

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA

a municipal corporation
441 4th Street, N.W.
Washington, D.C. 20001,

Plaintiff,

v.

DOORDASH, INC.

901 Market Street
San Francisco, CA 94103

Serve on:

REGISTERED AGENT

SOLUTIONS, INC.,

Registered Agent

1100 H Street N.W.

Suite 840

Washington, D.C. 20005

Defendant.

Case No.:

COMPLAINT FOR VIOLATIONS OF THE CONSUMER PROTECTION
PROCEDURES ACT

Plaintiff the District of Columbia (“District”), through the Office of the Attorney General, brings this action against Defendant DoorDash, Inc. (“DoorDash”) for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.* In support of its claims, the District states as follows:

INTRODUCTION

1. This case seeks relief from DoorDash’s deceptive trade practices that were in place from approximately July 2017 until at least September 2019 (the “relevant time period”). DoorDash misled consumers to believe that they were using DoorDash’s online delivery service

to tip the company's workers who delivered their food. Instead, the "tip" largely went to subsidize DoorDash's agreed payment to the worker and almost never served to increase that payment amount.

2. DoorDash is a food delivery company valued at nearly \$13 billion. DoorDash is an online platform whose business involves connecting consumers (who place food delivery orders) with workers (who deliver food to the consumers). DoorDash maintains a consumer and worker base in Washington, D.C. ("D.C.") numbering well into the tens of thousands. DoorDash calls its delivery workers—all of whom it classifies as independent contractors—"Dashers."

3. Consumers place delivery orders through DoorDash's mobile application or website (www.doordash.com). After the consumer places their order, the consumer enters a "checkout screenflow," where they receive an order subtotal, as well as the option to tip the Dasher who will perform the delivery. The consumer is presented with a menu of discrete tip amounts, as well as an option to enter a customized tip. While the tip options presented vary depending on the size of the order, a default tip amount is preselected. After confirming their tip selection, the consumer places their order.

4. Upon receiving a consumer order, DoorDash presents it to a nearby Dasher through the DoorDash mobile application, along with an approximate delivery route and a limited time to accept or decline the job. During the relevant time period, DoorDash also provided the Dasher with a "Guaranteed Amount," which was shown to the Dasher before they accepted or declined the job. The Guaranteed Amount was set by DoorDash and informed the Dasher the minimum amount they would earn if they accepted the job. If the Dasher accepted and successfully completed the delivery, they were paid at least the Guaranteed Amount. If the Dasher declined the delivery, it would be offered to other Dashers until it was accepted.

5. Any reasonable consumer would have expected that the “tip” they added to the delivery charge through the DoorDash checkout screenflow would be provided to the Dasher on top of the payment promised by DoorDash for the delivery. But during the relevant time period, that was not the case. Instead, DoorDash used consumer tips to subsidize the Guaranteed Amount payment it promised to Dashers.

6. During the relevant time period, DoorDash’s payment model for all orders was that it would pay \$1 plus the remainder of the Guaranteed Amount not covered by the consumer’s tip. Take, for example, a job where DoorDash set the Guaranteed Amount at \$10. If a consumer tipped \$0, DoorDash would pay \$10 (\$1 + \$9 remainder). If a consumer tipped \$9, DoorDash would pay \$1 (\$1 + \$0 remainder). Thus, no matter where the tip was between \$0 and \$9, the Dasher would be paid the same (\$10)—the only thing the consumer’s tip changed was DoorDash’s share of the worker’s pay. Indeed, in the overwhelming majority of circumstances, the consumer’s tip had no impact on the Dasher’s actual payment.

7. Consumers using DoorDash were unlikely to know about or fully understand this payment model. While DoorDash did address the payment model in a separate FAQ webpage, its statements about the model were ambiguous, confusing, and misleading. Among other things, the FAQ webpage encouraged consumers to tip, but did not disclose that a consumer’s tip would, in the vast majority of circumstances, make no difference at all to a Dasher’s pay. In addition, the FAQ webpage was entirely separate and apart from the consumer’s checkout screenflow. As a result, a consumer placing an order would likely never encounter the FAQ.

