

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA

Plaintiff,

v.

**GRUBHUB HOLDINGS INC. and
GRUBHUB INC.,**

Defendants.

Civil Action No. 2022 CA 001199 B

Hon. Maurice A. Ross

CONSENT JUDGMENT AND ORDER

Plaintiff District of Columbia (the “District”), by and through its Office of the Attorney General (“OAG”), filed its Complaint in this matter under the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.* (“CPPA”) against Defendant Grubhub Holdings Inc. and Grubhub Inc. (collectively “Defendants”). The District and Defendants (collectively, the “Parties”) stipulate to the entry of this Consent Order and Judgment (“Consent Order”) to resolve all matters in dispute in this action between them.

THE PARTIES

1. Plaintiff, the District, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General has authority to enforce the District’s consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

2. Defendant Grubhub Holdings Inc. (doing business as Grubhub), 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, IL 60602.

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

DEFINITIONS

4. **“Checkout”** means the last step in the online ordering process where a Consumer places a purchase.

5. **“Clear and Conspicuous”** or **“Clearly and Conspicuously”** means:

a. When referring to a written statement, disclosure, or any other information, **“Clear and Conspicuous”** or **“Clearly and Conspicuously”** shall mean that such statement, disclosure, or other information, by whatever medium communicated, (a) is readily noticeable and readable, (b) is in readily understandable language and syntax, (c) is in a type size, font, appearance, and location sufficiently noticeable for a Consumer to read and comprehend it, in a print that contrasts with the background against which it appears, (d) is in contrasting type, font, or color to the surrounding text of the same size, and (e) is visually distinguished from the surrounding text of the same size by a border, symbols, or other marks. If such statement, disclosure, or other information is necessary as a modification, explanation, or clarification to other information with which it is presented, it must be presented in Direct Proximity to the information it modifies in a manner that is readily noticeable and understandable.

b. As to statements, disclosures, or any other information made or presented on the Internet or other web-based applications or services, in addition to the other requirements

stated herein, “Clear and Conspicuous” or “Clearly and Conspicuously” shall mean that such statements, disclosures, or other information shall be placed in locations on the same webpage if doing so allows for the statement, disclosure, or other information to be readily noticeable and understandable. In particular, such statement, disclosure, or other information shall be (a) sufficiently prominent and readily seen, (b) in text that can be easily read and understood by the reader, and (c) placed on the webpage in a position in Direct Proximity to the offer, term, or limitation.

6. **“Consumer”** refers to any individual who purchased food from the Grubhub Platform that was ordered from a District of Columbia restaurant and delivered to a District of Columbia address or picked up from a restaurant in the District of Columbia.

7. **“Impacted Current Account Holder”** means a Consumer who has paid a small order or service fee on an order placed via the Grubhub Platform at a restaurant located in the District of Columbia, from January 1, 2016 until December 31, 2022.

8. **“Delivery App”** means a third-party delivery service that is not owned or controlled by a restaurant, and that is used by Consumers to place orders for food items from restaurants. This term does not include third parties used by the restaurant for orders to be placed and consumed by Consumers while located in the restaurant.

9. **“Direct Prices”** means the item price charged by the restaurant to a Consumer who orders directly from the restaurant, rather than placing an order through a Delivery App.

10. **“Direct Proximity”** means that a term is disclosed immediately above, beneath, or adjacent to the relevant content.

11. **“Grubhub Platform”** means grubhub.com, seamless.com, and the Grubhub and Seamless (Powered by Grubhub) applications that allow Consumers to place orders for food items from restaurants.

12. **“Effective Date”** means 45 days after the Consent Order is entered by this Court.

13. **“Microsite”** means a website created prior to 2020 and controlled by Grubhub for a single current or former Partner Restaurant, which contains menu items for that Partner Restaurant and where Consumers can order these items directly through Grubhub. This definition does not include any websites created by Grubhub pursuant to Grubhub Direct or other similar programs.

14. **“Online Menu”** means the version of a menu of items offered for sale published by Grubhub on the Grubhub Platform.

15. **“Partner Restaurants”** are restaurants that have signed an agreement with Grubhub and are listed on the Grubhub Platform.

16. **“Place and Pay Restaurants”** are restaurants that do not have a signed agreement with Grubhub and are listed on the Grubhub Platform.

