

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

MATTHEW STOCKMAN, individually)
and on behalf of all others similarly)
situated,)
)
Plaintiff,)
)
vs.)
)
GRUBHUB INC., a Delaware)
corporation,)
Defendant.)

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff, Matthew Stockman (“Plaintiff”), for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia* investigation conducted by his attorneys:

INTRODUCTION

1. Plaintiff’s claims herein are based upon Defendant GRUBHUB INC.’s (d/b/a GrubHub) (“GrubHub”) illegal practices related to their online food delivery and sales business.

2. GrubHub is a company that provides an online restaurant ordering service to consumers, as defined by the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*) (“ICFA”). By using their mobile phone application (“mobile app”), consumers can view local restaurants that deliver to their location. Consumers can then place delivery and pick-up orders through GrubHub’s mobile app. GrubHub has partnered with thousands of restaurants across the state of Illinois to offer this service.

3. GrubHub advertises this service as containing a specific delivery fee for consumers. When using GrubHub’s mobile app, consumers are provided a list of restaurants that

will deliver, along with the following information: the distance from the restaurant, the anticipated delivery time, consumer ratings for the restaurant, and a listed price for the delivery fee. (Exhibit A, Restaurant listing screenshot from mobile phone).

4. When consumers select a restaurant from the list by “tapping” on it, GrubHub lists a different, higher delivery fee than what was originally listed.

5. While GrubHub purports to provide its delivery service for a stated price to consumers, GrubHub systematically deceives its customers by increasing the delivery fee and charging consumers extra monies for the deliveries from restaurant orders placed through their mobile app. These heightened charges that are imposed on consumers stand in stark contrast to the delivery prices GrubHub affirmatively lists when it displays the list of available restaurants to consumers. (Exhibit B, El Pueblito screenshot from phone).

6. By listing a specific price of delivery as a service to consumers, GrubHub induces consumers to place their restaurant delivery and pickup orders through GrubHub’s mobile app for a particular restaurant. Consumers rely on GrubHub’s false delivery prices to their detriment, basing their choice of restaurant in part on the listed delivery price. GrubHub then increases that price once the consumer selects the restaurant, and does not provide adequate notice of the price change.

7. GrubHub employs a business model that systematically deceives its customers by charging them increased delivery fees after selecting a restaurant using GrubHub’s mobile app.

8. In clear violation of the law, GrubHub offers one price, and then charges another, for delivery after the consumer selects a restaurant.

9. This deceptive practice is being systematically employed in Illinois and throughout the nation.

10. Plaintiff brings this action on behalf of himself and a Class of individuals seeking injunctive relief, damages, and reasonable costs and attorneys' fees for Defendant's violations of the ICFA (815 ILCS 505/1, *et seq.*), breach of contract, unjust enrichment, and such other and further relief as the Court deems equitable and just.

NATURE OF THE CLAIM

11. GrubHub offers its services to consumers throughout the State of Illinois and the nation.

12. GrubHub operates its service in part through a mobile app named GrubHub. By entering their location into GrubHub's app, consumers can view local restaurants that deliver to the consumer's location. Consumers can then place delivery and pick-up orders through GrubHub's mobile app. Once an order is finalized, the consumer pays GrubHub electronically by credit or debit card. GrubHub then transmits the consumer's food order to the respective restaurant. The restaurant then prepares the consumer's order and, at the behest of the consumer, either delivers the food to the consumer or makes the order ready for pick-up by the consumer.

13. To place a delivery or pick-up order, consumers first select a restaurant from a list of nearby restaurants on GrubHub's mobile app. When a restaurant is selected, an electronic version of the restaurant's menu appears on GrubHub's website for consumers to browse and select their food order.

14. In violation of the express terms of advertisements contained on the initial listing of restaurants provided by the mobile app, GrubHub will alter and increase the price listed for the delivery fee after a consumer selects a restaurant, without clearly disclosing that fact to the consumer. (Exhibits A and B).

15. GrubHub conceals the actual prices of delivery from consumers, and deceives consumers into accepting GrubHub's heightened price changes for delivery fees by failing to effectively present notice of the increase in delivery cost to the consumer.

16. GrubHub's advertising makes no mention of varying delivery fees on its website, stating:

So, what's it cost to use Grubhub?

