

**IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA
FIRST JUDICIAL DISTRICT
CIVIL ACTION - EQUITY**

COMMONWEALTH OF PENNSYLVANIA BY Attorney General JOSH SHAPIRO	:	
	:	
Plaintiff,	:	November _____ Term, 2022
	:	
v.	:	Case No. <u>221101888</u>
	:	
GRUBHUB HOLDINGS INC. and GRUBHUB INC.	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this ____ day of _____, 2022, the attached Consent Petition for Final Decree, agreed to by the Plaintiff, Commonwealth of Pennsylvania, and Defendants, Grubhub Holdings Inc. and Grubhub Inc., is hereby entered as the **ORDER** and **FINAL DECREE** of this Court.

BY THE COURT:

J

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GRUBHUB HOLDINGS INC. and GRUBHUB INC.	:	
	:	
Defendants.	:	

**CONSENT PETITION FOR FINAL DECREE BETWEEN
COMMONWEALTH OF PENNSYLVANIA AND
DEFENDANTS GRUBHUB HOLDINGS INC. AND GRUBHUB INC.**

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Josh Shapiro (“Plaintiff” or “Commonwealth”), which initiated an action by filing a Complaint in the Court of Common Pleas of Philadelphia County (“Complaint”), as captioned above. The Complaint alleged violations by Defendants Grubhub Holdings Inc. and Grubhub Inc.

(“Grubhub” and/or collectively, “Defendants”) of the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* (“*Consumer Protection Law*”) arising from Defendants’ engaging in trade or commerce within the Commonwealth of Pennsylvania, including in Philadelphia, by accepting food orders from Consumers, communicating the food orders to restaurants, and, for certain of the orders, arranging for third party delivery partners to deliver the food from the restaurants to the Consumers.

I. PARTIES

A. The Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro, with offices located at 1600 Arch Street, Third Floor, Philadelphia, Pennsylvania 19103 and Strawberry Square, 15th Floor, Harrisburg, Pennsylvania 17120.

B. Defendant Grubhub Inc. is a Delaware corporation with a principal place of business located at 111 W. Washington Street, Suite 2100, Chicago, Illinois 60602. Defendant Grubhub Inc. is registered with the Pennsylvania Department of State as a foreign corporation, with Entity Number 3893477.

C. Defendant Grubhub Holdings Inc. is a Delaware corporation with a principal place of business located at 111 W. Washington Street, Suite 2100, Chicago, Illinois 60602. Defendant Grubhub Holdings Inc. is registered with the Pennsylvania Department of State as a foreign corporation, with Entity Number 3893477.

II. DEFINITIONS

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

B. “**Clear and Conspicuous**” or “**Clearly and Conspicuously**”

1. 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.

2. 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. 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.

C. “**Consumer**” means any person who buys goods using the Grubhub Platform from Pennsylvania.

D. **“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.

E. **“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.

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

G. **“Grubhub Platform”** means any Grubhub website or mobile application that allows Consumers to place orders for food items from restaurants. As of the Effective Date, this includes: grubhub.com, seamless.com and the Grubhub and Seamless (Powered by Grubhub) applications.

H. **“Effective Date”** means the date the Order approving the Consent Petition is entered by the Court of Common Pleas for Philadelphia County.

I. **“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.

J. **“Online Menu”** means the version of a menu of items offered for sale published by Grubhub on the Grubhub Platform or provided to Third-Party Partners for online dissemination.

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

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

M. **“Released Parties”** means (1) Defendants, (2) their successors and assigns, (3) their past and present direct or indirect subsidiaries and affiliates (and their respective successors and assigns), and (4) each and all of the past and present principals, partners, officers, directors, supervisors, employees, stockholders and members.

N. **“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.

O. **“Third-Party Partners”** means any entity with which Grubhub has an agreement in which the entity links to the Grubhub platform to facilitate online orders and publishes restaurant information such as contact information, hours, and menus.

III. GENERAL

A. The allegations contained within the Commonwealth’s Complaint are incorporated herein by reference.

B. Defendants have executed this Consent Petition for Final Decree with the Commonwealth of Pennsylvania (“Consent Petition”) with the intent that, upon approval of the Court of Common Pleas of Philadelphia County, its provisions shall constitute the provisions of the Final Decree or Order of this Court with respect to the above-captioned matter, and should bind all Parties hereto, including but not limited to Defendants, (2) their successors and assigns, (3) their past and present direct or indirect subsidiaries and affiliates (and their respective

successors and assigns), and (4) each and all of the past and present principals, partners, officers, directors, supervisors, employees, stockholders and members.