8. On August 22, 2019, following exposure of this practice by multiple media outlets, DoorDash announced that it would change its tipping practices. *See DoorDash Blog Post, Working to Strike a Better Balance*, (Aug. 22, 2019), available at

<https://blog.doordash.com/working-to-strike-a-better-balance-e1f66c76fca1>. However, DoorDash did not provide any restitution for consumers who had been misled by DoorDash's deceptive tipping practices. Nor did it provide any relief to workers who had their tips taken by DoorDash to subsidize its business.

9. The District brings this case to permanently enjoin this deceptive trade practice and secure appropriate restitution and other relief.

JURISDICTION

10. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921 and 28-3909.

11. This Court has personal jurisdiction over Defendant DoorDash pursuant to D.C. Code § 13-423(a).

PARTIES

12. Plaintiff the District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government for the United States. The District brings this action 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 is specifically authorized to enforce the District's consumer protection laws, including the CPPA.

13. Defendant DoorDash, Inc. is a Delaware corporation with its headquarters and principal place of business at 901 Market Street, San Francisco, CA 94103. DoorDash provides food delivery services to consumers in Washington, D.C.

FACTS

A. DoorDash's Business in Washington, D.C.

14. DoorDash is an on-demand food delivery company. DoorDash works by matching two types of users with one another: (1) consumers (who pay DoorDash to place delivery orders) and (2) workers (who DoorDash pays to deliver those orders).

15. In order to use DoorDash's services, consumers register for a DoorDash account by providing the company with their name, email address, and phone number. Once a consumer is logged into their account, they can place a delivery order with numerous local restaurants through DoorDash's website and mobile application.

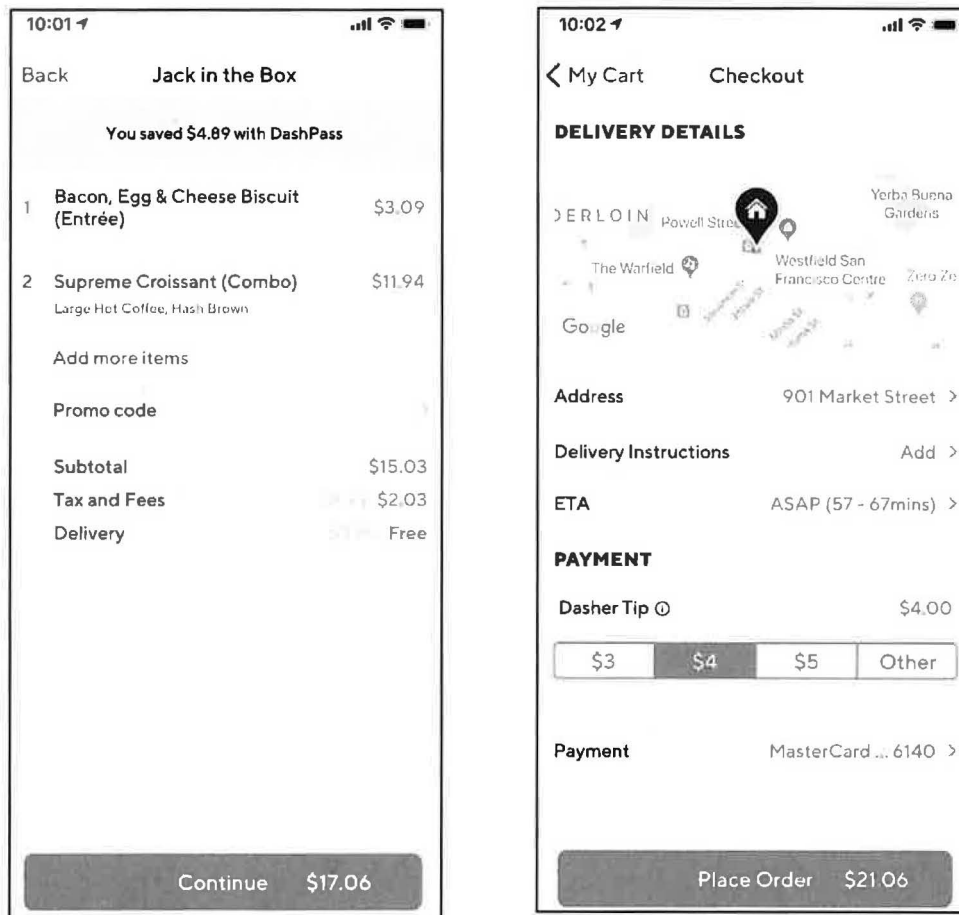
16. DoorDash calls its workers "Dashers." A prospective Dasher also registers with DoorDash by providing their email, phone number, and zip code. After clearing a background check, Dashers are able to begin delivering orders for the company. DoorDash classifies its Dashers as independent contractors and pays them on a weekly basis.