Grubhub is free to use. You'll have to pay for the food and, if you opt for delivery, you may notice that the restaurant charges a fee for delivery. In that case, the fee is set by the restaurant or the delivery service the restaurant utilizes and would apply even if you placed your order by phone.

(Exhibit C, GrubHub website).

17. GrubHub does not adequately notify the consumer that the delivery price will change when they select a restaurant from the list of available restaurants.

18. GrubHub knows the fees it presents for delivery before a consumer selects a restaurant are not the actual prices that will be charged for delivery from each restaurant.

19. Aside from the price of the food and delivery, at the time of purchase, there are no extra conditions, fees, or charges that are presented to (or agreed to) the consumer by "click acquiescence" or otherwise.

20. In direct violation of the ICFA, GrubHub causes consumers to incur unanticipated heightened fees and charges when using their mobile app to place online orders. These heightened fees imposed by GrubHub result in unjust gains for GrubHub to the detriment to the consumer.

PARTIES

21. Plaintiff, Matthew Stockman, is a resident of Chicago, Illinois. Plaintiff, who is a consumer as defined by 815 ILCS 505, placed an online delivery order from Defendant. On June

17, 2017, Plaintiff entered into an agreement with Defendant for the purchase and delivery of certain food through Defendant's mobile app. Despite Defendant's affirmative representations of a specified delivery fee from the list of available restaurants, Defendant caused Plaintiff to incur extra, unanticipated fees and charges upon placing a food order from the chosen restaurant.

22. Defendant, GRUBHUB, INC. d/b/a GrubHub is an online restaurant space that allows consumers to view menus and place delivery or pickup orders. GrubHub is a corporation existing under the laws of the State of Delaware with its principal place of business located at 111 West Washington Street, Suite 2100, Chicago, Illinois 60602. GrubHub conducts business throughout the state of Illinois and the United States.

JURISDICTION AND VENUE

23. The court has jurisdiction over this action pursuant to 735 ILCS 5/2-209(a)(1) because Defendant conducts business in Illinois, is registered to conduct business in Illinois, and Plaintiff is a resident of Illinois. (Exhibit D, Record from Illinois Secretary of State).

24. Venue is proper in this Court because Defendant maintains its headquarters in, and does business throughout, Cook County.

FACTS REGARDING PLAINTIFF

25. On or around June 17, 2017 at 12:45 P.M., Plaintiff used the GrubHub mobile app to place an online delivery order.

26. At that time, and in reliance upon Defendant's initial listed delivery price on the mobile app, Plaintiff placed a delivery order for El Pueblito Mexican Restaurant.

27. During all times relevant to this action, GrubHub listed on the initial restaurant listing screen a delivery fee of "\$3.00 fee" for El Pueblito Mexican Restaurant. (See, Exhibit A)

28. However, GrubHub increased the price for delivery with no clear notice when Plaintiff selected El Pueblito Mexican Restaurant and was moved to the second page and began selecting items on the electronic menu to order. (See, Exhibit B).

29. At no time did Defendant adequately notify Plaintiff that the delivery fee had been increased, nor did Defendant give any indication that the delivery fee was subject to change.

30. Plaintiff was induced to use Defendant's mobile app and pay a specific listed delivery fee, and was deceived by the Defendant's undisclosed additional charges and fees in direct contravention of Illinois law.

31. Plaintiff has been deceived in prior orders through GrubHub.

CLASS ALLEGATIONS

32. Plaintiff seeks certification of a class as defined below under Illinois Code of Civil Procedure 5/2-801.

The Class: All persons who place an online restaurant delivery order through GrubHub where the actual delivery price increases from the amount presented in the initial list of restaurants available to the consumer.

33. Excluded from the class are (i) any judge presiding over this action and members of their families; (ii) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers, and directors; (iii) persons who properly execute and file a timely request for exclusion from the Class; and (iv) the legal representatives, successors or assigns of any such excluded persons.

34. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but on information and belief, Defendant has contracted with thousands of Class members

throughout Illinois, making joinder of each individual member impracticable. Ultimately, the Class members will be easily identified through Defendant's records.

35. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members. These common questions include but are not limited to:

- (a) Whether delivery fees initially offered were increased after selecting a restaurant from which a consumer chose to order food;
- (b) Whether Defendant's practices caused members of the Class to pay additional fees or charges without adequate knowledge;
- (c) Whether Defendant's practices violate the ICFA;
- (d) Whether the Defendant breached the terms of the contract for its online service by inducing consumers with low delivery fees and then increasing those fees without providing adequate notice to the consumers;
- (e) Whether Defendant's practices violate the public policy of the State of Illinois;
- (f) Whether Defendant was unjustly enriched as a result of receiving additional fees from Plaintiff and the Class; and
- (g) Whether Plaintiff and the Class are entitled to relief, and the nature of such relief.

36. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the Class sustained damages as a result of Defendant's uniform wrongful conduct during transactions with Plaintiff and the Class.

37. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

38. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

39. **Policies Generally Applicable to the Class:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's policies challenged herein apply and affect members of the Class uniformly and Plaintiff's challenge of these policies hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

40. Plaintiff reserves the right to revise the Class definitions based upon information learned through discovery.

AMOUNT IN CONTROVERSY

41. Plaintiff makes no specific allegations that the amount in controversy (including requests for attorneys' fees, injunctive and other relief) exceeds any specific dollar amount, let alone \$5,000,000.

COUNT I—DECLARATORY RELIEF PURSUANT TO 735 ILCS 5/2-701
(On behalf of Plaintiff and the Classes against Defendant GrubHub)

42. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

43. There exists an actual controversy between Plaintiff and the Class on the one hand, and GrubHub on the other, to the extent that GrubHub's online business and advertising are contrary to Illinois public policy.

44. As explained *supra*, GrubHub's agreements with Plaintiff and the Class violate the Illinois Consumer Fraud and Deceptive Business Practices Act by, *inter alia*, presenting one fee for delivery when listing available restaurants, and then increasing that fee without adequate disclosure once the consumer selects a restaurant and places an order.

45. GrubHub's imposition of increased charges and its usage of deceptive delivery fee changes are contrary to applicable Illinois law and are therefore against Illinois public policy.

46. Plaintiff and the Class have tangible legal interests in the instant controversy, including but not limited to:

- (a) Their interest in recouping any hidden fees and/or extra charges paid to GrubHub for placement of online restaurant orders through GrubHub.
- (b) Their interest in obtaining injunctive relief so that Defendant does not in the future employ deceptive practices in its business dealings with consumers.

COUNT II—FRAUD IN THE INDUCEMENT
(On behalf of Plaintiff and the Classes against Defendant GrubHub)

47. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

48. As described with particularity in paragraphs 11 through 20, and throughout all Counts of this Complaint, GrubHub has disseminated, and continues to disseminate advertising and delivery fees that it knows or should reasonably know are false and misleading. This conduct includes, but is not limited to, promoting and advertising specific delivery fees that are false, and then raising those fees without adequately disclosing the change to consumers, and without anywhere notifying consumers that delivery prices are variable. Defendant actively misrepresents and conceals the hidden, undisclosed fees that consumers are charged by using its service and mobile app, enticing consumers with lower delivery fees than are actually available and actually charged.

49. Thus, Defendant clearly understands that consumers will be charged delivery fees which are higher than they are originally advertised to be.

50. By committing the acts alleged in this Complaint, Defendant has knowingly disseminated untrue and/or misleading statements made through fraudulent advertising in order to induce members of the public to place orders through its GrubHub mobile app.

51. The price of a delivery fee is a material term of any transaction because it directly affects a consumer's choice of, or conduct regarding, whether to purchase from a particular restaurant. Any deception or fraud related to the price of a consumer product is materially misleading.

52. The misrepresentation of the price of a delivery fee is likely to mislead a reasonable consumer who is acting reasonably under the circumstances.

53. Defendant knew or should have known of the falsity of the representations made regarding the services it marketed.

54. Defendant intended that the deceptive and fraudulent representations would induce consumers to rely and act based on those false representations.

55. Plaintiff and members of the Class were presented with artificially decreased delivery fees, and then charged additional fees without adequate disclosure, by placing their orders through GrubHub's mobile app. Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost money in justifiable reliance on Defendant's misrepresentations of material fact.

56. In deceiving Plaintiff and the Class members by creating and supporting advertising that fails to clearly and conspicuously disclose the potential for alteration in the delivery charges imposed by its GrubHub mobile app, Defendant has engaged in fraudulent practices designed to mislead and deceive consumers.

57. Plaintiff and Class members have suffered harm as a proximate result of the violations of law and wrongful conduct of Defendant. Plaintiff, on his own behalf, and on the behalf of the Class, seeks damages for Defendant's unlawful conduct.

