IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

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DISTRICT OF COLUMBIA,
a municipal corporation,
400 6th Street, N.W.
Washington, D.C. 20001,

Plaintiff,

v.

AMAZON.COM, INC.,
410 Terry Ave
Seattle, WA 98109

Serve on:
CORPORATION SERVICE COMPANY,
Registered Agent
1090 Vermont Avenue, N.W.
Washington, D.C. 20005

and

AMAZON LOGISTICS, INC.,
410 Terry Ave
Seattle, WA 98109

Serve on:
CORPORATION SERVICE COMPANY,
Registered Agent
1090 Vermont Avenue, N.W.
Washington, D.C. 20005

Defendants.
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<td>
Case No.:

COMPLAINT

JURY TRIAL DEMANDED
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<u>COMPLAINT</u>

When a worker is caught stealing from their employer, they face restitution and punishment. Restitution—repayment of the amount stolen—makes the victim whole. Punishment—like community service, fines, or jail time—deters future theft. Corporations should not be treated more leniently than people: when a company is caught stealing from its workers, it is not enough for the company to repay the amount stolen. Stealing from workers is theft, and significant penalties are necessary to strongly disincentivize this unlawful conduct.

For years, Defendants Amazon.com, Inc. and Amazon Logistics, Inc. (collectively, "Amazon") solicited tips from its customers who placed orders for delivery (here, "consumers") by representing, as a reasonable consumer would assume, that each dollar tipped would increase delivery driver compensation. In fact, Amazon diverted a significant portion of those so-called tips to subsidize its own labor costs without actually increasing driver compensation by the amount tipped. While Amazon later paid single-damages restitution for this conduct as part of a settlement with the Federal Trade Commission ("FTC"), multiple FTC Commissioners noted that Amazon's "outrageous" conduct would have warranted more than just restitution if the agency possessed authority to award penalties. Amazon has thus far escaped any other consequences. Plaintiff the District of Columbia ("District"), through its Office of the Attorney General, brings this enforcement action to hold Amazon to full account for its unlawful actions, and to send a clear message to employers not to divert tips for their own benefit.

INTRODUCTION

1. This case is brought under the District's Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, *et seq.*, to obtain relief from Amazon's deceptive trade practices that were in place from late 2016 to September 2019 (the "relevant time period"). During the relevant time period, Amazon misled consumers to believe that they were paying tips directly to their delivery drivers through Amazon's online delivery portal, and that those tips were increasing driver pay by the consumer-designated amounts. Instead, Amazon was using

those consumer “tips” to pay a portion of the amounts Amazon had already promised its drivers—thereby subsidizing Amazon’s labor costs.

2. Amazon offers different products for purchase, including books, electronics, clothing, groceries, household items, and other items that consumers can purchase through Amazon’s website and smartphone application.

3. In 2015, Amazon launched its Amazon Flex service, offering same- and next-day deliveries of some of the products sold through its website and smartphone applications. These orders were fulfilled by a fleet of Amazon Flex drivers (“drivers”), who could browse and select which orders to deliver based on advertised payment amounts set by Amazon.

4. During check-out for Amazon Flex orders, Amazon solicited tips from consumers. Amazon presented consumers with a preselected default tip and represented to consumers that 100% of the tip amount would be passed on to the driver.

5. At the beginning, that was true. In 2015, for example, when a consumer tipped $5.00, the driver received $5.00 in additional compensation beyond the amount that Amazon had already committed to paying the driver for the delivery.

6. But starting in late 2016, that changed. Amazon adjusted its driver payment model so that a large portion of the tips solicited from consumers did not actually serve to increase driver compensation. Between 2016 and 2019, Amazon used more than $1 million in “tips” from D.C. consumers to subsidize its own labor costs, instead of increasing driver pay by the consumer-designated tip amounts. Even after this change, Amazon continued to represent to consumers that 100% of “tips” would go to the drivers. In reality, Amazon was using those “tips” to pay a portion of what it had already promised to the drivers.

7. On August 22, 2019, following exposure of this practice by multiple media outlets and the issuance of a Civil Investigative Demand by the Federal Trade Commission ("FTC"), Amazon announced that it would cease using consumer tips to subsidize driver payments. And while Amazon later paid restitution to *drivers* as part of an FTC settlement, it has not paid any civil penalties in connection with the misrepresentations and omissions it made to *consumers* with respect to these deceptive tipping practices.