17. DoorDash has operated in D.C. since 2015. The company currently maintains a consumer and Dasher base operating in D.C. that numbers well into the tens of thousands. On a weekly basis, DoorDash receives thousands of delivery orders in D.C.

B. DoorDash's Dasher Payment Model During the Relevant Time Period

18. Throughout the relevant time period, DoorDash employed a payment model that subsidized the company's payments to Dashers with consumer tips.

19. Under this model, a consumer first placed a delivery order. This process involved a two-screen checkout screenflow. First, DoorDash presented the consumer with a subtotal for the order that included the cost of food, as well as taxes and a service fee, and an option to “Continue.” After clicking “Continue,” DoorDash presented the consumer with a “Delivery Details” page that allowed the consumer to confirm the delivery address and estimated time of arrival, and also included an option to add a “Dasher Tip.” An example of how this two-screen checkout screenflow appeared to consumers on DoorDash’s mobile application is provided below.



20. The options presented for the Dasher Tip varied depending on the size of the order. However, in general, the consumer was provided with several discrete options either in

dollars (i.e., \$3, \$4, \$5) or as a percentage of the total amount (i.e., 10%, 15%, 20%). Consumers were also provided with an “Other” option to enter a customized tip amount. DoorDash defaulted the tip to the middle amount.

21. If a consumer selected the “information” icon next to the “Dasher Tip,” a pop-up window appeared informing the consumer that, “Tip is [selected amount] on your [total amount] order (subtotal & service fee). **All of your tip goes to your dasher.**” (emphasis added).

22. A consumer confirmed their order by clicking the “Place Order” button.

23. Next, DoorDash matched the placed order with a Dasher by presenting a nearby Dasher with an offer to deliver the order. This offer was presented to the Dasher through the DoorDash application and included a map showing the delivery route and distance, a time to complete the delivery, a summary of the items to be delivered, and a “Guaranteed Amount” dollar amount for completing the delivery. The Dasher had a limited time in which to accept or decline the offer.

24. The “Guaranteed Amount” provided the Dasher with the minimum amount they would earn for making the delivery. DoorDash calculated the Guaranteed Amount using a variety of factors, including the size of the order, the projected delivery distance, and the projected wait time at the restaurant.

25. Under DoorDash’s payment model, DoorDash paid out (a) \$1 and (b) any remainder toward the Guaranteed Amount after deducting the consumer’s tip. DoorDash’s share of the Dasher’s Guaranteed Amount thus fluctuated depending on the consumer tip.

26. Take, for example, a Dasher who accepted a job with a Guaranteed Amount of \$10:

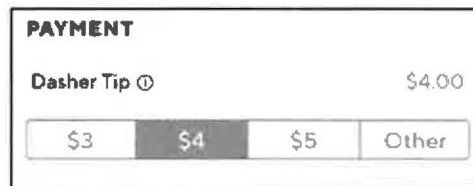
- a. If a consumer tipped \$0, DoorDash would pay \$10 (\$1 + \$9 remainder). The Dasher was paid \$10.
- b. If a consumer tipped \$3, DoorDash would pay \$7 (\$1 + \$6 remainder). The Dasher was paid \$10.
- c. If a consumer tipped \$6, DoorDash would pay \$4 (\$1 + \$3 remainder). The Dasher was paid \$10.
- d. If a consumer tipped \$9, DoorDash would pay \$1 (\$1 + \$0 remainder). The Dasher was paid \$10.
- e. If a consumer tipped \$10, DoorDash would pay \$1 (\$1 + \$0 remainder). The Dasher was paid \$11.

