

1 Mike Arias, Esq. (SBN 115385)
mike@aswtlawyers.com

2 Elise R. Sanguinetti (SBN 191389)
elise@aswtlawyers.com

3 Alfredo Torrijos, Esq. (SBN 222458)
alfredo@aswtlawyers.com

4 **ARIAS SANGUINETTI WANG & TORRIJOS, LLP**
5 6701 Center Drive West, 14th Floor
6 Los Angeles, California 90045
7 Tel: (310) 844-9696/ Fax: (310) 861-0168

8 Richard S. Cornfeld (To be admitted *Pro Hac Vice*)
9 rcornfeld@cornfeldlegal.com

10 Daniel Scott Levy (To be admitted *Pro Hac Vice*)
dlevy@cornfeldlegal.com

11 **LAW OFFICE OF RICHARD S. CORNFELD, LLC**
12 1010 Market Street, Suite 1645
13 St. Louis, Missouri 63101
14 Tel: (314) 241-5799 / Fax: (314) 241-5788

15 *Attorneys for Plaintiffs and the Proposed Class*

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 Jennifer Peter and Karson Theiss,
19 individually and on behalf of all others
20 similarly situated,

21 Plaintiffs,

22 vs.

23 DoorDash, Inc., a Delaware corporation,

24 Defendant.

Case No.

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Jennifer Peter and Karson Theiss (collectively, “Plaintiffs”), individually and on
2 behalf of all others similarly situated, make the following allegations based upon information and
3 belief, except as to those allegations specifically pertaining to Plaintiffs and their counsel, which
4 are based on personal knowledge. Plaintiffs bring this action for restitution, monetary damages
5 and injunctive relief against defendant DoorDash, Inc. (“DoorDash” or “Defendant”), demanding
6 a trial by jury.

7 NATURE OF THE ACTION

8 1. Plaintiffs bring this action individually and on behalf of a class and subclasses of
9 similarly situated consumers who used DoorDash’s website or app to place food-delivery orders
10 and who paid tips through its website or app. Those tips, which were made by consumers with
11 the intention that the tips benefit the drivers, were instead used by DoorDash fund its operations
12 by subsidizing the guaranteed minimum payments that DoorDash promised and owed its drivers.
13 As a result of DoorDash’s practice of using tips to assist in funding the guaranteed minimum
14 payments it owes drivers, part or all of the tips for drivers that consumers paid provided no
15 financial benefit to the driver.

16 2. DoorDash’s actions as alleged herein violate the California Unfair Competition Law
17 (“UCL”), Cal. Bus. & Prof. Code, §§ 17200, *et seq.*, the Missouri Merchandising Practices Act
18 (“MMPA”), §§ 407.010 *et seq.*, by means of unfair practices and deception, the Illinois Consumer
19 Fraud Act (“ICFA”), 815 ILCS 505/1 *et seq.*, by means of unfair practices and deception, and
20 constitute unjust enrichment under Missouri and Illinois law.

21 THE PARTIES

22 3. Plaintiff Jennifer Peter (“Plaintiff Peter”) is a resident of Madison County and a
23 citizen of the State of Illinois. In May of 2019 she used DoorDash in the State of Missouri to
24 place a food delivery order and to pay her driver a tip.

25 4. Plaintiff Karson Theiss (“Plaintiff Theiss”) is a resident of St. Clair County and a
26 citizen of the State of Illinois. Between March and August of 2019, he used DoorDash in the State
27 of Illinois to place food delivery orders and to pay his drivers tips.

28 5. On information and belief, defendant DoorDash (“Defendant” or “DoorDash”) is a

1 corporation incorporated in the State of Delaware with its principal place of business located at
2 901 Market Street, Suite 600, San Francisco, California 94103. DoorDash is registered to do
3 business in California. Its registered agent in California is Ricardo Orozco, Registered Agent
4 Solutions, Inc., 1220 S. Street, Suite 150, Sacramento, California 95811. DoorDash is also
5 registered to do business in Illinois. Its registered agent in Illinois is Registered Agent Solutions,
6 Inc., 901 S. 2nd St., Suite 201, Springfield, Illinois 62704. DoorDash is not currently registered
7 to do business in Missouri according to the Missouri Secretary of State’s website, following its
8 administrative dissolution on April 12, 2019 for failure to file a registration report.

9 JURISDICTION AND VENUE

10 6. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, because
11 this action arises under the laws of the United States. This Court has jurisdiction over this action
12 pursuant to the Class Action Fairness Act (28 U.S.C. § 1332(d)). The aggregated claims of the
13 individual class members exceed \$5,000,000, exclusive of interest and costs, at least one class
14 member is of diverse citizenship from one defendant, and there are more than 100 class members.

15 7. This Court has personal jurisdiction over DoorDash because it conducted business
16 in California and has sufficient minimum contacts with California.

17 8. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part
18 of the events or omissions giving rise to the claims occurred and/or emanated from this District,
19 as the principle place of business for DoorDash is in San Francisco, California, and because
20 DoorDash has caused harm to class members residing in this District.

21 FACTUAL ALLEGATIONS

22 **A. DoorDash’s Scheme of Using “Tips” from its Customers to Subsidize the** 23 **Guaranteed Minimum Payments That DoorDash Owes its Drivers.**

24 9. DoorDash is a self-described “technology company” that facilitates door-to-door
25 food delivery services.¹ Using DoorDash’s website or app, a consumer can place a food delivery
26 order from participating restaurants that one of DoorDash’s drivers, which it calls “Dashers,” then

27 _____
28 ¹ See “About Us,” on DoorDash’s website, available at <https://www.doordash.com/about/> (accessed September 9, 2019).

1 delivers to the consumer. A consumer who places an order through DoorDash is given the option
2 to add a tip for his or her Dasher before he or she completes the order online.

3 10. As outlined in a series of recent news articles, some of which are addressed below,
4 and as acknowledged by DoorDash, DoorDash's tipping policy results in parts or all of the tips
5 that consumers pay not providing a financial benefit to the Dashers. This is because DoorDash
6 uses tips that consumers pay to their Dashers to subsidize part or most of a guaranteed minimum
7 payment (the amount of which varies per delivery) that DoorDash promises to its Dashers for each
8 delivery.

9 11. For example, if a guaranteed minimum payment to a Dasher for a delivery is \$7.00
10 and the consumer leaves no tip, DoorDash pays the Dasher this \$7.00. But if the consumer leaves
11 a \$3.00 tip, DoorDash uses this \$3.00 toward the guaranteed \$7.00 minimum payment and only
12 pays \$4.00 of its own money.

13 12. The result is that the Dasher receives no additional compensation by the consumer
14 leaving a tip through DoorDash's website or app, and the consumer is deceived into leaving a tip
15 that merely reduces the amount that DoorDash has to pay the Dasher to meet the guaranteed
16 minimum payment.

17 13. This is explained in an article in the New York Times on July 21, 2019 by Andy
18 Newman, a reporter who worked for a few days as a food deliveryman for various companies,
19 including DoorDash.²

20 14. Mr. Newman states that DoorDash offers a guaranteed minimum for each job, which
21 for his first order was \$6.85. *Id.* The customer left a \$3.00 tip via DoorDash's app, but Mr.
22 Newman only received a total of \$6.85 for making the delivery. *Id.*

23 15. As he explains, had the customer not left a tip DoorDash would have paid him the
24 entire \$6.85. *Id.* But DoorDash used the customer's \$3.00 tip toward its guaranteed minimum
25 payment, meaning DoorDash only contributed \$3.85 towards the \$6.85 guaranteed minimum
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27 ² See "My Frantic Life as a Cab-Dodging, Tip-Chasing Food App Deliveryman," available at
28 <https://www.nytimes.com/2019/07/21/nyregion/doordash-ubereats-food-app-delivery-bike.html>
(accessed September 10, 2019).