C. The Parties enter into this Consent Petition for Final Decree (“Consent Petition”) 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 Petition 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 Petition shall not be construed or used as a waiver of any defense Grubhub may raise in any other proceeding.

D. Defendants represent that they have ceased creating and using Routing Telephone Numbers.

E. Defendants represent that they have ceased creating Microsites for Partner Restaurants, and that they never created Microsites for Place and Pay Restaurants.

F. Defendants agree by the signing of this Consent Petition to recognize and be bound by any and all obligations, liabilities, responsibilities, and encumbrances as set forth herein.

IV. INJUNCTIVE AND AFFIRMATIVE RELIEF

A. Grubhub is enjoined from violating the *Consumer Protection Law*, including but not limited to engaging in “unfair methods of competition” or “unfair or deceptive acts or

practices” which violate Section 201-3 of the *Consumer Protection Law*, as defined by Section 201-2(4)(iii), (v), and (xxi).

B. For all restaurants located in Pennsylvania, Grubhub is enjoined from publishing and charging prices that are higher than Direct Prices for items on the Grubhub Platform, unless Grubhub complies with the following condition:

1. Provides a Clear and Conspicuous disclosure on the Grubhub Platform, both on the Online Menu and at Checkout, that the prices for Pennsylvania restaurants on the Grubhub Platform may be higher than Direct Prices.

C. Grubhub shall not represent to Consumers that an offer is guaranteed to be at the “Lowest Price” unless all points of comparison for price are applicable. Grubhub may offer a “Price Match Guarantee,” or words with substantially similar meaning, if it includes a Clear and Conspicuous disclosure that explains any material limitations on the Price Match Guarantee, including which competitor prices can be used by Consumers as part of the Price Match Guarantee.

D. Grubhub will shut down all Microsites for Pennsylvania restaurants or transfer ownership of the Microsite to the restaurant.

E. Grubhub is enjoined from engaging in any deceptive conduct to Consumers which creates a likelihood of confusion or of misunderstanding related to Grubhub’s relationship with Place and Pay Restaurants, including the implication that a restaurant was endorsed Grubhub, by complying with the following condition:

1. On the Grubhub Platform, Grubhub shall provide a Clear and Conspicuous written disclosure for Pennsylvania Place and Pay Restaurants which states the following or something substantially similar: “Grubhub is not an authorized delivery service for 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.” Grubhub can meet this requirement by providing an alternative disclosure if it is expressly required by local law.

V. NOTICE

A. Within 30 days of the Effective Date, Grubhub shall provide copies of the settlement agreement to executive officers, and any and all senior management with responsibilities covering Grubhub’s Pennsylvania operations as well as to a representative of all Third Party Partners.

VI. MONETARY RELIEF

A. Grubhub shall be responsible for and shall pay to the Commonwealth the amount of One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) (“Payment”) which shall be distributed by the Commonwealth in equal amounts to the following non-profit organizations which specialize in providing food and related services to citizens in the Commonwealth of Pennsylvania in need of food assistance:

1. **Feeding Pennsylvania**, 20 Erford Road Suite 215, Lemoyne, PA 17043;
2. **Central Pennsylvania Food Bank**, 3908 Corey Road, Harrisburg, PA 17109;
3. **Greater Pittsburgh Community Food Bank**, 1 N. Linden Street, Duquesne, PA 15110;
4. **Philabundance**, 3616 S. Galloway Street, Philadelphia, PA 19148; and
5. **Greater Philadelphia Coalition Against Hunger**, 123 Chestnut St, Philadelphia, PA 19106.

B. Grubhub shall be responsible for and shall pay to the Commonwealth the amount of Three Hundred Ninety-Five and 91/100 Dollars (\$395.91) (“Costs”) which shall reimburse the Commonwealth for all costs associated with filing the Complaint and the Consent Petition.

C. Payment Terms: Upon Grubhub’s execution of the Consent Petition, Grubhub agrees to pay the Payment and Costs due under Paragraphs VI(A) and (VI)(B) above, by wire transfer, certified check, cashier’s check, or money order, made payable to the “Commonwealth of Pennsylvania, Office of Attorney General,” and forwarded to the Office of Attorney General, 1600 Arch Street, Suite 300, Philadelphia, PA 19103.