27. Thus, for the vast majority of orders, the consumer's tip made no difference at all to the Dasher's pay. As seen in the prior example involving a \$10 Guaranteed Amount, any tip amount a consumer chose between \$0 and \$9 would not affect the Dasher's pay—for any tip amount in that range, the Dasher would be paid \$10. Only when the consumer chose to tip over \$9 would the Dasher's pay increase above \$10.

28. Put another way, DoorDash set the Dasher's pay for each job (the Guaranteed Amount) and then used the consumer's tip, which DoorDash defaulted to a set amount, to subsidize the company's share of that pay.

29. This practice was deceptive, as any reasonable consumer would have expected that the amount they chose to tip would increase a worker's pay and be provided to workers on top of DoorDash's promised payment.

30. This deception was compounded by how DoorDash presented tip options to consumers. As shown in the below screenshot excerpted from the checkout screenflow shown in Paragraph 19, by presenting tip options to consumers in an increasing sequence (\$3, \$4, and \$5), a reasonable consumer would have expected that selecting a higher tip amount would increase the payment to Dashers. But, in the vast majority of orders, regardless of the tip chosen by the consumer from the options presented by DoorDash, the Dasher received the same payment amount. In other words, regardless of whether a consumer tipped \$3, \$4, or \$5 in the example below, the worker’s payment in almost all cases did not change. The only beneficiary of higher tips in these circumstances was DoorDash—the more the consumer tipped, the less DoorDash had to pay to its Dashers.



31. While DoorDash made some disclosures during the relevant time period about its payment model to consumers in an FAQ webpage, they were ambiguous, confusing, and misleading. For example, DoorDash addressed its payment model on a webpage titled, “Should I tip my Dasher?” In responding to that question, DoorDash disclosed the following to consumers:

In general, we recommend you tip your Dasher and Dashers always receive 100% of tips.

Dashers are independent contractors who work hard to provide you with a great delivery experience. We encourage you to tip an amount that you believe is fair to thank your Dasher. Standard tipping ranges are similar to those of the broader service industry. We provide a suggested tip amount, though you’re welcome to adjust the percentage or specify the exact dollar amount you’d like to leave for your Dasher.

Here's how Dasher pay is calculated. Dashers are shown a guaranteed amount that they will earn when they are offered a delivery. In addition to 100% of the tip, Dashers will always receive at least \$1 from DoorDash. Where the sum of \$1 plus tip is less than the guaranteed amount, DoorDash will provide a pay boost to make sure the Dasher receives the guaranteed amount. Where that sum is more than the guaranteed amount, the Dasher keeps the extra amount.

Tips can be entered on the checkout page prior to completing your order. If you'd like to adjust your tip after you place your order, please visit the Delivery Help section and we'll adjust the tip for you.

32. This FAQ was ambiguous, confusing, and misleading because it encouraged consumers to tip, but did not disclose that a consumer's tip would, in the vast majority of circumstances, make no difference at all to a Dasher's pay and would only go toward subsidizing DoorDash's share of Dasher pay. In addition, DoorDash's representations to consumers that Dashers would receive "100% of the [consumer's] tip" was also misleading because it contravened a reasonable consumer's understanding that a tip would be provided on top of DoorDash's payment to the Dasher and it implied to consumers that their choice of tip would affect Dasher pay when in reality, this was rarely the case.