1 payment owed. *Id.* Thus, by tipping \$3.00 the customer actually *saved* DoorDash this amount –
2 rather than increasing what the Dasher received for the delivery as consumers would reasonably
3 expect. *Id.*

4 16. The Washington Post also reported on DoorDash’s tipping policy, including tweets
5 by DoorDash’s CEO Tony Xu in which he expressed an intent for the company to change its
6 policy.³

7 17. The article states that under DoorDash’s current policy “tips are used to meet the
8 minimum payment promised to its delivery crew,” which, according to the article, has “prompted
9 customers, workers and advocacy groups to accuse DoorDash of using gratuities to underwrite
10 drivers’ paychecks.” *Id.*

11 18. It quotes tweets from Mr. Xu addressing the policy, in which he states in part: “But
12 it’s clear from recent feedback that we didn’t strike the right balance. We thought we were doing
13 the right thing by making Dashers whole when a customer left no tip. What we missed was that
14 some customers who *did* tip would feel like their tip did not matter.” *Id.*

15 19. This statement is misleading. “Some customers” may “feel” that their tips didn’t
16 matter, but the fact is that their tips didn’t matter except to subsidize the amounts that DoorDash
17 owed its drivers.

18 20. The Washington Post article also quotes a post that a DoorDash driver made on the
19 website Reddit: “[DoorDash] technically doesn’t ‘steal’ your tip. They give it to you. . . BUT
20 they use it to subsidize what they pay out of pocket which is basically the same thing at the end
21 of the day.” *Id.*

22 21. The Huffington Post similarly reported on DoorDash’s tipping policy.⁴ It quoted a
23 tech writer named Louise Matsakis who wrote on Twitter: “I don’t believe that a single person

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25 ³ See “DoorDash to change its controversial tipping policy after outcry.” Available at
26 <https://www.washingtonpost.com/business/2019/07/24/doordash-change-its-controversial-tipping-policy-after-outcry> (accessed September 10, 2019).

27 ⁴ See “DoorDash to Change Tipping Model Following Backlash,” available at
28 https://www.huffpost.com/entry/doordash-changes-tipping-policy_n_5d3888c6e4b020cd994d74cb (accessed September 10, 2019).

1 intends to give a tip to a multibillion dollar venture-backed startup. They are trying to tip the
2 person who delivered their order.” *Id.*

3 22. On August 21, 2019, Business Insider reported in an article written by Graham
4 Rapier that despite DoorDash having announced an intention to change its tipping policy in July
5 of 2019, receipts that they reviewed from as recent as August 19, 2019 showed that it was still
6 operating under the old policy.⁵

7 23. When consumers are in the process of paying for their orders DoorDash does not
8 inform them that part or all of the tips that they pay through the app or website do not benefit their
9 Dashers. Rather, consumers are simply given the option to add a “Dasher Tip.” It then suggests
10 various prices for the tip, such as “\$2.00,” “\$3.00,” “\$4.00,” or “Other.” No further information
11 about DoorDash’s tipping policy is presented to consumers on the webpage where they complete
12 their orders. This is shown in the screenshot below, which is taken from a sample order placed
13 through DoorDash’s website.⁶

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23 ⁵ See “DoorDash appears to still be pocketing some workers’ tips despite announcing changes to its
24 pay model in July.” Available at [https://www.businessinsider.com/doordash-still-be-pocketing-tips-
25 despite-pay-model-change-2019-8](https://www.businessinsider.com/doordash-still-be-pocketing-tips-despite-pay-model-change-2019-8) (accessed September 13, 2019). In an article that ran on the website
26 “Vox,” it was similarly reported that DoorDash failed to change its tipping policy despite nearly a month
27 after it promised to stop,” available at [https://www.vox.com/recode/2019/8/20/20825937/doordash-
28 tipping-policy-still-not-changed-food-delivery-app-gig-economy](https://www.vox.com/recode/2019/8/20/20825937/doordash-tipping-policy-still-not-changed-food-delivery-app-gig-economy) (accessed September 13, 2019).

⁶ Available at https://www.doordash.com/consumer/checkout/?order_cart_id=468602007 (accessed
September 16, 2019).

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ORDER FROM
Shake Shack

Please select valid payment method

Place Order

Subtotal	\$11.47
Taxes and Fees ⓘ	\$2.48
Delivery	\$5.99
Dasher Tip ⓘ	\$3.00

\$2.00 \$3.00 \$4.00 Other

Total \$22.94

Maximum order limit: \$100.00

Get DashPass
No delivery fees from 110 restaurants near you

16 24. As shown in the above screenshot, next to “Dasher Tip” there is an “i” enclosed in
 17 a circle. If a consumer happens to scroll directly over it while on a computer, the cursor turns into
 18 a hand symbol that enables the consumer to click on it, which then takes the consumer to a new
 19 webpage, addressed below.

20 25. Next to “Taxes and Fees” (which, as shown in the above screenshot, appears above
 21 “Dasher Tip”) there is an identical “i” enclosed in a circle. If a consumer places the cursor on it,
 22 further information is provided in a box that pops up. However, no pop-up box appears by merely
 23 placing the cursor on the “i” next to “Dasher Tip.” Thus, a consumer reasonably would not know
 24 to click on it for further information.

25 26. Nothing on the page indicates what this “i” means or says to click on it for more
 26 information. When a consumer is using DoorDash’s app the “i” still appears next to “Dasher
 27 Tip,” but by using a smartphone there is no cursor that changes into a hand symbol.

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1 27. If a consumer does click on this “i” the page they are taken to is entitled “How Is
2 Your Dasher Paid?” which is very long, with four sections⁷, but this page fails to make clear to
3 consumers that part or all of the tips that they leave through the app or website do not provide a
4 financial benefit to their Dashers.

5 28. A consumer who wants to learn more about the “Dasher Tip” or DoorDash’s tipping
6 policy would likely go straight to the section on this webpage entitled “Tips.”

7 29. That section states: “Whether and how much to tip is up to you, and you always
8 have the option to tip more or less than the suggested amount. After each order, Dashers will be
9 able to see the breakdown in their earnings between the amount DoorDash contributes and the
10 customer tip.” *Id.*

11 30. Nothing in this section entitled “Tips” informs consumers that their tips are being
12 used by DoorDash to subsidize the Dasher’s guaranteed minimum payment and in most cases
13 provide no financial benefit to the Dasher.

14 31. Under the section entitled “The Dasher Pay Model” this page states: “We guarantee
15 Dashers will earn a minimum amount, including tips, for completing each delivery. This
16 ‘guaranteed minimum’—which Dashers see before accepting any delivery—is based on the
17 estimated time and effort required to complete that delivery.” *Id.*

18 32. This section then provides: “For each delivery, Dashers will always receive at least
19 \$1 from DoorDash plus the customer tip, but Dashers will never earn less than the guaranteed
20 minimum. If \$1 plus tip is less than the guaranteed minimum, DoorDash will make up the
21 difference. If \$1 plus tip is more than the guaranteed minimum, the Dasher keeps the larger
22 amount.” *Id.*

23 33. Even if a consumer reads this, it does not clearly inform consumers that in most
24 cases their tips merely subsidize part of DoorDash’s guaranteed minimum payments and provide
25 no additional compensation to the Dasher.