VII. MISCELLANEOUS TERMS

A. Nothing in this Consent Petition shall prevent or restrict the use of this Consent Petition by the Commonwealth in any action against Defendants for contempt or failure to comply with any provision of this Consent Petition, or in the event that Defendants are in default of any of the terms and conditions of this Consent Petition. A default on the part of Defendants shall include any default or breach by Defendants of any of the terms or requirements of this Consent Petition. Nothing in this Consent Petition shall be construed to (i) exonerate any contempt or failure to comply with any of its provisions after the Effective Date, as defined herein below; (ii) compromise or limit the Commonwealth’s authority to initiate a proceeding for any contempt or other sanctions for failure to comply; or (iii) compromise the authority of the Court of Common Pleas of Philadelphia County or any other court of competent jurisdiction to punish as contempt any violation of this Consent Petition.

B. The Effective Date of this Consent Petition shall mean the date that this Consent Petition is approved by the Court of Common Pleas of Philadelphia County and entered as the Order and Final Decree of this Court. The Defendants shall have one hundred and twenty (120)

days from the Effective Date to implement the requirements of this Final Judgment, unless a specific provision herein expressly provides for a different time period. In such a case, that express time period shall control.

C. Defendants agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Consent Petition.

D. The Commonwealth and Defendants hereby stipulate that the Order of Court to be issued pursuant to this Consent Petition for Final Decree shall act as a permanent injunction issued under Section 201-4 of the *Consumer Protection Law*, and, that breach of any of the terms of this Consent Petition or of the Order accompanying it shall be sufficient cause for the Commonwealth, by its Attorney General, to seek penalties as provided in Section 201-8 of the *Consumer Protection Law* or any other relief as the Court shall determine.

E. In the event that the Attorney General believes that Defendants are violating any provision of the Final Decree, and if in the Attorney General's sole discretion the violation does not threaten the health or safety of its citizens and does not create an emergency requiring immediate action, the Attorney General will provide Defendants written notice of any such violation. Any notice provided under this provision shall provide sufficient detail of the alleged violation so that Defendants can investigate the allegation and, if appropriate, correct it. Defendants shall have ten (10) days from receipt of the written notice to address and cure any alleged violation. Defendants shall respond in writing to the Attorney General within this ten (10) day period and identify what, if any, corrective action they have taken. The Attorney General shall not bring suit for any alleged violation of the Final Decree, unless and until the Attorney General has provided Defendants notice and the opportunity to cure under the terms of

this provision. If Defendants do adequately cure the violation, then no further penalty or sanctions shall be issued.

F. The Court of Common Pleas of Philadelphia County shall maintain jurisdiction over the subject matter of this Consent Petition and over Defendants for the purpose of enforcement of this injunction, Consent Petition and/or the Order accompanying it.

G. This Consent Petition sets forth all of the promises, covenants, agreements, conditions, and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, express or implied relating to the subject matter of this Consent Petition. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Petition that are not fully expressed herein or attached hereto. Each party specifically warrants that this Consent Petition is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

H. The parties hereto further acknowledge and agree that this Consent Petition is subject to and contingent upon this Consent Petition and/or the agreements contained herein being approved by the Court of Common Pleas of Philadelphia County and entered as a Final Decree.

I. This Consent Petition may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Final Decree may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

J. Margo Drucker, as Chief Legal Officer and Secretary of Grubhub Inc., hereby states that she is authorized to enter into and execute this Consent Petition on behalf of the Defendants.

VIII. RELEASE

A. Plaintiff hereby releases and forever discharges the Released Parties from any and all civil claims based on, arising out of, or in any way related to the allegations in the Commonwealth'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**").

NOW THEREFORE, without trial or adjudication of the facts or law herein between the parties to this Consent Petition for Final Decree, Defendants agree to the signing of this Consent Petition and this Court hereby orders that Defendants shall be permanently enjoined from breaching any and all of the aforementioned provisions, and this Consent Petition resolves any and all civil claims under the *Consumer Protection Law* between the Commonwealth of Pennsylvania, by its Attorney General, and Defendants arising from the specific allegations in the aforementioned Complaint, except for those rights expressly reserved herein by said parties to this action.

WE HEREBY consent to this Consent Petition for Final Decree and submit the same to this Honorable Court for the making and entry of a Final Decree or Order of the Court on the dates indicated herein below.

{SIGNATURES ON THE FOLLOWING PAGE}

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

For the Plaintiff:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
Attorney General

Date: 11/21/2022

By: /s/ Sarah A. E. Frasch

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For the Defendants:

GRUBHUB HOLDINGS INC.

Date: 11 / 14 / 2022

By: Margo Drucker
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GRUBHUB INC.

Date: 11 / 14 / 2022

By: Margo Drucker
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Date: 11/16/2022

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