8. The District brings this case to ask the Court to declare that these deceptive trade practices violated the CPPA, to enjoin any further violations of the CPPA, and to assess civil penalties commensurate with Amazon's misconduct in order to deter Amazon and other merchants from soliciting tip money from D.C. consumers to subsidize their own labor costs.

JURISDICTION

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

10. This Court has personal jurisdiction over Defendants Amazon.com, Inc. and Amazon Logistics, Inc. pursuant to D.C. Code § 13-423(a).

PARTIES

11. 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 of 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 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.

12. Defendants Amazon.com, Inc. and Amazon Logistics, Inc. are Delaware corporations with their headquarters and principal places of business at 410 Terry Ave, Seattle, WA 98109. Defendants provide consumers in Washington, D.C. with the option to purchase products and have those products delivered, including through the Amazon Flex program.

FACTS

A. Amazon Flex Operated in Washington, D.C.

13. Amazon has operated in D.C. since approximately 2000 and has operated its Amazon Flex service in D.C. since approximately 2015. The company currently serves tens of thousands of consumers in D.C. On a weekly basis, Amazon receives thousands of delivery orders from consumers in D.C.

14. Amazon offers consumers the option to purchase products and have those products delivered to their homes.

15. To use Amazon's services, consumers register for an Amazon account by providing the company with their name, address, email address, and phone number. Once consumers are logged into their accounts, they can place an order through Amazon's website (www.amazon.com) or smartphone app.

16. In 2015, Amazon began offering consumers the opportunity to have Amazon's products delivered through the Amazon Flex service, which provided same- and next-day delivery of products sold through Amazon as well as food from local restaurants.

17. Amazon Flex drivers sign up to drive for Amazon by providing their email, phone number, and zip code. Amazon advertises that anyone who is over twenty-one years old and has both a phone and car can become a driver. Amazon classifies its drivers as independent contractors. As such, drivers do not receive basic employment protections including minimum

wage, overtime, and paid sick leave, and drivers must pay out of pocket for all expenses, including gas, insurance, phone bills, vehicle maintenance, and more.

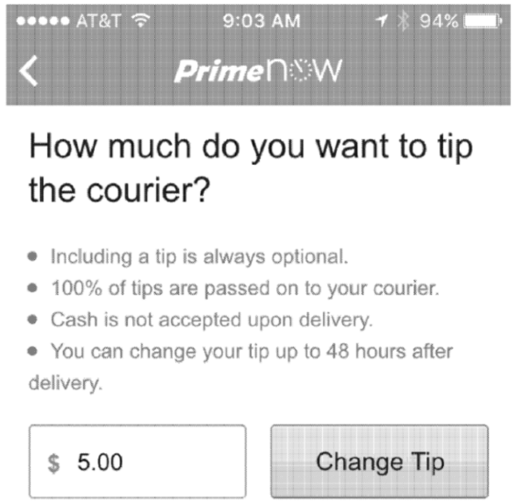
18. Amazon Flex drivers—whom Amazon calls “Delivery Partners”—deliver a variety of products for Amazon, including products ordered through Amazon’s website, along with other products and services provided by Amazon, including Prime Now, Amazon Fresh, and Amazon Restaurants. For many of those orders, drivers were eligible to receive tips.

19. Upon receiving a consumer order, Amazon lists the order on a mobile app provided to drivers. Before choosing a delivery order to complete, drivers can see the payment amount that Amazon is offering for those deliveries and whether the order was one in which the consumer was permitted to add a tip.

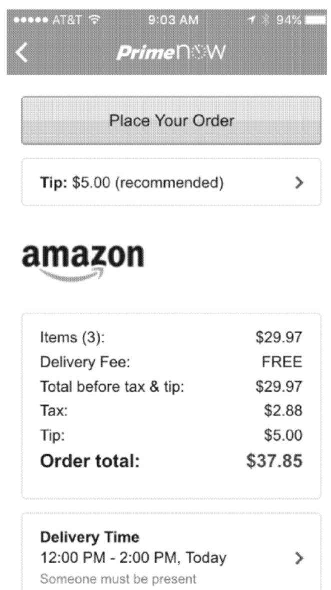
B. From 2016 to 2019, Amazon Solicited “Tips” from Consumers that Were Not Tips, But Instead Subsidized the Company’s Labor Costs.