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27 ⁷ Available at [https://help.doordash.com/consumers/s/article/How-do-Dasher-earnings-](https://help.doordash.com/consumers/s/article/How-do-Dasher-earnings-work?language=en_US)
28 [work?language=en_US](https://help.doordash.com/consumers/s/article/How-do-Dasher-earnings-work?language=en_US) (accessed September 10, 2019).

1 **B. Plaintiffs' Experiences.**

2 1. Plaintiff Peter's Experience

3 34. Plaintiff Peter, under the name Jennifer Markezich, placed an order through
4 DoorDash's app on May 16, 2019.⁸ The delivery address for this order was 727 N. 1st St., St.
5 Louis, MO 63102. She left a "Dasher tip" in the amount of \$2.00.

6 35. On information and belief, based on the date of her order and DoorDash's policy at
7 the time, part or all of the tip that Plaintiff Peter left for her Dasher did not provide a financial
8 benefit to her Dasher. Rather, DoorDash used her tip to subsidize part of its guaranteed minimum
9 payment to her Dasher for that delivery.

10 36. Had Plaintiff Peter known that part or all of her tip would not provide a financial
11 benefit to her Dasher, but would be used by DoorDash to subsidize the amount it had to pay to the
12 Dasher as part of the Dasher's guaranteed minimum payment, she would not have left a tip through
13 DoorDash's app.

14 2. Plaintiff Theiss's Experience

15 37. Plaintiff Theiss placed several orders through DoorDash's app. His first order was
16 placed on March 16, 2019.⁹ The delivery address for this order was 811 Old Caseyville Rd.,
17 Caseyville, IL 62232. He left a "Dasher tip" in the amount of \$3.00.

18 38. Plaintiff Theiss's next order was placed on March 20, 2019.¹⁰ The delivery address
19 for this order was 1600 Keebler Rd., Collinsville, IL 62234. He added a \$2.00 "Dasher tip" in
20 connection with this order.

21 39. Plaintiff Theiss placed another order through DoorDash on April 19, 2019.¹¹ The
22 delivery address was 811 Old Caseyville Rd., Caseyville, IL 62232, and he left a "Dasher tip" in
23 the amount of \$2.00.

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25 _____
⁸ A printout of this order is attached as **Exhibit A.**

26 ⁹ A printout of this order is attached as **Exhibit B.**

27 ¹⁰ A printout of this order is attached as **Exhibit C.**

28 ¹¹ A printout of this order is attached as **Exhibit D.**

1 40. On May 27, 2019, he placed another order through DoorDash.¹² The delivery
2 address was 1600 Keebler Rd., Collinsville, IL 62234, and the “Dasher tip” for this order was
3 \$2.00.

4 41. The next order that Plaintiff Theiss placed through DoorDash was on August 10,
5 2019.¹³ The delivery address was 1600 Keebler Rd., Collinsville, IL 62234. He added a “Dasher
6 tip” in the amount of \$2.00.

7 42. Plaintiff Theiss placed another order through DoorDash on August 23, 2019.¹⁴ The
8 delivery address was 811 Old Caseyville Rd., Caseyville, IL 62232, and he left a “Dasher tip” in
9 the amount of \$2.00.

10 43. On information and belief, based on the dates of his orders and DoorDash’s policy
11 at the time, part or all of the tips that Plaintiff Theiss left for his Dashers did not provide a financial
12 benefit to his Dashers. Rather, DoorDash used his tips to subsidize part of its guaranteed
13 minimum payments to his Dashers for those deliveries.

14 44. Had Plaintiff Theiss known that part or all of his tips would not provide a financial
15 benefit to his Dashers, but would be used by DoorDash to subsidize the amount it had to pay to
16 the Dashers as part of the Dashers’ guaranteed minimum payments, he would not have left tips
17 through DoorDash’s app.

18 **C. DoorDash’s Tipping Policy Is Unethical and Violates Established**
19 **Ethical Standards.**

20 45. DoorDash’s practice of using consumers’ tips to subsidize its guaranteed minimum
21 payments to its Dashers, as alleged herein, violates generally accepted ethical principles of
22 business conduct.

23 46. The basis for the allegation that it is unethical to engage in the above practices
24 comes, in part, from established ethical principles recognized by the Direct Marketing Association
25 (“DMA”), the leading industry association for companies that, like DoorDash, market directly to

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¹² A printout of this order is attached as **Exhibit E**.

27 ¹³ A printout of this order is attached as **Exhibit F**.

28 ¹⁴ A printout of this order is attached as **Exhibit G**.

1 consumers, and the American Marketing Association, “the leading organization for marketers
2 [and] the trusted go-to resource for marketers and academics.”

3 1. DMA Ethical Guidelines

4 47. DMA publishes principles of ethical business practices in the *Direct Marketing*
5 *Association’s Guidelines for Ethical Business Practice* (2014) (“DMA Ethical Guidelines”). A
6 true and copy of the DMA Ethical Guidelines is attached as **Exhibit H**.

7 48. These DMA Ethical Guidelines “are intended to provide individuals and
8 organizations involved in direct marketing in all media with generally accepted principles of
9 conduct.” *Id.* at 2.

10 49. The DMA Ethical Guidelines apply to all marketers, not just those that belong to
11 DMA. DMA states that the principles “reflect DMA’s long-standing policy of high levels of
12 ethics and the responsibility of the Association, its members, and *all marketers* to maintain
13 consumer and community relationships that are based on fair and ethical principles.” *Id.* (emphasis
14 added).

15 50. DMA’s Ethical Guidelines are set forth in a series of “Articles,” each of which states
16 a separate ethical principle.

17 51. Article #1 of DMA’s Ethical Guidelines is “HONESTY AND CLARITY OF
18 OFFER.” It states: “All offers should be clear, honest and complete so that the consumer may
19 know the exact nature of what is being offered” *Id.* at 7.

20 52. By concealing that it used consumers’ tips to subsidize its guaranteed minimum
21 payments and that part or all of the tips do not provide a financial benefit to the Dashers, DoorDash
22 violated this principle because its offer to consumers to leave a tip was not clear, honest and
23 complete.

24 53. Article #2 of DMA’s Ethical Guidelines is “ACCURACY AND CONSISTENCY.”
25 It states: “Simple and consistent statements or representations of all the essential points of the
26 offer should appear in the promotional material. The overall impression of an offer should not be
27 contradicted by individual statements, representations or disclaimers.” *Id.* at 7.

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1 54. DMA has published a companion volume to its Ethical Guidelines called *Do the*
2 *Right Thing: A Companion to DMA's Guidelines for Ethical Business Practice* (Revised January
3 2009) ("Do the Right Thing"). A true and copy of Do the Right Thing is attached as **Exhibit I**.
4 That volume is intended to "give[] direct marketers advice on how to assure their business
5 practices comply with" the Ethical Guidelines. Do the Right Thing at 2.

6 55. In *Do the Right Thing*, DMA elaborates on Article #2 of its ethical principles. It
7 states, "Keep in mind that a disclaimer or disclosure alone usually is not enough to remedy a
8 misleading or false claim."

9 56. By not stating on the page where consumers were given the option to leave a tip that
10 the tips were used to subsidize DoorDash's guaranteed minimum payments and that part or all of
11 the tips did not provide a financial benefit to the Dashers, DoorDash violated the ethical principle
12 in DMA's Article #2 because this page did not contain all the essential points of the offer. It
13 omitted the point that the tips were used to subsidize the guaranteed minimum payments and relied
14 on a purported disclaimer that was included on a different web page.