17. **“Refundable Credit”** means a credit of not less than \$4.50, and no more than \$75.00, which is automatically placed in an Impacted Current Account Holder’s account on the Grubhub Platform, which will expire in 90 days and, if not used by the end of that period, will be refunded by check without the Impacted Current Account Holder being required to take any affirmative action in accordance with Paragraph 33.

18. **“Routing Telephone Numbers”** means phone numbers generated and controlled by Grubhub, which Grubhub individually assigned to Partner Restaurants to facilitate orders and charged Partner Restaurants for billable calls placed through such Routing Telephone Numbers.

FACTS

19. This Court has jurisdiction over this matter.

20. The District's Complaint alleges that Defendants engaged in unlawful trade practices violating the CPPA. D.C. Code § 28-3904 (b), (e), (f), (f-1), and (h). In particular, the Complaint alleges Defendants listed Place and Pay Restaurants on the Grubhub Platform without approval from Place and Pay Restaurants; Defendants listed menu items for prices that were higher than the prices on the restaurant's own menu; Defendants deceptively advertised that consumers could "order online for free"; Defendants deceptively advertised the Grubhub+ subscribers would obtain "free delivery"; and Defendants misrepresented various aspects of their use of Routing Telephone Numbers, Microsites, and the Supper for Support promotion.

21. The Parties enter into this Consent Order without trial or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind. Defendants deny any wrongdoing and the allegations in the Complaint, and no part of this settlement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Defendants. Defendants are entering into this Consent Order solely for the purpose of concluding this matter, and nothing contained herein may be taken as or construed to be an admission or concession of any alleged violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing. This Consent Order shall not be construed or used as a waiver of any defense Grubhub may raise in any other proceeding.

INJUNCTIVE RELIEF

22. The terms of this injunction apply to the Grubhub Platform with respect to orders that are placed at a District of Columbia restaurant and delivered to a District of Columbia address or picked up from a restaurant in the District of Columbia.

23. Grubhub shall not engage in any act or practice that violates the CPPA.

24. Grubhub shall not combine taxes and fees into one line item for Consumers on the Grubhub Platform.

25. To the extent Grubhub is charging fees to the Consumer, Grubhub shall include a prominent disclosure on either the search result page or restaurant menu page on the Grubhub Platform that indicates to the Consumer that fees may apply by using the word “fees” or a similar word. Grubhub also shall provide details about the fees either on that page or through a hyperlink or other similar method on the Grubhub Platform.

26. Grubhub shall list the fees at Checkout on the Grubhub Platform in the manner required by section 4 of the D.C. Fair Meals Delivery Act of 2022, as enacted and during the period that this law is in effect.

27. To the extent Grubhub is charging fees to the Consumer, Grubhub shall not issue advertisements stating that Grubhub+ members are entitled to “free delivery” on the Grubhub Platform. Grubhub may advertise that Grubhub+ members are entitled to \$0 delivery fees on eligible orders and, space permitting, if Grubhub is charging fees to the Consumer, will indicate that other fees may apply.

28. Grubhub shall shut down all Microsites for restaurants located in the District or transfer ownership of the Microsite to the restaurant.

29. Grubhub shall not publish and charge prices that are higher than Direct Prices for items on the Grubhub Platform for orders placed by Consumers, unless Grubhub provides a Clear and Conspicuous disclosure, both on the Online Menu and at Checkout, that the prices on the Grubhub Platform may be higher than Direct Prices.

30. Grubhub shall comply with D.C. law regarding the listing of Place and Pay Restaurants. If D.C. law is changed to allow for the listing of Place and Pay Restaurants, then Grubhub may include these restaurants on the Grubhub Platform in accordance with the law. If that occurs, Grubhub will include a Clear and Conspicuous disclosure substantially similar in nature to: “Grubhub is unaffiliated with this restaurant and does not have an agreement to deliver for this restaurant. In-store hours and available menu items may differ. Please contact the restaurant directly to obtain up to date information on menu items. If you own this restaurant, please claim your business to update menus, change hours, and more.”

31. Grubhub shall not create and/or use Routing Telephone Numbers for District of Columbia restaurants.

MONETARY AND RESTITUTION TERMS

32. Within 15 days of the Effective Date of this agreement, Defendants shall pay the District \$1,000,000. This sum shall be comprised of:

- a. \$200,000 in consumer restitution for impacted former account holders, with excess amounts reverting to the District; and
- b. \$800,000 in a payment to the District, which may be used by the District for any lawful purpose, at the sole discretion of the Attorney General, as detailed in Paragraph 35.

