

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KRISTINE DIVNEY, individually and on behalf of others similarly
situated,

Plaintiff,

-against-

DOORDASH, INC. d/b/a CAVIAR and APPLE PAYMENTS
SERVICES LLC,

Defendants.

INDEX NO.:

**VERIFIED
CLASS ACTION
COMPLAINT**

Plaintiff, KRISTINE DIVNEY, by and through counsel, THE LAW OFFICES OF
MICHAEL J.S. PONTONE, ESQ., as and for the complaint against the Defendants, together and
severally, alleges as follows:

INTRODUCTION

1. This action is for violations of New York’s Consumer Protection Act and General
Business Law §§ 349 and 350 and seeks damages caused by the Defendants’ deceptive acts and
practices with respect to their food delivery and mobile wallet services in the State of New York.

2. Defendant DOORDASH, INC. d/b/a CAVIAR (“DoorDash” or “Caviar”) sets
itself out as a company that partners with restaurants to provide food delivery services through
two separate mobile applications: DoorDash and Caviar. Each app requires a separate user
account.

3. Defendant APPLE PAYMENTS SERVICES LLC (“Apple Pay”) sets itself out as
a subsidiary of Apple, Inc. that provides a mobile wallet service called Apple Pay. Apple Pay
allows users to make secure, contactless payments by connecting their credit or debit cards.

JURISDICTION

4. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

5. This Court has jurisdiction over the subject matter of this case pursuant to CPLR §§ 301 and 304, and pursuant to Frummer v. Hilton Hotels Int., 19 NY 2d 533 - NY: Court of Appeals 1967, *et al.*

PARTIES

6. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

7. At all times herein mentioned, the Plaintiff, KRISTINE DIVNEY, was and still is a natural person, residing in the County of New York, City of New York.

8. At all times herein mentioned, Defendant, DOORDASH, INC. d/b/a CAVIAR, was and still is a domestic corporation duly organized and existing under and by virtue of the Laws of the State of California.

9. At all times herein mentioned, Defendant, DOORDASH, INC. d/b/a CAVIAR, was and still is a foreign corporation authorized to do business under and by virtue of the Laws of the State of New York.

10. At all times herein mentioned, Defendant DOORDASH, INC. d/b/a CAVIAR maintained a principal place of business in the State of California.

11. At all times herein mentioned, Defendant, DOORDASH, INC. d/b/a CAVIAR derived substantial revenue from goods used or consumed or services rendered in the State of New York.

12. At all times herein mentioned, Defendant, DOORDASH, INC. d/b/a CAVIAR

expected or should reasonably have expected its acts to have consequences in the State of New York.

13. At all times herein mentioned, Defendant, DOORDASH, INC. d/b/a CAVIAR derived substantial revenue from interstate or international commerce.

14. At all times herein mentioned, Defendant, APPLE PAYMENTS SERVICES LLC was and still is a domestic corporation duly organized and existing under and by virtue of the Laws of the State of Texas.

15. At all times herein mentioned, Defendant, APPLE PAYMENTS SERVICES LLC was and still is a foreign corporation authorized to do business under and by virtue of the Laws of the State of New York.

16. At all times herein mentioned, Defendant APPLE PAYMENTS SERVICES LLC maintained a principal place of business in the State of Texas.

17. At all times herein mentioned, Defendant, APPLE PAYMENTS SERVICES LLC derived substantial revenue from goods used or consumed or services rendered in the State of New York.

18. At all times herein mentioned, Defendant, APPLE PAYMENTS SERVICES LLC expected or should reasonably have expected its acts to have consequences in the State of New York.

19. At all times herein mentioned, Defendant, APPLE PAYMENTS SERVICES LLC derived substantial revenue from interstate or international commerce.

FACTS

20. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

21. Plaintiff created a Caviar account to use the Caviar app and order food delivery.
22. Plaintiff has never created a DoorDash account.
23. The Caviar app charges delivery fees, but also offers the “DashPass” monthly subscription, which is advertised on the app as “Get \$0 delivery fees, reduced service fees & 5% back on pick up.” Said DashPass advertisements and/or statements also prominently feature the words “Cancel anytime.” (**Exhibit A**)
24. Plaintiff has never subscribed to the DashPass monthly subscription offered by Caviar, nor does she have any interest in doing so.
25. Plaintiff has never entered her Capital One credit card information into the Caviar app, nor any other credit card. Instead, Plaintiff selected Apple Pay as her payment method on file, because it requires Face ID verification every time it authorizes a payment. (**Exhibit B**)
26. Apple Pay advertises on its website that it is “safer” than other payment methods, that credit card numbers are not shared with merchants, and that “Face ID, Touch ID, or your passcode is required for purchases on your iPhone.” (**Exhibit C**)
27. Plaintiff has never used Face ID to authorize an Apple Pay payment for a DashPass subscription.
28. On May 29, 2025, Plaintiff’s Capital One credit card showed a \$9.99 charge for a DashPass subscription from DoorDash. (**Exhibit D**)
29. Plaintiff’s Caviar app did not show an active DashPass subscription anywhere on her account.
30. Plaintiff called DoorDash customer support at 8:26 p.m., an auto-transcript of which is annexed hereto as **Exhibit E**, and was informed of the following:
 - a. DoorDash had no record of a DoorDash account for Plaintiff, only a Caviar

