” MCC § 4-276-480. The City is therefore entitled to fines for each violation of MCC § 4-276-470.

273. WHEREFORE, the City respectfully requests that this Court enter an order (a) awarding judgment in the City’s favor on its First Cause of Action; (b) declaring that Grubhub has violated MCC § 4-276-470; (c) enjoining Grubhub from engaging in further deceptive practices in violation of MCC § 4-276-470; (d) assessing Grubhub fines of \$2,000 for each offense under MCC § 4-276-470; (e) awarding the City its costs of investigation and suit, including reasonable attorneys’ fees and costs, to the extent allowable; (f) awarding the City pre- and post-

judgment interest, to the extent allowable; and (g) awarding such other, further, and different relief as this Court deems reasonable and just.

SECOND CAUSE OF ACTION

Violation of MCC § 2-25-090

274. All preceding factual statements and allegations are incorporated herein by reference.

275. MCC § 2-25-090 prohibits “any act of consumer fraud, unfair method of competition, or deceptive practice while conducting any trade or business in the city,” including “[a]ny conduct constituting an unlawful practice under the Illinois Consumer Fraud and Deceptive Business Practices Act . . . or constituting a violation of any section of this Code relating to business operations or consumer protection.”

276. The Illinois Consumer Fraud and Deceptive Business Practices Act makes unlawful, among other things, “unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the Uniform Deceptive Trade Practices Act.” 815 ILCS 505/2.

277. Section 2 of the Uniform Deceptive Trade Practices Act (815 ILCS 510/2) provides that a person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person, *inter alia*:

- a. causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, 815 ILCS 510/2(a)(2);

- b. causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with or certification by another, 815 ILCS 510/2(a)(3);
- c. represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have, 815 ILCS 510/2(a)(5);
- d. advertises goods or services with intent not to sell them as advertised, 815 ILCS 510/2(a)(9); or
- e. engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding, 815 ILCS 510/2(a)(12).

278. Grubhub has engaged, and continues to engage, in deceptive acts and practices while conducting its meal delivery business in Chicago, in violation of MCC § 2-25-090. Specifically, Grubhub has violated MCC § 2-25-090 by:

- a. misrepresenting to consumers that it has a business relationship with or is otherwise authorized to list Unaffiliated Restaurants on the Grubhub and Seamless Platforms;
- b. concealing, suppressing, and/or failing to disclose to consumers that it does not have a business relationship with the Unaffiliated Restaurants on the Grubhub and Seamless Platforms and/or that it is not authorized by Unaffiliated Restaurants to list them on those Platforms;
- c. causing confusion or misunderstanding regarding Unaffiliated Restaurants' approval of unauthorized listings on the Grubhub and Seamless Platforms

- and/or regarding those Platforms' affiliation, connection, or association with Unaffiliated Restaurants;
- d. concealing, suppressing, and/or failing to disclose to consumers that it has not verified the menus, operating status, and other information it lists for Unaffiliated Restaurants on the Grubhub and Seamless Platforms;
 - e. misrepresenting to consumers that they can order delivery from Unaffiliated Restaurants on the Grubhub and Seamless Platforms, when in fact those Platforms' listings for the restaurants do not permit consumers to order or obtain delivery;
 - f. misrepresenting to consumers that it will provide its Service with respect to menu items that Unaffiliated Restaurants do not offer, and/or during times Unaffiliated Restaurants are not open, on the Grubhub and Seamless Platforms;
 - g. misrepresenting Grubhub-created routing telephone numbers to consumers as restaurants' own phone numbers;
 - h. concealing, suppressing, and/or failing to disclose to consumers that restaurant routing telephone numbers belong to Grubhub and not the restaurants, and/or that using the routing numbers to place orders will cause restaurants to owe commissions to Grubhub;
 - i. concealing, suppressing, and/or failing to disclose to restaurants that Grubhub will use Grubhub-created routing telephone numbers in listings of the restaurants on Defendants' Platforms, and/or that consumers' use of the