20. To place an order through Amazon Flex, consumers proceeded through several screens on the website or app. Consumers first selected the product(s) they wanted delivered. Next, Amazon presented the consumer with a subtotal for the order that included the cost of the product(s), as well as taxes, a service fee (if applicable), and a recommended tip amount that was set by default. That page also included a button to “Place Your Order.”

21. When a consumer selected the box containing the recommended tip amount, Amazon permitted consumers to choose a different tip amount and represented that “100% of tips are passed on to your courier.” Amazon also represented that drivers could not accept cash tips upon delivery, meaning consumers could only leave a tip or change the amount of the tip through Amazon’s online ordering process.



22. As shown below, consumers confirmed their orders by clicking the "Place Your Order" button on a screen that again listed the selected "tip" amount.



Amazon Continued to Solicit "Tips" from Consumers

23. From 2015 through late 2016, Amazon paid Amazon Flex drivers the full amount it promised for completing the deliveries plus 100% of consumer tips.

24. Starting in late 2016, Amazon changed its policy and implemented a payment model that often used these "tips" to subsidize the company's own labor costs. Amazon referred

to this new policy as the "Variable Base Pay" model.

25. After implementing the Variable Base Pay model, Amazon continued to solicit "tips" from consumers just as they had before this change.

Amazon Pocketed the "Tips" in Order to Offset its Own Costs

26. Amazon batched orders into "delivery blocks" that it presented to Amazon Flex drivers. Delivery blocks contained several orders that had to be completed by a driver within a certain period of time. A driver could view delivery blocks in their area along with the payment amount Amazon was offering for those delivery blocks.

27. Under Amazon's payment model during the relevant time period, Amazon set a secret Variable Base Pay amount for each delivery block. That Variable Base Pay was the minimum amount that Amazon would pay the driver for making the deliveries and was known only internally by Amazon.

28. Meanwhile, Amazon advertised payments to drivers through its driver app. Those payments often included a range, the lower end of which—referred to by Amazon as the "Guaranteed Minimum Payment"—almost always exceeded the Variable Base Pay that Amazon had already decided to pay for the delivery.

29. Amazon used "tips" to make up the difference between the amount Amazon had secretly decided to pay the driver (the Variable Base Pay) and the amount that Amazon had advertised to the driver (the Guaranteed Minimum Payment). Amazon's share of the driver's payment for completing the delivery therefore fluctuated depending on the amount of the tip a consumer decided to leave for a driver.

30. The mechanics of Amazon's compensation model during the relevant time period are illustrated by the following example of a driver accepting a job with a Guaranteed Minimum

Payment of $30, where Amazon had calculated the secret Variable Base Pay of the job (the amount Amazon would pay) to be $15:

a. If the consumers in the delivery block “tipped” $0, Amazon would pay $30 ($15 + $15 remainder). The Amazon Flex driver was paid $30.

b. If the consumers in the delivery block “tipped” $5, Amazon would pay $25 ($15 + $10 remainder). The Amazon Flex driver was paid $30.

c. If the consumers in the delivery block “tipped” $10, Amazon would pay $20 ($15 + $5 remainder). The Amazon Flex driver was paid $30.

d. If the consumers in the delivery block “tipped” $15, Amazon would pay $15 ($15 + $0 remainder). The Amazon Flex driver was paid $30.

e. If the consumers in the delivery block “tipped” $20, Amazon would pay $15 ($15 + $0 remainder). The Amazon Flex driver was paid $35.

f. If the consumers in the delivery block “tipped” $25, Amazon would pay $15 ($15 + $0 remainder). The Amazon Flex driver was paid $40.

31. Thus, in many cases, a consumer’s “tip” made no difference at all to the driver’s take-home pay. As illustrated by the example above, consumer “tips” between $0 and $15 would not affect the driver’s take-home pay, inclusive of “tips.” For “tips” in that range, the driver would be paid $30. Only when “tips” exceeded $15 would the driver’s take-home pay increase above $30.

32. Amazon set both the driver’s pay for each job (the Guaranteed Minimum Payment) and the amount Amazon would pay (the Variable Base Pay), and then Amazon used the consumer’s “tip” to subsidize the difference. Only after this would a driver receive any amount of “tip” that was left over. Neither the driver nor the consumer were aware that Amazon was doing this math behind the scenes, all to its own benefit.