account.

- b. DoorDash had no record of Plaintiff ever having purchased a DashPass subscription.
- c. Plaintiff had no DashPass subscription in her account.

31. Plaintiff informed the customer service representative that no one else had access to her credit card and there was no identity fraud. Plaintiff requested that the DashPass charge be reversed. The representative stated that they had no way of doing so, and informed Plaintiff that the only way to resolve the issue was to cancel her credit card.

32. In fact, based on the reports of other users who were charged for DashPass without their consent, if Plaintiff were to cancel her credit card, the only way to stop DoorDash from charging the new card would be to call the credit card company and block any and all charges from DoorDash or Caviar indefinitely. (**Exhibit F**)

33. The present matter is reminiscent of a 2023 “non-consensual enrollment” case before the Western District of Washington in which Amazon.com, Inc. tricked consumers into enrolling in its automatically-renewing subscription service, Amazon Prime, and knowingly complicated the cancellation process (Complaint, Federal Trade Commission v. Amazon.com, Inc., 2:23-cv-00932, (W.D. Wash. June 21, 2023)). The FTC sued Amazon for violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits “unfair or deceptive acts or practices in or affecting commerce,” as well as the Restore Online Shoppers’ Confidence Act (ROSCA), 15 U.S.C. §§ 8401-05.

34. Similarly, Defendant DoorDash has charged users without their consent for subscriptions that are immensely difficult to cancel. This is by design.

35. Defendant Apple Pay, meanwhile, has allowed users’ credit cards to be charged

without Face ID verification or any other form of verification, despite advertising otherwise.

36. Therefore, at all times mentioned herein, based on the above, the Defendants deceptively advertised to Plaintiff that she could cancel a DashPass subscription at any time and that Apple Pay would not charge her credit card without Face ID authorization. On the contrary, however, Plaintiff was charged without her knowledge or consent for a subscription she cannot cancel.

37. At all times mentioned herein, it is alleged that Defendants were engaging and continue to engage in a scheme to coerce, induce, and defraud the common Consumer, and unjustly enrich themselves as outlined hereinabove.

38. Each of the above practices by the Defendants constitutes a separate violation of New York's Consumer Protection Act and General Business Law §§ 349 and 350.

39. The Plaintiff herein, including those similarly situated, has thus adequately set forth their claims, pursuant to GBL § 349 (h), that Defendants have engaged, and continue to be engaging, in acts and/or practices that are deceptive and misleading in a material way, and that the Plaintiff, and those similarly situated, have been damaged by reason thereof.

40. Wherefore, the Plaintiff herein demands judgment as against the Defendants, and such other and further judgment this Honorable Court deems necessary and just.

CLASS ALLEGATIONS

41. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

42. This action is properly maintainable as a Class Action under Article 9 of the New York Civil Practice Law and Rules.

43. This action is brought on behalf of the named Plaintiff individually, and a class

consisting of similarly situated consumers who received unauthorized charges for a DashPass subscription via Apple Pay during the applicable statutes of limitations through the date a class is certified.

44. The putative class is so numerous that joinder of all members is impracticable. DoorDash and Apple Pay each have millions of active users, many of whom have posted about similar experiences online. Therefore, although discovery is required to identify the actual total number of affected consumers, the size of the putative class in New York is believed to be significant.

45. In addition, the names of all potential members of the putative class are not known.

46. The questions of law and fact common to the putative class predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to:

- a. Whether Defendants violated New York's Consumer Protection Act and General Business Law §§ 349 and 350, as fully set forth herein;
- b. Whether Defendants violated the pertinent parts of the New York City Administrative Code: Title 20, as fully set forth herein;
- c. Whether the Defendants committed fraud, were involved in a scheme to unjustly enrich themselves, and whether the Defendants were negligent.

47. The claims of the named Plaintiff are typical of the claims of the putative class.

48. The named Plaintiff and putative class members were all subject to Defendants' policies and willful practices which led, and continue to lead, to the within violations.