15 57. In July 2018, DMA (then going by the name "Data & Marketing Association") was
16 acquired by the Association of National Advertisers ("ANA"), "one of the oldest and most
17 venerated trade association in the marketing industry." ANA adopted DMA's Ethical Guidelines,
18 which it publishes on its web site as Part II of its Member Principles under the heading,
19 "Marketing." Thus, these ethical principles are still current and applicable.

20 2. *AMA Statement of Ethics*

21 58. The American Marketing Association ("AMA") "commits itself to promoting the
22 highest standard of professional ethical norms and values ..." **Exhibit J**. As such, it has published
23 its "Statement of Ethics." *Id.* AMA states that "marketers are expected to embrace the highest
24 professional ethical norms and the ethical values implied by our responsibility toward multiple
25 stakeholders (e.g., customers ...)." *Id.* Thus, the Statement of Ethics contains "Ethical Norms,"
26 which "are established standards of conduct that are expected and maintained by society and/or
27 professional organizations." *Id.*

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1 59. The AMA’s Ethical Norms state that marketers must “consciously avoid[] harmful
2 actions and omissions,” “striv[e] for good faith and fair dealing,” “avoid[] deception in ... pricing,
3 communication, and delivery of distribution,” and affirm “core values” of honesty, ... fairness
4 [and] transparency.”

5 60. By not stating on the page where consumers were given the option to leave a tip that
6 the tips were used to subsidize DoorDash’s guaranteed minimum payments and that part or all of
7 the tips did not provide a financial benefit to the Dashers, DoorDash violated these Ethical Norms
8 because, among other reasons, it did not strive (or achieve) good faith and fair dealing, did not
9 avoid deception in communication and did not affirm the core values of honesty, fairness and
10 transparency.

11 61. The AMA has also published “Ethical Values,” which “represent the collective
12 conception of what communities find desirable, important and morally proper.” *Id.* AMA states
13 that marketers’ Ethical Values include honesty, meaning “[s]triv[ing] to be truthful in all situations
14 and at all times” and “[h]onoring our explicit and implicit commitments and promises.”

15 62. Another Ethical Value, according to the AMA, is fairness, which includes
16 “[r]epresent[ing] products in a clear way in selling, advertising and other forms of
17 communication,” “avoid[ing] false, misleading and deceptive promotion,” and “[r]efusing to
18 engage in ‘bait-and-switch’ tactics.” *Id.*

19 63. Yet another Ethical Value, according to the AMA, is “Transparency,” which
20 includes “[s]triv[ing] to communicate clearly with all constituencies.” *Id.*

21 64. By not stating on the page where consumers were given the option to leave a tip that
22 the tips were used to subsidize DoorDash’s guaranteed minimum payments and that part or all of
23 the tips did not provide a financial benefit to the Dashers, DoorDash violated these Ethical Values,
24 because, among other reasons, it was not truthful (to say nothing of not striving to be truthful) in
25 all situations, did not represent their products and policy in a clear way, did not avoid false,
26 misleading and deceptive promotion, engaged in a “bait-and-switch” tactic, and did not
27 communicate clearly.

28 ///

D. DoorDash's Scheme Originated and Was Directed from California.

65. On information and belief, DoorDash made the decisions and took the actions that violated the UCL in California. This belief is based on the following:

66. California is the center of DoorDash's business operations. As set forth above, its headquarters is located in San Francisco.

67. Most of DoorDash's top executives are based out of California. This includes CEO Tony Xu¹⁵, Chief Technology Officer Andy Fang¹⁶, Chief Financial Officer Prabir Adarkar¹⁷, Chief Operating Officer Christopher Payne¹⁸, Chief Business and Legal Officer Keith Yandell¹⁹, Vice President of Finance Michael Kim²⁰, Vice President of Product Management Rajat Shroff²¹, Vice President of Analytics & Data Science Jessica Lachs²², and HR Director Nathan Tanner²³.

68. Other high ranking DoorDash employees based out of California include Vice President Ravi Inukonda²⁴, Vice President of Business Development A. Toby Espinosa²⁵, Senior Manager of Marketing Strategy Lauren Reinhard²⁶, Vice President of Legal Tia Sherringham²⁷, and Head of Corporate Development Matthew Rotella²⁸.

69. On information and belief, DoorDash made its decisions regarding its tipping policy at its headquarters in San Francisco, where its CEO Mr. Xu and other executives are located. That

¹⁵ <https://www.linkedin.com/in/xutony/> (accessed 9/16/19).

¹⁶ <https://www.linkedin.com/in/andy-fang-5302b830/> (accessed 9/16/19).

¹⁷ <https://www.linkedin.com/in/prabir-adarkar-8b7b16/> (accessed 9/16/19).

¹⁸ <https://www.linkedin.com/in/christopherpayne/> (accessed 9/16/19).

¹⁹ <https://www.linkedin.com/in/keith-yandell-2a947432/> (accessed 9/16/19).

²⁰ <https://www.linkedin.com/in/michaelkimsf/> (accessed 9/16/19).

²¹ <https://www.linkedin.com/in/rajatshroff/> (accessed 9/16/19).

²² <https://www.linkedin.com/in/jessica-lachs/> (accessed 9/16/19).

²³ <https://www.linkedin.com/in/nathantanner/> (accessed 9/16/19).

²⁴ <https://www.linkedin.com/in/rinukonda/> (accessed 9/16/19).

²⁵ <https://www.linkedin.com/in/a-toby-espinosa-b9458812/> (accessed 9/16/19).

²⁶ <https://www.linkedin.com/in/laurenmaddoxreinhard/> (accessed 9/16/19).

²⁷ <https://www.linkedin.com/in/tiasherringham/> (accessed 9/16/19).

²⁸ <https://www.linkedin.com/in/matthewrotella84/> (accessed 9/16/19).

1 belief is based, in part, on Mr. Xu’s tweets stating, as quoted above, “But it’s clear from recent
2 feedback that we didn’t strike the right balance. We thought we were doing the right thing by
3 making Dashers whole when a customer left no tip. What we missed was that some customers
4 who *did* tip would feel like their tip did not matter.”

5 CLASS ALLEGATIONS

6 70. Plaintiffs brings this action on behalf of themselves and as representatives of all
7 others who are similarly situated. Pursuant to Rules 23(a), (b)(2), and/or (b)(3) of the Federal
8 Rules of Civil Procedure, Plaintiffs seeks certification of a Nationwide Class, a Missouri Subclass
9 and an Illinois Subclass (collectively, the “Class”).

10 71. The nationwide Class is initially defined as follows:

11 *All consumers who placed a food delivery order*
12 *through DoorDash who, within the applicable*
13 *period of limitations preceding the filing of this*
14 *lawsuit to the date of class certification, paid a tip*
15 *to his or her driver through DoorDash’s website or*
16 *app (the “Nationwide Class”).*

17 72. The Missouri Subclass is initially defined as follows:

18 *All consumers who, in the State of Missouri, placed*
19 *a food delivery order through DoorDash and paid*
20 *a tip to his or her driver through DoorDash’s*
21 *website or app within the applicable period of*
22 *limitations preceding the filing of this lawsuit to the*
23 *date of class certification (the “Missouri*
24 *Subclass”).*

25 73. The Illinois Subclass is initially defined as follows:

26 *All consumers who, in the State of Illinois, placed a*
27 *food delivery order through DoorDash and paid a*
28 *tip to his or her driver through DoorDash’s website*

1 *or app within the applicable period of limitations*
2 *preceding the filing of this lawsuit to the date of*
3 *class certification (the “Illinois Subclass”).*

4 74. Excluded from each of the above classes is DoorDash, including any entity in which
5 DoorDash has a controlling interest, is a parent or subsidiary, or which is controlled by DoorDash,
6 as well as the officers, directors, affiliates, legal representatives, predecessors, successors, and
7 assigns of DoorDash. Also excluded are the judges and court personnel in this case and any
8 members of their immediate families.