COUNT III—VIOLATIONS OF THE ICFA
(On behalf of Plaintiff and the Classes against Defendant GrubHub)

58. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

59. The ICFA provides that Defendant may not employ "[u]nfair methods of competition and 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." 815 ILCS 505/2.

60. Defendant illegally sold, advertised and collected monies from Plaintiff and the Class for placement of online orders through GrubHub's mobile app.

61. By presenting false delivery fees to consumers and causing Plaintiff and the Class to incur hidden fees and charges, Defendant violated the ICFA.

62. By employing deceptive means of advertising to induce Plaintiff and the Class to place orders through GrubHub, Defendant violated the ICFA.

63. Defendant intended that Plaintiff and the Class would rely on its artificially reduced fees to induce them to place online orders through GrubHub's mobile app. Defendant's deception occurred during marketing, advertising, and sale of food through GrubHub in the course of trade and commerce. As a result of the Defendant's violations of the ICFA as described herein, Plaintiff and the Class have been harmed and suffered actual damages.

COUNT IV—BREACH OF CONTRACT
(On behalf of Plaintiff and the Classes against Defendant GrubHub)

64. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

65. Plaintiff and members of the Class entered into agreements with GrubHub whereby GrubHub agreed to process their online restaurant orders with the respective restaurants with a specified listed delivery fee. Plaintiff agreed, and did give GrubHub monies owed to the restaurants for the order.

66. GrubHub expressly and/or impliedly agreed to provide Plaintiff and the Class its service at a specific fee, with no notice of the possibility for changes to the specified fee.

67. GrubHub further expressly and/or impliedly agreed to carry out its obligations in good faith and fair dealing. GrubHub breached its contractual obligations by presenting artificially reduced fees and then imposing additional fees and charges that were not agreed to by the Plaintiff when the agreement was formed.

68. Plaintiff and the Class have performed their obligations under their respective contracts. The aforementioned breaches of contract have proximately caused Plaintiff and the Class economic injury and other damages.

**COUNT V—RESTITUTION/UNJUST ENRICHMENT IN THE ALTERNATIVE TO
BREACH OF CONTRACT**

(On behalf of Plaintiff and the Classes against Defendant GrubHub)

69. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

70. This Count V is alleged in the alternative to Count IV.

71. Defendant has knowingly received and retained benefits from Plaintiff and the Class under circumstances that would render it unjust to allow Defendant to retain such benefits.

72. By requiring Plaintiff and the Class to pay hidden fees and charges, Defendants knowingly received and appreciated benefits at the expense and to the detriment of Plaintiff and the Class.

73. Defendant's receipt of monies from Plaintiff and the Class allowed it to utilize those monies for its own purposes, without expending resources to perform its obligation under the contract.

74. Defendant appreciates or has knowledge of that benefit.

75. Under principles of equity and good conscience, Defendant should not be permitted to retain the monies belonging to Plaintiff and the Class that were paid to Defendant, and that Defendant unjustly received as a result of their misconduct alleged herein.

WHEREFORE, Plaintiff, Matthew Stockman, on his own behalf and on behalf of the Class, asks that the Court enter a judgment in his favor and against the Defendant as follows:

- (a) Certifying this case as a class action, designating Plaintiff Matthew Stockman as Class Representative and his attorneys as Class Counsel;
- (b) Declaring GrubHub's Agreements with Plaintiff and the Class void and granting such injunctive release that is necessary to protect the Plaintiff and Class;
- (c) Awarding actual damages to Plaintiff and the Class under 815 ILCS 505/2SS(b) in an amount to be proven at trial;
- (d) Granting equitable and injunctive relief to Plaintiff and the Class for Count V, including restitution, disgorgement and an accounting of all revenue gained by Defendant through its' unlawful conduct alleged herein;
- (e) Awarding Plaintiff and the Class reasonable costs and attorneys' fees;
- (f) Awarding Plaintiff and the Class pre- and post-judgment interest; and
- (g) Granting such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiff demands trial by jury.

By: /s/Holly R. McCurdy
One of Plaintiff's Attorneys

Holly McCurdy
Celetha Chatman
Michael Wood
Community Lawyers Group. Ltd.
73 W. Monroe Street, Suite 514
Chicago, IL 60603
Ph: (312)757-1880
Fx: (312)265-3227
Attorney No. 60070