49. The named Plaintiff and her counsel will fairly and adequately protect the

interests of the putative class.

50. The named Plaintiff has retained counsel experienced in complex litigation and class action litigation.

51. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The individual named Plaintiff and putative class members lack the financial resources to adequately prosecute separate lawsuits against Defendants.

52. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to the Defendants' actions.

FIRST CAUSE OF ACTION

Violations of New York's Consumer Protection Act,

General Business Law §§ 349 and 350

53. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

54. New York's Consumer Protection Act, and the General Business Law article 22-A, was enacted to provide consumers with a means of redress for injuries caused by unlawfully deceptive acts and practices (see General Business Law §§ 349, 350; see also, Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, 85 NY2d 20 [1995]). This legislation, much like its federal counterpart, the Federal Trade Commission Act (15 USC § 45), is intentionally broad, applying "to virtually all economic activity" (Karlin v IVF Am., 93 NY2d 282, 290 [1999]). The statute seeks to secure an "honest marketplace" where "trust," and not deception, prevails (Oswego, 85 NY2d at 25, quoting Mem of Governor Rockefeller, 1970 NY Legis Ann, at 472).

55. General Business Law § 349 provides that "[d]eceptive acts or practices in the

conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful” (General Business Law § 349 [a]).

56. Under General Business Law § 349 (h) “[a] prima facie case requires a showing that defendant is engaging in an act or practice that is deceptive or misleading in a material way and that plaintiff has been injured by reason thereof” (Oswego, 85 NY2d at 25). Additionally, the allegedly deceptive acts, representations or omissions must be misleading to “a reasonable consumer” (Oswego, 85 NY2d at 26; see also, Karlin, 93 NY2d 282; Gaidon, 94 NY2d 330).

57. The services that Defendants provide consumers are for personal, household, or family purposes and, therefore, are consumer goods and services.

58. Defendants, in the ordinary course of business, supply consumer goods and services and, therefore, are merchants under New York State Law.

59. Users of Defendants’ services receive consumer goods and services in the form of food delivery services and/or mobile wallet services from Defendants or their agents and are therefore consumers under New York Law.

60. New York’s Consumer Protection Act and General Business Law prohibits unfair or deceptive trade practices in connection with the offer, sale, and supply of consumer goods and services.

61. Defendants, in the course of marketing, promoting, selling, and supplying their goods and services, have engaged in a course of trade or commerce which constitutes false, deceptive, or misleading acts or practices, and is therefore unfair or deceptive under the New York Law.

62. General Business Law § 350 provides that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby

declared unlawful” (General Business Law § 350).

63. Defendants have advertised their products and services in a manner that is misleading in a material respect, namely by representing that DashPass subscriptions are easy to cancel when they are not, and/or that Apple Pay purchases require Face ID verification when they do not, which constitutes false advertising and is therefore unlawful under the New York Law.

64. As a direct and proximate result of Defendants’ conduct, including the acts and practices set forth herein, Defendants have caused, and are likely to continue causing, substantial injury to the public and to Plaintiff, and Plaintiff is entitled to recover damages, including enhanced damages, if available, in an amount to be determined at trial, and reasonable attorneys’ fees.

SECOND CAUSE OF ACTION

Violations of the New York City Administrative Code: Title 20

65. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

66. The New York City Administrative Code § 20-700 prohibits deceptive or unconscionable trade practice in the sale of any consumer goods or services.

67. At all times mentioned herein, the Defendants engaged, and continue to engage, in deceptive trade practices, consisting of, but not limited to, misleading written statements, visual descriptions and other representations made in connection with the sale and offering for sale consumer goods and services with intent of effectively and intentionally deceiving and misleading consumers.

68. At all times mentioned herein, the Defendants engaged, and continue to engage,

in deceptive trade practices including, but not limited to:

- a. Representations that goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
- b. The use, in any representation, of exaggeration, innuendo or ambiguity as to a material fact, and failure to state a material fact with intent to deceive;
- c. Offering goods and services with intent not to sell them as offered, including by failing to disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications, or conditions on such offer; and
- d. Stating that a consumer transaction involves consumer rights, remedies, or obligations that it does not involve.