9 75. Plaintiffs reserve the right to amend or modify the above class definitions with
10 greater specificity or division into subclasses after having had an opportunity to conduct
11 discovery.

12 76. This action has been brought and may be properly maintained on behalf of the Class
13 proposed herein under Rule 23 of the Federal Rules of Civil Procedure.

14 77. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Nationwide Class and
15 each subclass are so numerous that joinder of all members is impractical. Plaintiffs are informed
16 and believe that there are thousands of members of the Class and Subclasses. The precise number
17 of class members can be ascertained from DoorDash’s records.

18 78. Commonality and Predominance. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are
19 questions of law and fact common to each class, which predominate over any questions affecting
20 individual members of each respective class. These common questions of law and fact include,
21 without limitation:

- 22 a. Whether DoorDash uses tips paid by consumers to subsidize the guaranteed
23 minimum payments that it provides to its drivers;
24 b. Whether DoorDash conceals that it uses tips paid by consumers to subsidize the
25 guaranteed minimum payments that it provides to its drivers;
26 c. Whether DoorDash conceals that part or all of the tips paid by consumers do not
27 provide a financial benefit to their drivers;

28 ///

- 1 d. Whether DoorDash's conduct as alleged herein is unfair, unlawful and or fraudulent
- 2 in violation of the UCL;
- 3 e. Whether DoorDash's actions are deceptive and unfair under the MMPA;
- 4 f. Whether DoorDash's actions are deceptive and unfair under the ICFA;
- 5 g. Whether DoorDash's actions constitute unjust enrichment or money had and
- 6 received; and
- 7 h. Whether Plaintiffs and the other Class members are entitled to equitable relief,
- 8 including, but not limited to, restitution or injunctive relief; and
- 9 i. Whether Plaintiffs and other Class members are entitled to damages and other
- 10 monetary relief.

11 79. Typicality. Fed. R. Civ. P. 23 (a)(3). Plaintiffs' claims are typical of the claims of
12 the class and subclasses they seek to represent. Plaintiffs and all Class members were exposed to
13 uniform practices and sustained injuries arising out of and caused by DoorDash's scheme of using
14 consumers' tips to subsidize its guaranteed minimum payments.

15 80. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiffs are committed to the vigorous
16 prosecution of this action and have retained competent counsel experienced in the prosecution of
17 class actions. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately
18 protect the interests of the Class.

19 81. Superiority. Fed. R. Civ. P. 23(b)(3). A class action is superior to other available
20 methods for the fair and efficient adjudication of this controversy. Since the amount of each
21 individual Class member's claim is small relative to the complexity of the litigation, and due to
22 the financial resources of DoorDash, no Class member could afford to seek legal redress
23 individually for the claims alleged herein. Therefore, absent a class action, Class members will
24 continue to suffer losses and DoorDash's misconduct will proceed without remedy. Even if Class
25 members themselves could afford such individual litigation, the court system could not. Given
26 the complex legal and factual issues involved, individualized litigation would significantly
27 increase the delay and expense to all parties and to the Court. Individualized litigation would also
28 create the potential for inconsistent or contradictory rulings. By contrast, a class action presents

1 far fewer management difficulties, allows claims to be heard which might otherwise go unheard
2 because of the relative expense of bringing individual lawsuits, and provides the benefits of
3 adjudication, economies of scale and comprehensive supervision by a single court. Finally,
4 Plaintiffs know of no difficulty that will be encountered in the management of this litigation which
5 would preclude its maintenance as a class action.

6
7 **FIRST CLAIM FOR RELIEF**
8 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
9 **Cal. Bus. & Prof. Code, § 17200, *et seq.***
10 **(By Plaintiffs and the Nationwide Class Against DoorDash)**

11 82. Plaintiffs reallege and incorporate by reference the allegations contained in
12 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
13 extent necessary, plead this cause of action in the alternative.

14 83. Plaintiffs bring this claim individually and on behalf of the members of the
15 Nationwide Class against DoorDash under California law.

16 84. Plaintiffs have standing to pursue this cause of action as Plaintiffs have suffered
17 injury in fact and have lost money or property as a result of DoorDash's actions as delineated
18 herein.

19 85. DoorDash's scheme, as delineated herein, constitutes an unlawful, unfair and/or
20 fraudulent business practices in violation of California's UCL (Cal. Bus. & Prof. Code, §§ 17200,
21 *et seq.*).

22 86. DoorDash's business practices, as alleged herein, violate the "unlawful" prong of
23 the UCL because they violate, *inter alia*, Section 5(a)(1) of the FTC Act.

24 87. DoorDash's business practices, as alleged herein, violate the "unfair" prong of
25 California Business & Professions Code sections 17200, *et seq.* because the injury resulting from
26 DoorDash's acts and practices is substantial, not outweighed by any countervailing benefits to
27 consumers or to competition, and not an injury that the consumers themselves could reasonably
28 have avoided.

88. DoorDash's business practices, as alleged herein, violate the "fraudulent" prong of
California Business & Professions Code sections 17200, *et seq.* because they are likely to deceive

1 a reasonable consumer. Specifically, giving consumers the option to leave tips for their drivers
 2 and then using amounts tipped to subsidize its guaranteed minimum payments, such that part or
 3 all of the tips provide no financial benefit to the drivers, is likely to deceive a reasonable consumer
 4 as to who is benefitting from their tips and thereby cheat them into paying tips that provide a
 5 financial benefit to DoorDash instead of their drivers.

6 89. Accordingly, DoorDash has violated, and continues to violate, California Business
 7 and Professions Code section 17200's proscription against engaging in unlawful business acts or
 8 practices.

9 90. As a direct and proximate result of DoorDash's unlawful, unfair, and fraudulent
 10 business practices, Plaintiffs and the Class have suffered injury in fact and lost money or property.

11 91. Pursuant to California Business and Professions Code section 17203, Plaintiffs and
 12 the Class seek an order of this court enjoining DoorDash from continuing to engage in unlawful,
 13 unfair, or deceptive business practices and any other act prohibited by law, including those acts
 14 set forth in the complaint.

15 92. Plaintiffs and the Class also seek an order requiring DoorDash to make full
 16 restitution of all monies it wrongfully obtained from Plaintiffs and the Class.

17 WHEREFORE, Plaintiffs and the Nationwide Class pray judgment against DoorDash as
 18 hereafter set forth.

19 **SECOND CLAIM FOR RELIEF**
 20 **VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES**
 21 **Mo. Rev. Stat. §§ 407.010 *et seq.***
 22 **(By Plaintiff Peter and the Missouri Subclass Against DoorDash)**

23 93. Plaintiff Peter realleges and incorporates by reference the allegations contained in
 24 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
 25 extent necessary, pleads this cause of action in the alternative.

26 94. Plaintiff Peter brings this claim individually and on behalf of the members of the
 27 Missouri Subclass against DoorDash under Missouri law.

28 95. The actions of DoorDash alleged herein violated, and continue to violate, the
 Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. §§ 407.010 *et seq.*, because

1 they constitute unfair practices.