C. Amazon Designed Its "Tip" Policy to Deceive Both Consumers and Amazon Flex Drivers.

33. Amazon's change in its tipping policy was deceptive because reasonable consumers would expect that the amount they chose to "tip" their drivers would be the amount by which a driver's pay actually increased. Put differently, a reasonable consumer would expect that the amount of money they left as a tip would increase driver pay rather than offsetting Amazon's own labor costs.

34. Amazon explicitly formulated its Variable Base Pay using consumer tip data through various programs created by Amazon for the purpose of increasing the dollars generated by tips to lower its cost per delivery. Indeed, as Amazon prepared to roll out its new "tip" policy, Amazon tested different default "tip" options through such projects in order to determine how it could minimize its own payment to drivers by maximizing the amount of money it was diverting from consumer "tips."

35. Amazon repeatedly told consumers, through marketing materials and at the point of sale, that 100% of tips would be passed to their delivery drivers. By allowing consumers to increase the amount of the "tip," Amazon created the impression that a larger "tip" would make for a larger payment to the driver. Instead, in many instances, only Amazon benefitted from higher "tips"—the more consumers "tipped," the less Amazon had to pay out of its own budget to drivers.

36. Amazon's change to its "tip" policy meant that a consumer's common understanding of what a tip is—an additional amount of payment to increase a worker's compensation—was no longer true for the tips they provided through Amazon. A consumer's common understanding is that the tip they provide will serve to increase worker pay by that same amount, above and beyond the base compensation negotiated by the worker with the company.

37. Amazon deliberately chose not to inform drivers of the change in its "tip" policy that occurred in late 2016 and early 2017. Instead, Amazon changed the way it displayed "tips" to drivers so that drivers could no longer see how much each consumer had provided them in "tips." This change was made, at least in part, to avoid allowing drivers to determine their base pay rate. During that same time, Amazon continued to advertise that its drivers could make more money on "tip"-eligible orders and that 100% of consumer "tips" would be passed on to drivers.

38. Amazon's change in "tip" policy decoupled the motivation behind many consumers "tips"—a reward for good service—from the amount of the "tip," because drivers could no longer see or otherwise determine the actual "tip" amount that each consumer designated. The fact that drivers could not see or determine the amount of "tip" left by consumers also functioned to obfuscate this change in policy.

39. Amazon's change in "tip" policy also helped it recruit drivers. By diverting a portion of "tips" to driver pay, Amazon could advertise higher compensation to drivers while not actually paying drivers more out of its own budget. Instead of using its own corporate coffers to pay its drivers more, Amazon encouraged consumers to provide "tips" that were actually used to pay a portion of what Amazon itself had promised to pay its drivers.

40. Despite Amazon's efforts to keep its new "tip" policy a secret, many drivers were alerted to the change because, although they were no longer able to see their tips as they had previously, they noticed a decrease in their take-home pay. Many drivers spoke directly about this phenomenon to repeat consumers, who reported having left some tip on their orders, despite the driver's surprisingly low take-home pay. This led some drivers to believe they were not receiving the full amount of "tips" provided by the consumers as Amazon had advertised they would. When hundreds of drivers contacted Amazon to ask why they were suddenly receiving

lower “tip” amounts, Amazon provided those drivers with preformulated responses from Amazon’s management that excluded any mention of the change in its “tip” policy, in order to conceal the change in policy from drivers and ultimately from the public. These responses misleadingly stated that Amazon was continuing to abide by its policy of passing on 100% of consumer “tips” to drivers.

41. Around the same time Amazon changed its “tip” policy, it also changed the way it displayed earnings to drivers: rather than showing Amazon’s payment and consumer tips separately, Amazon showed drivers one lump-sum payment.

42. This change in policy was done in furtherance of Amazon’s attempts to conceal the change to its “tip” policy.

43. Amazon employees indicated that this changed “tip” policy was a “huge PR risk” for Amazon and a “reputational tinderbox.” Nonetheless, Amazon decided that saving millions of dollars by unlawfully diverting money from consumers was worth the risk of a reputational hit and persisted with its policy of using “tips” to subsidize what Amazon had promised to pay its drivers.