33. In addition, this FAQ disclosure was located on a webpage that consumers would be unlikely to see, entirely separate from the checkout screenflow that consumers used to place their orders. It was thus insufficiently clear and conspicuous, especially when considering how DoorDash's payment model contravened a reasonable consumer's expectations that tips would be provided to the Dasher on top of the payment promised by DoorDash and that generally, an increased tip would increase a Dasher's pay.

34. In effect, DoorDash's deceptive payment model allowed it to significantly reduce its labor costs by using consumer tips (which DoorDash defaulted to a positive value) to subsidize the company's share of the Guaranteed Amount.

35. These cost savings were significant. Over the course of the two-year relevant time period DoorDash had this policy in place, consumers in D.C. paid millions of dollars in tips that were used to subsidize DoorDash's payments to Dashers.

36. Had DoorDash adequately disclosed its payment model to consumers and the fact that tip amounts would rarely have an impact on Dasher pay, this understanding would have significantly affected consumers' tipping decisions.

C. DoorDash's Changes to its Tipping Practices

37. The Office of the Attorney General opened an investigation of DoorDash's tipping practices in March 2019. Five months later, after multiple media outlets published reports exposing DoorDash's tipping practices, DoorDash announced changes to its tipping practices on August 22, 2019. Those changes were implemented in September 2019. However, DoorDash has not provide any restitution to consumers who were misled by DoorDash's deceptive tipping practices throughout the relevant time period. Nor has DoorDash committed to making workers whole who had their tips taken by DoorDash to subsidize its payments to Dashers.

Count I: Violations of the Consumer Protection Procedures Act

38. The District incorporates the allegations of paragraphs 1 through 37 into this Count.

39. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

40. The services that DoorDash provides consumers are for personal, household, or family purposes and, therefore, are consumer goods and services.

41. DoorDash, in the ordinary course of business, supplies consumer goods and services and, therefore, is a merchant under the CPPA.

42. DoorDash users receive consumer goods and services in the form of food delivery services from DoorDash and are therefore consumers under the CPPA.

43. The CPPA prohibits unfair and deceptive trade practices in connection with the offer, sale, and supply of consumer goods and services.

44. During the relevant time period, DoorDash's deceptive payment model constituted a deceptive and unfair trade practice that violated D.C. Code § 28-3904.

45. During the relevant time period, DoorDash made misrepresentations to consumers in their checkout screenflow that consumers could "tip" their Dashers, commonly understood as an amount paid directly to the worker on top of any agreed payment by the employing company, that "All of your [the consumer's] tip goes to your dasher", and that consumer tips would impact Dasher pay. These misrepresentations had the tendency to mislead and were unfair and deceptive trade practices in violation of D.C. Code § 28-3904(e).

46. During the relevant time period, DoorDash's failure to disclose to consumers that their tips, in the vast majority of cases, did not change Dasher pay and subsidized DoorDash's share of payments to Dashers, was a failure to state material facts that had the tendency to mislead and were unfair and deceptive trade practices in violation of D.C. Code § 28-3904(f).

47. During the relevant time period, DoorDash's failure to adequately explain to consumers that their tips would rarely impact Dasher pay, as well as its representations, both express and implied, that 100% of tips would go to workers and that consumer tips would impact Dasher pay, constituted ambiguities as to material facts that had the tendency to mislead and were unfair and deceptive trade practices in violation of D.C. Code § 28-3904(f-1).

Prayer for Relief

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendant DoorDash as follows:

- (a) Permanently enjoin Defendant, pursuant to D.C. Code § 28-3909(a), from violating the CPPA;
- (b) Award such relief as the Court finds necessary to redress injury resulting from Defendant's violations of the CPPA, including disgorging monies from Defendant based on their unlawful conduct and/or requiring Defendant to pay damages and restitution;
- (c) Award civil penalties in an amount to be proven at trial and as authorized per violation of the CPPA pursuant to D.C. Code § 28-3909(b); and
- (d) Award the District the costs of this action and reasonable attorney's fees pursuant to D.C. Code § 28-3909(b); and grant such further relief as the Court deems just and proper.

Jury Demand

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Dated: November 19, 2019

Respectfully submitted,

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