2 96. The MMPA, Mo. Rev. Stat. § 407.020, states in relevant part:

3 The act, use or employment by any person of any deception, fraud,
4 false pretense, false promise, misrepresentation, unfair practice or the
5 concealment, suppression, or omission of any material fact in
6 connection with the sale or advertisement of any merchandise in trade
7 or commerce . . . is declared to be an unlawful practice.

8 97. Plaintiff Peter, on behalf of herself and all others similarly situated in Missouri, is
9 entitled to bring this action pursuant to Mo. Rev. Stat. § 407.025, which provides in relevant part
10 that:

11 1. Any person who purchases or leases merchandise primarily
12 for personal, family or household purposes and thereby suffers an
13 ascertainable loss of money or property, real or personal, as a result
14 of the use or employment by another person of a method, act or
15 practice declared unlawful by section 407.020, may bring a private
16 civil action in either the circuit court of the county in which the seller
17 or lessor resides or in which the transaction complained of took place,
18 to recover actual damages. The court may, in its discretion, award
19 punitive damages and may award to the prevailing party attorney's
20 fees, based on the amount of time reasonably expended, and may
21 provide such equitable relief as it deems necessary or proper.

22 2. Persons entitled to bring an action pursuant to subsection 1
23 of this section may, if the unlawful method, act or practice has caused
24 similar injury to numerous other persons, institute an action as
25 representative or representatives of a class against one or more
26 defendants as representatives of a class In any action brought
27 pursuant to this section, the court may in its discretion order, in
28 addition to damages, injunction or other equitable relief and

1 reasonable attorney's fees.

2 98. The MMPA defines "merchandise" as any objects, wares, goods, commodities,
3 intangibles, real estate or services. Mo. Rev. Stat. § 407.010. Thus, the food-delivery services that
4 DoorDash provides are merchandise.

5 99. In providing food-delivery services to its customers, DoorDash is engaging in the
6 sale of merchandise in trade or commerce.

7 100. Plaintiff Peter and the Missouri Subclass ordered food through DoorDash for
8 personal, family, or household purposes and tipped their drivers through the website or app, which
9 DoorDash used toward its guaranteed minimum payment. Thus, part or all of the amounts left by
10 Plaintiff Peter and the Missouri Subclass members as tips did not provide a financial benefit to
11 their drivers.

12 101. The Missouri Attorney General has promulgated a regulation defining the meaning
13 of unfair practice as used in the MMPA. That definition states that unethical practices are unfair
14 in violation of the above statute. Mo. Code Regs. tit. 15, § 60-8.020.

15 102. Pursuant to the MMPA, DoorDash has a duty not to engage in any unethical or
16 unfair practice in connection with the sale of any merchandise in trade or commerce. For the
17 reasons stated herein, it breached that duty.

18 103. Giving consumers the option to leave tips for their drivers, while concealing that the
19 tips are used to subsidize part of DoorDash's guaranteed minimum payments and that part or all
20 of the tips provide no financial benefit to the drivers, is unfair and unethical and violates generally
21 accepted principles of ethical business conduct, including the principles of the Direct Marketing
22 Association and American Marketing Association, as set forth above.

23 104. Plaintiff Peter and the Missouri Subclass thereby suffered ascertainable loss based
24 on DoorDash's unfair acts or practice by paying to leave tips for their drivers that DoorDash used
25 to subsidize its guaranteed minimum payments. Had DoorDash not concealed what the tips were
26 really used for, Plaintiff Peter and the Missouri Subclass would have paid less in connection with
27 their orders because they would not have left tips that did not provide a financial benefit to their
28 drivers.

1 105. DoorDash’s acts and practices alleged herein have directly, foreseeably, and
2 proximately caused loss, damages, and injury to Plaintiff Peter and the Missouri Subclass in an
3 amount to be determined at trial.

4 106. DoorDash’s unfair and unethical acts and practices in violation of the MMPA were
5 performed willfully and wantonly, were outrageous, and were done in reckless indifference to the
6 rights of Plaintiff Peter and Missouri Subclass.

7 WHEREFORE, Plaintiff Peter and the Missouri Subclass pray judgment against DoorDash
8 as hereafter set forth.

9
10 **THIRD CLAIM FOR RELIEF**
11 **VIOLATION OF THE MMPA BY MEANS OF DECEPTION**
12 **Mo. Rev. Stat. §§ 407.010 *et seq.***
13 **(By Plaintiff Peter and the Missouri Subclass Against DoorDash)**

14 107. Plaintiff Peter realleges and incorporates by reference the allegations contained in
15 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
16 extent necessary, pleads this cause of action in the alternative.

17 108. Plaintiff Peter brings this claim individually and on behalf of the members of the
18 Missouri Subclass against DoorDash under Missouri law.

19 109. The actions of DoorDash alleged herein violated, and continue to violate, the
20 MMPA because they constitute deception.

21 110. Mo. Rev. Stat. § 407.020.1 prohibits “[t]he act, use or employment by any person
22 of any ... deception ... in connection with the sale or advertisement of any merchandise in trade
23 or commerce.”

24 111. The Missouri Attorney General has promulgated a regulation defining the meaning
25 of deception as used in the MMPA. That definition states that deception is any “method, act, use,
26 practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or
27 cheat, or that tends to create a false impression.” Mo. Code Regs. Ann. tit. 15, § 60-9.020.

28 112. Pursuant to the MMPA, DoorDash has a duty not to engage in any deception in
connection with the sale or advertisement of any merchandise in trade or commerce. For the
reasons stated herein, it breached that duty.

1 113. Giving consumers the option to leave tips for their drivers and then using amounts
2 tipped to subsidize its guaranteed minimum payments, such that part or all of the tips provide no
3 financial benefit to the drivers, constitutes deception under the MMPA because this act or practice
4 has the tendency or capacity to mislead, deceive, cheat, and/or create a false impression.

5 114. Specifically, DoorDash's act or practice of using consumers' tips to subsidize its
6 guaranteed minimum payments has the tendency to create a false impression and mislead
7 consumers as to who is benefitting from their tips, and to deceive and cheat them into paying tips
8 that provide a financial benefit to DoorDash instead of their drivers.

9 115. Plaintiff Peter and the Missouri Subclass thereby suffered ascertainable loss based
10 on DoorDash's deception by paying to leave tips for their drivers that DoorDash used to subsidize
11 its guaranteed minimum payments. Had DoorDash not concealed what the tips were really used
12 for, Plaintiff Peter and the Missouri Subclass would have paid less in connection with their orders
13 because they would not have left tips that did not provide a financial benefit to their drivers.

14 116. DoorDash's deceptive acts and practices have directly, foreseeably, and proximately
15 caused loss, damages and injury to Plaintiff Peter and the MMPA Subclass.

16 117. DoorDash's deceptive acts and practices in violation of the MMPA were performed
17 willfully and wantonly, were outrageous and were done in reckless indifference to the rights of
18 Plaintiff Peter and the Missouri Subclass.

19 WHEREFORE, Plaintiff Peter and the Missouri Subclass pray judgment against DoorDash
20 as hereafter set forth.

21 **FOURTH CLAIM FOR RELIEF**
22 **UNJUST ENRICHMENT IN MISSOURI**
23 **(By Plaintiff Peter and the Missouri Subclass Against DoorDash)**

24 118. Plaintiff Peter realleges and incorporates by reference the allegations contained in
25 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
26 extent necessary, pleads this cause of action in the alternative.

27 119. Plaintiff Peter brings this claim individually and on behalf of the members of the
28 Missouri Subclass against DoorDash under Missouri law.