- routing numbers to place orders will cause the restaurants to owe commissions to Grubhub;
- j. misrepresenting to restaurants the circumstances under which the restaurants will pay Grubhub commissions for telephone calls placed to Grubhub-originated routing numbers;
 - k. concealing, suppressing, and/or failing to disclose to restaurants that calls to Grubhub-originated routing telephone numbers may cause the restaurants to owe commissions to Grubhub even if no order is placed;
 - l. misrepresenting its impostor websites to consumers as the restaurants' own websites, and/or misrepresenting to consumers that restaurants endorse or approve routing consumers from impostor sites to Grubhub.com to complete their orders;
 - m. concealing, suppressing, and/or failing to disclose to consumers that impostor websites are operated by Grubhub, and/or that ordering through an impostor site will cause the restaurant to owe a commission to Grubhub;
 - n. concealing, suppressing, and/or failing to disclose to restaurants that Grubhub will create an impostor website and present it to consumers as the restaurant's own website;
 - o. misrepresenting to consumers that the "Supper for Support" promotion would help restaurants offset lost revenue and stay in business;
 - p. concealing, suppressing, and/or failing to disclose to consumers that restaurants were required to pay for the "Supper for Support" consumer

- discount and pay commissions to Grubhub on the full (non-discounted) price of the food;
- q. misrepresenting to consumers that its commission “suspension” program included all restaurant commissions, that the commissions would be forgiven or waived, and/or that the commission “suspensions” had meaningful monetary value to restaurants;
 - r. concealing, suppressing, and/or failing to disclose to consumers that its commission “suspension” program did not include all restaurant commissions, that the suspended commissions must be repaid, that restaurants could take advantage of the suspension only if they agreed to continue on the Grubhub Platforms for one full year, and/or that commission “suspensions” had no meaningful monetary value to restaurants;
 - s. advertising the Delivery Fee or “free delivery” to consumers, with no intent to provide the Service at the advertised price, on the Grubhub and Seamless Platforms;
 - t. misrepresenting the Delivery Fee to consumers as the full price of its Service on the Grubhub and Seamless Platforms and/or advertising “free delivery,” when the actual price of the Service is higher;
 - u. concealing, suppressing, and/or failing to disclose to consumers the full price of its Service on the Grubhub and Seamless Platforms;

- v. concealing, suppressing, and/or failing to disclose to consumers the existence, amount, and/or source of the Service Fee and Small Order Fee on the Grubhub and Seamless Platforms;
- w. misrepresenting Platform Menu Prices on Defendants' Platforms as those available from restaurants' menus on their own websites; and
- x. concealing, suppressing, and/or failing to disclose to consumers that Platform Menu Prices on Defendants' Platforms contain markups from the prices available on restaurants' menus on their own websites.

279. Grubhub has also engaged, and continues to engage, in unfair acts and practices while conducting its meal delivery business in Chicago, in violation of MCC § 2-25-090. These acts and practices are unfair in that they offend public policy; are immoral, unethical, oppressive, and unscrupulous; and/or cause substantial injury to consumers. As alleged herein, these methods include the following:

- a. creating listings for Unaffiliated Restaurants on the Grubhub and Seamless Platforms, using their trade names and intellectual property, without permission and without verifying the menu items, operating hours, or other restaurant information presented to consumers; and
- b. obtaining marketing commissions from restaurants by inserting itself into telephone transactions between the restaurants and consumers who have not chosen to use Defendants' Platforms;
- c. charging restaurants marketing commissions for consumer telephone calls that do not result in orders;

- d. obtaining marketing commissions from restaurants by inserting itself into online transactions between restaurants and consumers who have not chosen to use Defendants' Platforms; and
- e. obstructing consumer understanding of the price of its Service on Defendants' Platforms, and thwarting consumers' ability to make informed choices in the market for restaurant meal delivery, by separating the price of its Service into separate fees, which do not reflect and are not associated with distinguishable parts or costs of the Service; by only advertising a portion of the price of its Service up front; by failing to disclose the true cost of the Service until after the consumer has invested time in the transaction; by using the Platform's design to conceal the total fees associated with the Service; and/or by otherwise employing the user interface dark patterns described herein.

280. Grubhub has further violated MCC § 2-25-090 by engaging in conduct that constitutes a violation of MCC § 4-276-470, as set forth in the City's First Cause of Action, *supra*.

281. Grubhub has further violated MCC § 2-25-090 by charging restaurants total fees, commissions, and costs in excess of 15 percent of the restaurants' monthly net sales processed through Defendants' Platform, in violation of the Emergency Fee Cap.

282. Grubhub has further violated MCC § 2-25-090 by charging consumers Platform Menu Prices for menu items of Unaffiliated Restaurants that were higher than the prices of those same items on the restaurants' own menus, in violation of the Emergency Fee Cap.