33. In addition to the payment detailed in Paragraph 32, Defendants shall make \$2,500,000 in restitution payments to Impacted Current Account Holders, as follows:

a. Within 30 days of the Effective Date of this agreement, Defendants shall place a Refundable Credit in the Grubhub Platform account of all Impacted Current Account Holders. Defendants will divide Impacted Current Account Holders into three different groups based upon ordering history and frequency. Defendants will provide the first group a credit of not less than \$4.50, the second group a credit of not less than \$7, and the third group a credit of not less than \$10. Grubhub will create these groups so that the total amount of credits provided is \$2.5 million;

b. When the credit is made available, Defendants shall email all Impacted Current Account Holders to notify them of the existence of the Refundable Credit. This email shall also Clearly and Conspicuously notify the Impacted Current Account Holders that, if they do not use the credit within 90 days, it will be refunded to them in the form of a check; and

c. If an Impacted Current Account Holder does not use the credit within 90 days of receipt, Grubhub shall send a check for the credit amount to the Impacted Current Account Holder. Grubhub shall send the check within 60 days of the expiration of the credit.

34. Within 30 days of sending these checks, Defendants shall provide a report to the District (1) stating the total number of Impacted Current Account Holders, (2) stating the number of Impacted Current Account Holders who redeemed the Refundable Credit through the Grubhub

Platform, and (3) confirming that credit refund checks have been issued to all Impacted Current Account Holders who did not redeem the Refundable Credit through the Grubhub Platform.

35. The payment described in Paragraph 32 shall be made by wire payment and delivered to the Office of the Attorney General consistent with instructions from OAG. The District may use this payment for any lawful purposes, including, but not limited to, restitution, attorneys' fees, and other costs of investigation and litigation, and/or this payment may be placed in, or applied to, the District's restitution fund or litigation support fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney General for the District of Columbia. Defendant agrees to cooperate with the District in obtaining any modification to the language of this Paragraph needed to facilitate the administration of the District's payment under this Paragraph. The District agrees to coordinate with Defendants in connection with any notices or communications regarding restitution paid pursuant to this Order.

36. Within 15 days of the Effective Date of this agreement, to the extent the data is available, Defendants shall provide to the District a list of all individuals who have had a Grubhub account from January 1, 2016 to December 31, 2022 with an address in the District of Columbia where (1) that account is no longer active and (2) those individuals paid either a service or small order fee. This list shall include, to the extent available, the individual's name, address(es), and email address.

RELEASES

37. This Consent Order finally disposes of all claims and issues by the parties that have been raised, or could have been raised, by either party based on the conduct and time period alleged in the Complaint in this lawsuit.

38. The District hereby releases and forever discharges the Defendants from any and all civil claims based on, arising out of, or in any way related to the allegations in the District's Complaint, prior to the Effective Date to the full extent of the Attorney General's power and authority to release Claims (the "Released Claims").

39. Notwithstanding any term of this Order, claims of tax liability do not comprise Released Claims.

40. Defendants shall release the District from all claims that Defendants raised or could have raised, in this lawsuit.

GENERAL PROVISIONS

41. The Parties may apply to the Court to modify this Consent Order by agreement at any time. Any party may apply to the Court, without the other party's agreement, to modify this Consent Order for good cause shown based on a substantial change in law or fact occurring after the date this Consent Order is entered.

42. Unless otherwise set forth above, Defendants shall implement all changes required by this Consent Order within 90 days of the Effective Date.

43. The District reserves the right to take any legal action to enforce the terms of this Consent Order.

44. This Consent Order represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior versions of this

Consent Order nor prior versions of any of its terms that were not entered by the Court in this Consent Order may be introduced for any purpose whatsoever.

45. This Court retains jurisdiction of this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate. The Parties may agree in writing, through their counsel, to an extension of any time period in this Consent Order without a court order.

46. The District shall provide a fifteen (15) business day notice letter by email and first-class mail to Defendants upon a good faith belief that Defendants have violated the injunctive terms of this Consent Order. Defendants shall have fifteen (15) business days from the receipt of the notice to explain and correct any violation before the District may take any legal action to enforce the terms of this Consent Order.