///

1 120. Substantial benefits have been conferred upon DoorDash from Plaintiff Peter and
2 members of the Missouri Subclass by Plaintiff Peter and the Missouri Subclass members paying
3 their drivers tips that DoorDash used to subsidize its guaranteed minimum payments. DoorDash
4 has knowingly and willingly accepted and enjoyed the benefits of its practice of using consumers'
5 tips to subsidize its guaranteed minimum payments.

6 121. DoorDash either knew or should have known that it was deceiving consumers by
7 giving them the option to tip their drivers while concealing that it used their tips to subsidize its
8 guaranteed minimum payments, and that it was therefore accepting money from consumers that
9 consumers intended to benefit their drivers.

10 122. For DoorDash to retain the benefit of these payments under these circumstances is
11 inequitable.

12 123. DoorDash's acceptance and retention of these benefits under the circumstances
13 make it inequitable for DoorDash to retain these benefits without payment of the value to Plaintiff
14 Peter and the Missouri Subclass.

15 124. Plaintiff Peter and the Missouri Subclass are entitled to recover from DoorDash all
16 amounts wrongfully collected and improperly retained by DoorDash based on its practice of using
17 consumers' tips to subsidize its guaranteed minimum payments.

18 125. As a direct and proximate result of DoorDash's wrongful conduct and unjust
19 enrichment, Plaintiff Peter and the Missouri Subclass are entitled to restitution from, and
20 institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained
21 by DoorDash, plus attorneys' fees, costs, and interest thereon.

22 WHEREFORE, Plaintiff Peter and the Missouri Subclass pray judgment against DoorDash
23 as hereafter set forth.

24 **FIFTH CLAIM FOR RELIEF**
25 **MONEY HAD AND RECEIVED IN MISSOURI**
26 **(By Plaintiff Peter and the Missouri Subclass Against DoorDash)**

27 126. Plaintiff Peter realleges and incorporates by reference the allegations contained in
28 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
extent necessary, pleads this cause of action in the alternative.

1 127. Plaintiff Peter brings this claim individually and on behalf of the members of the
2 Missouri Subclass against DoorDash under Missouri law.

3 128. DoorDash has received money from Plaintiff Peter and the Missouri Subclass for
4 providing food-delivery services, which includes money that it received as a result of its practice
5 of using consumers' tips to subsidize its guaranteed minimum payments, that in equity and good
6 conscience should be returned to Plaintiff Peter and the Missouri Subclass.

7 129. It is unjust for DoorDash to accept and retain this money that it received by using
8 tips paid by Plaintiff Peter and members of the Missouri Subclass to subsidize its guaranteed
9 minimum payments.

10 130. DoorDash should return to Plaintiff Peter and members of the Missouri Subclass the
11 money DoorDash received by using their tips to subsidize its guaranteed minimum payments.

12 WHEREFORE, Plaintiff Peter and the Missouri Subclass pray judgment against DoorDash
13 as hereafter set forth.

14 **SIXTH CLAIM FOR RELIEF**
15 **UNFAIR PRACTICES IN VIOLATION OF THE ICFA**
16 **ICFA, 815 ILCS 505/2**

17 **(By Plaintiff Theiss and the Illinois Subclass Against DoorDash)**

18 131. Plaintiff Theiss realleges and incorporates by reference the allegations contained in
19 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
20 extent necessary, pleads this cause of action in the alternative.

21 132. Plaintiff Theiss brings this claim individually and on behalf of the members of the
22 Illinois Subclass against DoorDash under Illinois law.

23 133. Section 2 of the ICFA, 815 ILCS 505/2, prohibits "unfair or deceptive acts or
24 practices, including but not limited to the use or employment of any deception, fraud, false
25 pretense, false promise, misrepresentation or the concealment, suppression or omission of such
26 material fact ... in the conduct of any trade or commerce ...," as set forth below:

27 Unfair methods of competition and unfair or deceptive acts or
28 practices, including but not limited to the use or employment of any
deception, fraud, false pretense, false promise, misrepresentation or

1 the concealment, suppression or omission of any material fact, with
2 intent that others rely upon the concealment, suppression or omission
3 of such material fact, or the use or employment of any practice
4 described in Section 2 of the “Uniform Deceptive Trade Practices
5 Act”, approved August 5, 1965,¹ in the conduct of any trade or
6 commerce are hereby declared unlawful whether any person has in
7 fact been misled, deceived or damaged thereby.

8 815 ILCS 505/2.

9 134. In outlawing unfair acts and practices, the Illinois legislature adopted the Federal
10 Trade Commission’s interpretation of § 5(a)(1) of the Federal Trade Commission (“FTC”) Act,
11 15 U.S.C. § 45(a): “In construing this section consideration shall be given to the interpretations
12 of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal
13 Trade Commission Act.” 815 ILCS 505/2.

14 135. In determining whether a practice is unfair in violation of Section 5(a) of the FTC
15 Act, the FTC considers “whether the practice, without necessarily having been previously
16 considered unlawful ... is within at least the penumbra of some common-law, statutory, or other
17 established concept of unfairness” and “whether it is ... unethical.” *FTC v. Sperry & Hutchinson*
18 *Co.*, 405 U.S. 233, 244 n. 5 (1972).

19 136. Accordingly, unethical practices are unfair under the ICFA.

20 137. In providing food-delivery services to its customers, DoorDash is engaged in trade
21 and commerce.

22 138. Pursuant to the ICFA, DoorDash has a duty not to engage in unfair acts or practices
23 in the conduct of any trade of commerce. For the reasons stated herein, it breached that duty.

24 139. Giving consumers the option to leave tips for their drivers, while concealing that the
25 tips are used to subsidize part of DoorDash’s guaranteed minimum payments and that part or all
26 of the tips provide no financial benefit to the drivers, is unfair and unethical and violates generally
27 accepted principles of ethical business conduct, including the principles of the Direct Marketing
28 Association and American Marketing Association, as set forth above.

1 140. DoorDash has engaged in the unfair acts and practices as described above willfully
2 and knowingly.

3 141. DoorDash’s unfair acts and practices have directly, foreseeably, and proximately
4 caused damages and injury to the Illinois Subclass.

5 142. Plaintiff Theiss and members of the Illinois Subclass paid tips to their drivers that
6 DoorDash used to subsidize the guaranteed minimum payments that it owed to its drivers.

7 143. Plaintiff Theiss and the Illinois Subclass therefore suffered monetary damages in
8 the amounts of the tips that they paid that did not provide a financial benefit to their drivers.

9 144. The ICFA allows “[a]ny person who suffers actual damage as a result of a violation
10 of this Act committed by any other person [to] bring an action against such person. The court, in
11 its discretion may award actual economic damages or any other relief which the court deems
12 proper...” 815 ILCS 505/10a.

13 WHEREFORE, Plaintiff Theiss and the Illinois Subclass pray judgment against DoorDash
14 as hereafter set forth.

15 **SEVENTH CLAIM FOR RELIEF**
16 **AFFIRMATIVE DECEPTION IN VIOLATION OF THE ICFA**
17 **ICFA, 815 ILCS 505/2**
18 **(By Plaintiff Theiss and the Illinois Subclass Against DoorDash)**

19 145. Plaintiff Theiss realleges and incorporates by reference the allegations contained in
20 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
21 extent necessary, pleads this cause of action in the alternative.

22 146. Plaintiff Theiss brings this claim individually and on behalf of the members of the
23 Illinois Subclass against DoorDash under Illinois law.