44. Amazon’s understanding that the change in policy would be a “reputational tinderbox” and its attempts to conceal from drivers and consumers that its “tipping” policy had changed confirm the materiality of the representations Amazon made to consumers: had Amazon’s true policy regarding “tips” been revealed, many reasonable consumers would have chosen to stop subsidizing Amazon’s labor costs by not providing tips or, in some cases, may have stopped using Amazon altogether—a fact underscored by Amazon’s immediate cessation of the policy as soon as the reputational tinderbox they had concealed for years became public.

45. Amazon understood that reasonable consumers, in deciding how much to tip, attached importance to whether the “tip” being solicited was actually a tip to a driver (i.e., a payment that dollar-for-dollar increased the driver’s compensation) or instead a payment to the company. Amazon understood this because, among other things, it received complaints from the public about how consumers felt cheated when they found out the true nature of Amazon’s “tip” policy.

46. Amazon’s deceptive payment model allowed it to significantly reduce its labor costs by using consumer “tips,” which Amazon added by default to orders, to subsidize the company’s promised payment to drivers.

47. These cost savings were significant. In the years Amazon had this policy in place, consumers in D.C. paid millions of dollars in “tips” to reward drivers for providing a valuable service. Meanwhile, Amazon used much of those tips to save on its own operating costs, thereby deceiving both District consumers and drivers.

48. Had Amazon adequately disclosed this model to consumers, including the fact that “tips” might not always increase driver pay by the consumer-designated amount, this information would have significantly affected consumers’ tipping decisions.

D. Amazon Changed to Its Tipping Practices.

49. In May 2019, the FTC issued a Civil Investigative Demand to Amazon regarding Amazon Flex.

50. In August 2019, after multiple media outlets published reports exposing Amazon’s “tip” practices, Amazon announced changes to these practices. In so doing, Amazon stated to drivers: “For deliveries that give customers the option to tip, you always receive 100% of the tips.”

51. It is notable that Amazon maintained effectively the same messaging—that drivers receive 100% of tips—before, during, and after the implementation of its deceptive "tip" policy. That is, Amazon's messaging across its various iterations of tipping policies belied the fact that any change happened at all. When in reality, as drivers realized via lower take-home pay, things had changed dramatically.

52. Similarly, Amazon's maintained effectively the same messaging regarding tips to consumers: they continued to indicate to consumers, before, during, and after implementation of their changes to "tip" practices, that drivers would continue to receive 100% of consumer "tips."

53. Later, as part of a June 2021 settlement with the FTC, Amazon paid restitution to drivers who were harmed by Amazon's deceptive "tip" practices throughout the relevant time period. The settlement did not include any assessment of civil penalties.

Count I: Violations of the Consumer Protection Procedures Act

54. The District incorporates the allegations of Paragraphs 1 through 53 into this Count.

55. 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.

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

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

58. Amazon users receive consumer goods and services in the form of products bought through Amazon's website or smartphone application and delivered through Amazon Flex and, therefore, are consumers under the CPPA.

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

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

61. During the relevant time period, Amazon made misrepresentations to consumers that consumers could "tip" their Amazon Flex drivers. Tips are commonly understood as an amount paid by a consumer to a worker, which increase worker pay by the consumer-designated amount above and beyond any amount of compensation agreed on by the worker and the company. Amazon specifically represented that "100% of your [the consumer's] tip goes to your courier [referring to the Amazon Flex driver]." These misrepresentations had the tendency to mislead and were unfair and deceptive trade practices in violation of D.C. Code § 28-3904(e).

62. During the relevant time period, Amazon's failure to disclose to consumers that their tips often did not change Amazon Flex driver pay, but instead subsidized Amazon's share of payments to Amazon Flex drivers, 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).

63. During the relevant time period, Amazon's failure to adequately explain to consumers that some of the tips they provided would not affect Amazon Flex driver pay, as well as its representations, both express and implied, that 100% of tips would be paid to workers, 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).

RELIEF REQUESTED

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

(a) Award restitution to the extent it has not already been provided;

(b) Declare that the Defendants' conduct violated the CPPA;

(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);

(d) Enjoin Defendants from committing further violations of the CPPA;

(e) Award the District the costs of this action and reasonable attorney's fees pursuant to D.C. Code § 28-3909(b); and

(f) 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: December 6, 2022

Respectfully submitted,

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