283. Grubhub is a “person” as defined by MCC § 1-4-090(e), which includes “any natural individual, firm, trust, partnership, association, joint venture, corporation or other legal entity.”

284. The MCC provides that any person “who violates any of the requirements of this section shall be subject to a fine of not less than \$500.00 nor more than \$10,000.00 for each offense.” MCC § 2-25-090(f). The City is therefore entitled to fines for each violation of MCC § 2-25-090.

285. The MCC also authorizes the City’s Corporation Counsel to bring an action for injunctive relief and other equitable relief. MCC § 2-25-090(e)(4). The City is entitled to injunctive and equitable relief as described below.

286. WHEREFORE, the City respectfully requests that this Court enter an order (a) awarding judgment in the City’s favor on its Second Cause of Action; (b) declaring that Grubhub has violated MCC § 2-25-090; (c) enjoining Grubhub from engaging in further deceptive acts and practices in violation of MCC § 2-25-090; (d) assessing Grubhub fines of \$10,000 for each offense under MCC § 2-25-090; (e) requiring Grubhub to pay restitution of the money acquired by means of its violations of MCC § 2-25-090; (f) requiring Grubhub to disgorge profits obtained by means of its violations of MCC § 2-25-090; (g) awarding the City its costs of investigation and suit, including reasonable attorneys’ fees and costs, to the extent allowable; (h) awarding the City pre- and post-judgment interest, to the extent allowable; and (i) awarding such other, further, and different relief as this Court deems reasonable and just.

THIRD CAUSE OF ACTION

Violation of Emergency Fee Cap

287. All preceding factual statements and allegations are incorporated herein by reference.

288. The City's Emergency Fee Cap was enacted on November 23, 2020 and remained in effect until April 17, 2021. It was reinstated on a temporary basis effective June 26, 2021, and it will remain in effect until September 24, 2021.

289. Subsection (b)(3) of the Emergency Fee Cap provides that “[i]t shall be unlawful for a Third-Party Food Delivery Service to charge a Food Dispensing Establishment any combination of fees, commissions, or costs for the Food Dispensing Establishment’s use of the Third-Party Food Delivery Service that is greater than 15 percent of the Food Dispensing Establishment’s monthly net sales processed through the Third-Party Delivery Service.”

290. Grubhub violated Subsection (b)(3) by charging restaurants on Defendants’ Platforms total fees, commissions, and costs in excess of 15 percent of the restaurants’ monthly net sales processed through the Platforms.

291. Subsection (b)(5) of the Emergency Fee Cap provides that [it] shall be unlawful for a Third-Party Food Delivery Service to charge a customer any Purchase Price for a food or beverage item that is higher than the price set by the Food Dispensing Establishing on the Third-Party Food Delivery Service or, if no price is set by the Food Dispensing Establishment on the Third-Party Food Delivery Service, the price listed on the Food Dispensing Establishment’s own menu.”

292. Grubhub violated Subsection (b)(5) by charging consumers Platform Menu Prices for menu items of Unaffiliated Restaurants that were higher than the prices of those same items on the restaurants’ own menus.

293. Grubhub is a “person” as defined by MCC § 1-4-090(e), which includes “any natural individual, firm, trust, partnership, association, joint venture, corporation or other legal entity.”

294. Subsection (d) of the Emergency Fee Cap provides that any person who violates “any provision of this section shall be fined not less than \$1,000.00 nor more than \$2,000.00 for each offense.” The City is therefore entitled to fines for each violation of the Emergency Fee Cap.

295. WHEREFORE, the City respectfully requests that this Court enter an order (a) awarding judgment in the City’s favor on its Third Cause of Action; (b) declaring that Grubhub has violated the Emergency Fee Cap; (c) enjoining Grubhub from engaging in further violations of the Emergency Fee Cap; (d) assessing Grubhub fines \$2,000 for each offense under the Emergency Fee Cap; (e) awarding the City its costs of investigation and suit, including reasonable attorneys’ fees and costs, to the extent allowable; (f) awarding the City pre- and post-judgment interest, to the extent allowable; and (g) awarding such other, further, and different relief as this Court deems reasonable and just.

JURY DEMAND

296. The City requests a trial by jury of all claims.

Dated: August 27, 2021

Respectfully submitted,

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