24 147. Section 2 of the ICFA prohibits “deceptive acts or practices, including but not
25 limited to the use or employment of any deception, fraud, false pretense, false promise,
26 misrepresentation or the concealment, suppression or omission of any material fact, with intent
27 that others rely upon the concealment, suppression or omission of such material fact ... in the
28 conduct of any trade or commerce” 815 ILCS 505/2.

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1 148. In providing food-delivery services to its customers, DoorDash is engaged in trade
2 and commerce.

3 149. Pursuant to the ICFA, DoorDash has a duty not to engage in deceptive acts or
4 practices by the use of deception, fraud, false pretense, false promise, or misrepresentation in the
5 conduct of any trade of commerce.

6 150. By giving consumers the option to leave tips for their drivers while concealing that
7 DoorDash uses the tips to subsidize part of its guaranteed minimum payments, such that all or
8 part of the tips provide no financial benefit to the drivers, DoorDash has engaged in deceptive acts
9 or practices by the use of deception, fraud, false pretense, false promise, or misrepresentation.

10 151. Plaintiff Theiss and members of the Illinois Subclass paid tips to their drivers that
11 DoorDash used to subsidize its guaranteed minimum payments to the drivers. This means that
12 part or all of their tips did not provide a financial benefit to the drivers.

13 152. DoorDash's deceptive acts and practices have directly, foreseeably, and proximately
14 caused damages and injury to Plaintiff Theiss and the Illinois Subclass. DoorDash has engaged in
15 these deceptive acts and practices willfully and knowingly.

16 153. Plaintiff Theiss and the Illinois Subclass therefore suffered monetary damages in
17 the amounts of the tips that they paid that did not provide a financial benefit to their drivers.

18 154. The ICFA allows "[a]ny person who suffers actual damage as a result of a violation
19 of this Act committed by any other person [to] bring an action against such person. The court, in
20 its discretion may award actual economic damages or any other relief which the court deems
21 proper..." 815 ILCS 505/10a.

22 WHEREFORE, Plaintiff Theiss and the Illinois Subclass pray judgment against DoorDash
23 as hereafter set forth.

24 **EIGHTH CLAIM FOR RELIEF**
25 **UNJUST ENRICHMENT IN ILLINOIS**
26 **(By Plaintiff Theiss and the Illinois Subclass Against DoorDash)**

27 155. Plaintiff Theiss realleges and incorporates by reference the allegations contained in
28 paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the
extent necessary, pleads this cause of action in the alternative.

1 156. Plaintiff Theiss brings this claim individually and on behalf of the members of the
2 Illinois Subclass against DoorDash under Illinois law.

3 157. Substantial benefits have been conferred upon DoorDash from Plaintiff Theiss and
4 Illinois Subclass Members by Plaintiff Theiss and Illinois Subclass Members paying their drivers
5 tips that DoorDash used to subsidize its guaranteed minimum payments. DoorDash has
6 knowingly and willingly accepted and enjoyed the benefits of its practice of using consumers' tips
7 to subsidize its guaranteed minimum payments.

8 158. DoorDash either knew or should have known that it was deceiving consumers by
9 giving them the option to tip their drivers while concealing that it used their tips to subsidize its
10 guaranteed minimum payments, and that it was therefore accepting money from consumers that
11 consumers intended to benefit their drivers.

12 159. For DoorDash to retain the benefit of these payments under these circumstances is
13 inequitable.

14 160. DoorDash's acceptance and retention of these benefits under the circumstances
15 make it inequitable for DoorDash to retain these benefits without payment of the value to Plaintiff
16 Theiss and the Illinois Subclass.

17 161. Plaintiff Theiss and the Illinois Subclass are entitled to recover from DoorDash all
18 amounts wrongfully collected and improperly retained by DoorDash based on its practice of using
19 consumers' tips to subsidize its guaranteed minimum payments.

20 162. As a direct and proximate result of DoorDash's wrongful conduct and unjust
21 enrichment, Plaintiff Theiss and the Illinois Subclass are entitled to restitution from, and
22 institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained
23 by DoorDash, plus attorneys' fees, costs, and interest thereon.

24 WHEREFORE, Plaintiff Theiss and the Illinois Subclass pray judgment against DoorDash
25 as hereafter set forth.

26 ///

27 ///

28 ///

NINTH CLAIM FOR RELIEF
MONEY HAD AND RECEIVED IN ILLINOIS
(By Plaintiff Theiss and the Illinois Subclass Against DoorDash)

163. Plaintiff Theiss realleges and incorporates by reference the allegations contained in paragraphs 1 through 81, inclusive, of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

164. Plaintiff Theiss brings this claim individually and on behalf of the members of the Illinois Subclass against DoorDash under Illinois law.

165. DoorDash has received money from Plaintiff Theiss and the Illinois Subclass for providing food-delivery services, which includes money that it received as a result of its practice of using consumers' tips to subsidize its guaranteed minimum payments, that in equity and good conscience should be returned to Plaintiff Theiss and the members of the Illinois Subclass.

166. It is unjust for DoorDash to accept and retain this money that it received by using tips paid by Plaintiff Theiss and the members of the Illinois Subclass to subsidize its guaranteed minimum payments.

167. DoorDash should return to Plaintiff Theiss and the members of the Illinois Subclass the money it received by using their tips to subsidize its guaranteed minimum payments.

WHEREFORE, Plaintiff Theiss and the Illinois Subclass pray judgment against DoorDash as hereafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter judgment against DoorDash, as follows:

1. An order certifying appropriate classes and/or subclasses, designating Plaintiffs as the class representatives and their counsel as class counsel;
2. An award of restitution, damages, and disgorgement to Plaintiffs and the Class in an amount to be determined at trial;
3. An award of punitive damages as the Court deems necessary or proper;
4. An order enjoining DoorDash from continuing to engage in the practices complained of herein;

- 1 5. An order requiring DoorDash to pay both pre- and post-judgment interest on any
2 amounts awarded, as allowed by law;
- 3 6. An award of costs and attorneys' fees, as allowed by law; and
- 4 7. Such other or further relief as may be appropriate.
- 5

6 Dated: September 25, 2019

ARIAS SANGUINETTI WANG & TORRIJOS, LLP

7 By: /s/ Alfredo Torrijos

8 Mike Arias (SBN 115385)

mike@aswtlawyers.com

9 Elise R. Sanguinetti (SBN 191389)

10 elise@aswtlawyers.com

11 Alfredo Torrijos (SBN 222458)

alfredo@aswtlawyers.com

12 6701 Center Drive West, 14th Floor

13 Los Angeles, CA 90045

(310) 844-9696 / (310) 861-0168 (fax)

14 **LAW OFFICE OF RICHARD S. CORNFELD, LLC**

15 Richard S. Cornfeld (To be admitted *Pro Hac Vice*)

rcornfeld@cornfeldlegal.com

16 Daniel Scott Levy (To be admitted *Pro Hac Vice*)

dlevy@cornfeldlegal.com

17 1010 Market Street, Suite 1645

18 St. Louis, MO 63101

(314) 241-5799 / (314) 241-5788 (fax)

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20 *Attorneys for Plaintiffs and the Proposed Class*

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs, individually and on behalf of all others similarly situated, hereby demand a trial by jury of any and all issues in this action so triable of right.

Dated: September 25, 2019

ARIAS SANGUINETTI WANG & TORRIJOS, LLP

By: /s/ Alfredo Torrijos
Mike Arias (SBN 115385)
mike@aswtlawyers.com
Elise R. Sanguinetti (SBN 191389)
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St. Louis, MO 63101
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Attorneys for Plaintiffs and the Proposed Class