

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**TIFFIN EPS, LLC and TIFFIN MOUNT
AIRY, LLC**, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

GRUBHUB INC.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Tiffin EPS, LLC and Tiffin Mount Airy, LLC (“Plaintiffs”), by and through their undersigned counsel, bring this class action on behalf of themselves and a proposed class of all others similarly situated, against Defendant Grubhub Inc. (“Grubhub”). Plaintiffs make the following allegations based upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation undertaken by their counsel of the contracts at issue, Grubhub financial records, public records, Grubhub’s filings with the Securities and Exchange Commission (“SEC”), and online postings and articles.

I. NATURE OF THE CASE

1. For at least seven years, if not longer, Grubhub has been withholding commissions for sham telephone food orders, depriving more than 80,000 restaurants of revenues and profits that rightfully belong to them.

2. While Grubhub boasts that it is “the leading online and mobile platform” for restaurant takeout orders and brags that by using the platform “diners do not need to place their orders over the phone,” Grubhub has nevertheless been charging restaurants commissions on

telephone calls, regardless of whether those calls were actually made to place orders for takeout. Grubhub has done this, even though the restaurants— *not Grubhub*— take the telephone orders, process them, and prepare the food.

3. Moreover, Grubhub charges these commissions without verifying whether the calls generated actual food orders and has instead relied solely on the length of the call to justify its withholding of revenues and profits that belong to the restaurants—not Grubhub.

4. In fact, Grubhub has admitted that restaurants “may have been incorrectly charged” for these sham telephone orders.

5. Grubhub’s wrongful conduct includes: (1) failing to disclose in its standard form contracts that Grubhub does not take telephone orders and that instead it issues a new telephone number per restaurant that is advertised on Grubhub’s microsite and, when dialed, Grubhub redirects the call to the restaurant itself and records the call; (2) misrepresenting that commissions will only be charged on actual food and beverage orders; (3) failing to disclose in its standard form contract Grubhub’s method, if any, for determining which phone calls generate actual food and beverage orders; (4) failing to disclose that Grubhub does not undertake any analysis to determine which telephone calls actually result in food and beverage orders before charging commissions for them; and (5) misrepresenting that commissions are being charged for orders placed through GrubHub.com and generated by Grubhub.

6. Grubhub’s actions, and failure to act when required, have caused Plaintiffs and tens of thousands of other restaurants across the country to suffer harm, including but not limited to lost profits in the tens of millions of dollars over the past seven years.

7. Plaintiffs seek to remedy these harms and prevent their future occurrence, individually and on behalf of themselves and a proposed class of all other similarly situated

consumers who were wrongfully charged for telephone orders by Grubhub. Plaintiffs assert claims for themselves and on behalf of a nationwide class of consumers for Grubhub's (1) breach of contract, (2) conversion, and (3) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act.

8. Plaintiffs seek to recover, for themselves and a proposed class of all others similarly situated, actual and statutory damages, injunctive relief, restitution, disgorgement, costs, and reasonable attorneys' fees.

II. JURISDICTION AND VENUE

9. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2) because: (i) there are 100 or more members of the Class; (ii) the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; and (iii) at least one member of the Class is a citizen of a State different from Grubhub.

10. This Court has personal jurisdiction over Grubhub because Grubhub is authorized to do business and regularly conducts business throughout the United States, including Pennsylvania.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District, Grubhub is authorized to conduct business in this District, and Grubhub regularly conducts and transacts business in this District and is therefore subject to personal jurisdiction in this District.

III. THE PARTIES

12. Tiffin EPS, LLC is a Pennsylvania Limited Liability Company with its principal place of business located at 8080 Old York Road, Elkins Park, Pennsylvania 19027 ("**Tiffin Elkins Park**"). Tiffin Elkins Park owns and operates a restaurant, Tiffin Indian Cuisine, at that location. Tiffin Elkins Park was injured as a result of Grubhub's conduct described herein.

13. Tiffin Mount Airy, LLC is a Pennsylvania Limited Liability Company with its principal place of business located at 7105 Emlen Street, Philadelphia, Pennsylvania 19119 (“**Tiffin Mount Airy**”). Tiffin Mount Airy owns and operates a restaurant, Tiffin Indian Cuisine, at that location. Tiffin Mount Airy was injured as a result of Grubhub’s conduct described herein.

14. Grubhub Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 111 W. Washington Street, Suite 2100, Chicago, Illinois 60602.

IV. FACTUAL BACKGROUND

A. Grubhub’s Business Model And Ordering Platform

15. Grubhub considers itself to be “the leading online and mobile platform for restaurant pick-up and delivery orders, which the Company refers to as takeout.” Grubhub’s Form 10-K, dated February 28, 2018, at 3 [hereinafter, “2018 Form 10-K”].¹ Grubhub uses its platform to connect more than 80,000 restaurants with diners in more than 1,600 cities across the United States. *Id.* Grubhub contends that its “powerful two-sided network” creates enhanced value for both diners and restaurants. *Id.*

1. Grubhub’s Service To Diners

16. With respect to diners, Grubhub contends that it “makes takeout accessible, simple and enjoyable, enabling them to discover new restaurants and accurately and easily place their orders anytime and from anywhere.” *Id.* at 5.

17. Grubhub’s platform helps diners search for and locate local restaurants and place food orders with those restaurants “from any internet-connected device.” *Id.* at 3. Grubhub

¹ Grubhub’s Form 10-K, dated February 28, 2018, is incorporated by reference as if fully set forth herein.

“generates revenues primarily when diners place an order on its platform.” *Id.* Indeed, the number of diners using Grubhub’s platform “is a key revenue driver.” *Id.* at 29.

18. Simply put, a hungry diner visits Grubhub’s ordering platform—either the website or the mobile app—and searches for restaurants according to various parameters, such as type of food or location. The diner can then browse the restaurant’s menu and place an order for takeout via Grubhub’s platform. Grubhub processes the order and transmits it to the restaurant to be fulfilled. The restaurant prepares the food and delivers it to the diner, though Grubhub offers delivery services as well.

19. Grubhub boasts that by using the platform, “diners do not need to place their orders over the phone” which allows diners to order food “without having to talk to a distracted order-taker in an already error-prone process.” *Id.* at 5.

20. As of December 31, 2017, Grubhub claimed to have 14.5 million “active diners” and more than 334,000 “daily average grubs.” *Id.*

2. Grubhub’s Service To Restaurants

21. For restaurants, Grubhub contends that it provides them “with more orders, helps them serve diners better, facilitates delivery logistics in many markets, and enables them to improve the efficiency of their takeout business.” *Id.* at 4-5.

22. Diners use Grubhub’s platform to place takeout orders with restaurants that have enlisted Grubhub’s services. In turn, restaurants pay a commission on food orders that are processed through Grubhub’s platform. *Id.* at 3. Grubhub contends that it only gets paid on food orders it generates for restaurants that use its services. *Id.*

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