47. This Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

48. All notices sent pursuant to this Consent Order shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the Plaintiff District of Columbia

Adam Teitelbaum, Director
Office of Consumer Protection
DC Office of the Attorney General
400 6th Street, NW
Washington, DC 20001
Email: adam.teitelbaum@dc.gov

For the Defendants Grubhub Holdings Inc. and Grubhub Inc.

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Grubhub
111 W Washington St
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49. If any clause, provision, or section of this Consent Order shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Consent Order and this Consent Order shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

50. Nothing in this Consent Order shall be construed as relieving Defendants of the obligation to comply with all state, District, and federal laws, regulations, or rules, nor shall any of the provisions of this Consent Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

51. Defendants shall ensure that all current and future personnel having final decision-making authority with respect to the subject matter of this Consent Order are informed of the requirements set forth in this Consent Order.

52. Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Consent Order or for any other purpose that would otherwise circumvent any part of this Consent Order or the spirit or purposes of this Consent Order.

53. For the purposes of 26 U.S.C. § 162(f) and its associated regulations, a portion of the settlement payment made by Grubhub shall be considered by the District as restitution, remediation, or cost of compliance with the law. Specifically, the District identifies \$3,300,000 as restitution for damage or harm which was or may be caused by the violation or potential violation of the CPPA. This restitution amount is paid by Grubhub to restore impacted Consumers damaged by the violation or potential violation of these laws to the same or substantially similar position or condition as existed prior to such damage.

54. The District agrees that, in accordance with 26 U.S.C. § 6050X and its associated regulations, the District shall furnish a written statement or copy of Form 1098-F to Grubhub on or before January 31, 2023, and the District shall file an information return with the Internal Revenue Service utilizing Form 1098-F or any successor form.

55. The District agrees to cooperate with any questions or requests for a copy of this Consent Order or other documents made by the Internal Revenue Service, and the District agrees to notify Grubhub as soon as practicable of any such requests made by the Internal Revenue Service.

56. The District takes no position on whether the Internal Revenue Service will allow any deduction by Grubhub of any amounts paid under this Consent Order. Grubhub agrees that Grubhub is fully responsible for the payment of all applicable taxes, including in the event any deductions for amounts paid under this Consent Order are disallowed, as well as any fines or penalties imposed by the Internal Revenue Service. Grubhub agrees that Grubhub shall comply with this Consent Order and not seek any modification regardless of the treatment by the Internal Revenue Service of amounts paid.

For the Plaintiff:

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Attorney General for the District of Columbia

JENNIFER C. JONES
Deputy Attorney General
Public Advocacy Division

ARGATONIA D. WEATHERINGTON
Assistant Deputy Attorney General
Public Advocacy Division

/s/ Adam Teitelbaum

Date: 12/30/22

ADAM TEITELBAUM
Director, Office of Consumer Protection

Laura Beckerman

Date: 12/30/22

LAURA BECKERMAN
Senior Trial Counsel, Public Advocacy Division

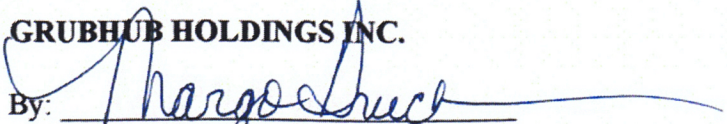
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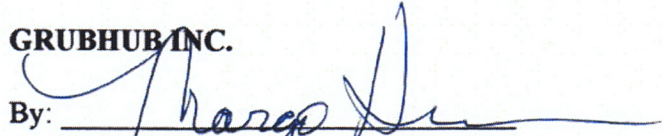
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GRUBHUB HOLDINGS INC.

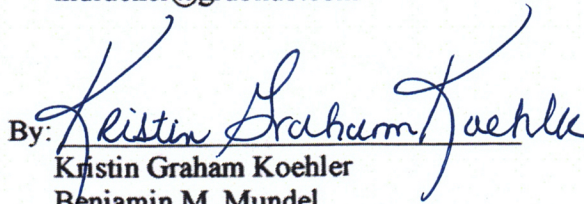
By: 
Margo Drucker
Chief Legal Officer and Secretary
Grubhub Inc.
mdrucker@grubhub.com

Date: 12/29/22

GRUBHUB INC.

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Counsel for Defendants

IT IS SO ORDERED, ADJUDGED, AND DECREED

Date

Judge Maurice A. Ross