69. At all times mentioned herein, the Defendants further engaged, and continue to engage, in unconscionable trade practices, consisting of, but not limited to, the following:

- a. The Defendants acted and continue to act, practiced and continue to practice, in connection with the sale and offering for sale consumer goods and services, which unfairly take advantage of the lack of knowledge, ability, experience or capacity of a consumer;
- b. The Defendants engaged and continue to engage in sales tactics which ultimately result in a gross disparity between the value received by a consumer and the price paid, to the consumer's detriment;
- c. The Defendants engaged and continue to engage in the aforementioned deceptive, "bait-and-switch" marketing and pricing scheme with the full, premeditated knowledge of: (i) the inability of consumers to receive properly anticipated benefits from the goods or services involved; (ii) the gross disparities between the

price of goods or services and their value measured by the price at which similar goods or services are readily obtained by other consumers; and (iii) the fact that Defendants' acts and practices may enable the Defendants, as they have, to take advantage of the inability of consumers to reasonably protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education, or similar factors.

70. As a direct and proximate result of Defendants' conduct, including the acts and practices set forth herein, Defendants have caused, and are likely to continue causing, substantial injury to the public and to Plaintiff, and Plaintiff is entitled to recover damages, including enhanced damages, if available, in an amount to be determined at trial, and reasonable attorneys' fees.

THIRD CAUSE OF ACTION

Negligence

71. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

72. Defendants negligently, carelessly, and/or recklessly misrepresented and/or omitted the fees, prices, services, terms and other aspects of their offers and intents to the Plaintiff and those of the same putative class.

73. At all times material, Plaintiff and those of its putative class justifiably and detrimentally relied upon the material misrepresentations and/or omissions of Defendants which resulted in the above violations and damages.

74. By the foregoing reasons, Defendants are liable to Plaintiff and the other members of the putative class for an amount to be determined at trial, plus interest, attorneys' fees, and

costs.

FOURTH CAUSE OF ACTION

Fraud

75. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

76. Defendants fraudulently misrepresented and/or omitted information as clearly outlined hereinabove, with intent to defraud the common Consumer and those similarly situated and had a motive and purpose to do such.

77. The fraudulent misrepresentations and/or omissions were made in an attempt to procure pecuniary gain from the Plaintiff and/or otherwise from the proceeds of said acts.

78. As the intended result of the aforesaid, Plaintiff and those of its putative class justifiably and detrimentally relied upon said misrepresentations and/or omissions, which resulted in the above violations and damages.

79. By the foregoing reasons, Defendants are liable to Plaintiff and the other members of the putative class for an amount to be determined at trial, plus interest, attorneys' fees, and costs.

FIFTH CAUSE OF ACTION

Unjust Enrichment

80. Plaintiff realleges and incorporates by reference all the paragraphs preceding hereto, as if fully set forth herein.

81. At all times mentioned herein, the Plaintiff and the other members of the putative class purchased products and/or services offered by Defendants for which the Plaintiff paid additional fees as outlined hereinabove, which were not disclosed and/or properly disclosed, and

was unlawfully and unjustly retained by Defendants.

82. At all times mentioned herein, the Plaintiff and other members of the putative class were directly coerced and lied to by the Defendants.

83. Owing solely to the purchases made by the Plaintiff and other members of the putative class at Defendants' direction and schemes, the Defendants were able to benefit from the assessment and collection of additional fees, without due explanation nor refunding of the unlawful and unjust fees and price increases.

84. Equity and good conscience would not permit Defendants to retain the additional fees and/or inflated price discrepancies from the products and services Defendants provided, inasmuch as the Consumers reasonably believed such charges and price increases would not occur and come due upon Plaintiff and other members of the putative class.

85. By the foregoing reasons, Defendants are liable to Plaintiff and the other members of the putative class for an amount to be determined at trial, plus interest, attorneys' fees, and costs.

WHEREFORE, the Plaintiff, individually and on behalf of all other persons similarly situated, demand(s) judgment against the Defendants as follows:

A. Judgment awarding damages on the first cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts, which would otherwise have jurisdiction;

B. Judgment awarding damages on the second cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts, which would otherwise have jurisdiction;

C. Judgment awarding damages on the third cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts, which would otherwise have jurisdiction;

D. Judgment awarding damages on the fourth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts, which would otherwise have jurisdiction;

E. Judgment awarding damages on the fifth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts, which would otherwise have jurisdiction;

F. Interest, the costs and disbursements of this action, together with such other and further relief as to this Court deems just and proper.

Dated: New York, New York
June 6, 2025

s/ Michael J.S. Pontone, Esq.

The Law Offices of Michael J.S. Pontone, Esq., P.C.

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and the Putative Class*

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APPLE PAYMENTS SERVICES LLC
c/o C T CORPORATION SYSTEM
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New York, NY 10005

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [DoorDash, Apple Pay Facing Class Action Lawsuit Over Allegedly Unauthorized DashPass Subscription Charges](#)
