

Complaint

IN THE MATTER OF

**AMAZON.COM, INC.,
AND
AMAZON LOGISTICS, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

*Docket No. C-4746; File No. 192 3123
Complaint, June 9, 2021 – Decision, June 9, 2021*

This consent order addresses Amazon.com, Inc.’s operation of Amazon Flex, a gig economy program through which consumers can become “drivers” for Amazon and, using their own vehicles, deliver products and groceries to Amazon customers. The complaint alleges that Amazon has violated Section 5 of the Federal Trade Commission Act by misrepresenting to both customers and drivers that it would give drivers 100% of customer tips in addition to the pay Amazon offered. The consent order prohibits Amazon from misrepresenting to any consumer, including both customers and drivers: (a) the income a driver is likely to earn, (b) the amount Amazon will pay drivers, (c) that Amazon will give drivers customer tips in addition to Amazon’s contribution to drivers’ earnings, (d) the percentage or amount of any customer tip a driver will receive, or (e) that any amount customers pay is a tip.

Participants

For the *Commission*: Elizabeth C. Scott, Claire Stewart, and Guy G. Ward.

For the *Respondents*: James Howard, David Maas, Chris Renner, and Steve Rummage, Davis Wright Tremaine LLP; Maureen K. Ohlhausen and Andrew George, Baker Botts LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Amazon.com, Inc., a corporation, and Amazon Logistics, Inc., a corporation (collectively, “Amazon” or “Respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Amazon.com, Inc. is a Delaware corporation with its principal office or place of business at 410 Terry Avenue North, Seattle, Washington, 98126.
2. Respondent Amazon Logistics, Inc. is a Delaware Corporation with its principal office or place of business at 410 Terry Avenue North, Seattle, Washington, 98126. Amazon Logistics, Inc. is a wholly owned subsidiary of Amazon.com, Inc.
3. Respondents advertise and sell products, using drivers to deliver them.
4. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

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Respondents' Business Activities

5. Amazon offers various products, including books, electronics, household goods, apparel, groceries, and other items that consumers purchase online through Amazon websites and smartphone applications.

6. In 2015, Amazon launched Amazon Flex, a service through which consumers can sign up as drivers to deliver products to Amazon customers. Amazon pays drivers for making deliveries, and for some deliveries, allows customers to tip their drivers.

7. Amazon consistently has represented both to Amazon Flex drivers and to customers that it will pass on 100% of tips to drivers. In fact, for a period of over two and a half years, without consumers' permission, Amazon secretly used nearly a third of customer tips to subsidize its own pay to drivers.

8. Amazon continued to divert drivers' tips during this time despite hundreds of driver complaints about the practice, critical media reports, and internal recognition that its conduct was a "reputation tinderbox." Through these practices, Amazon ultimately pocketed over \$61 million in tips meant for drivers.

Amazon Flex

9. In 2015, Amazon launched Amazon Flex, through which it hires drivers (also known as "delivery partners") to deliver products for Amazon. At various times relevant to this complaint, Amazon offered to pay drivers to deliver packages to customers of its various services, including Amazon.com, Prime Now (household items), AmazonFresh (groceries), and Amazon Restaurants (restaurant meals).

10. To qualify to be a driver for Amazon Flex, consumers must be over twenty-one years of age with a car and a valid driver's license. They also must install the Amazon Flex App (the "App") on their smartphones. Among other things, the App includes Amazon's terms of service for drivers and answers to frequently asked questions ("FAQs").

11. According to Amazon's terms of service, Amazon Flex drivers are treated as independent contractors who must pay for their own gas, insurance, vehicle repairs, and other expenses.

Amazon's Representations to Prospective Drivers About Tips and Pay

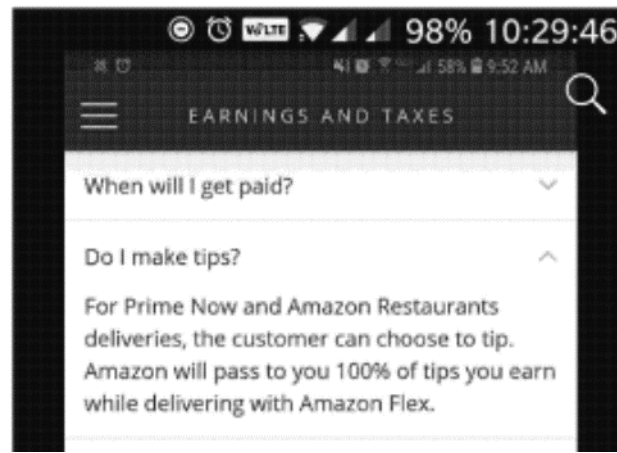
12. Through widely disseminated advertisements, websites, and the App, Amazon has represented that Amazon Flex drivers will receive 100% of customer tips.

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13. For example, the FAQs in the Amazon Flex App answer the question “Will I receive tips?” by promising that drivers will receive 100% of their tips:

For Prime Now, AmazonFresh, and store deliveries, the customer can choose to tip. **You will receive 100% of the tips you earn** while delivering with Amazon Flex.

14. An earlier version of the FAQs promised that Amazon “will pass to you 100% of tips you earn,” as shown in the following screenshot from May 2018:



15. Amazon’s recruitment ads also promoted the benefits of tip-eligible deliveries, including quotes from drivers describing tips as one of the “best thing[s]” about “Instant Offers,” one of the delivery options within Amazon Flex:

Instant offers are a great opportunity to earn while on the go.

Have an extra hour between blocks? Tap ‘Available Now.’

The best thing about instant offers?

“Quick money” – Dawit M., Falls Church, Virginia

“It’s fast & easy, and tips are good” – Angel E., San Diego, California

“Short trips and tips” – Randa J., Dallas, Texas

16. When drivers enroll in Amazon Flex, they are required to accept terms of service that make similar representations about driver tips, promising that Amazon will pay drivers “service fees in the amounts indicated in the Amazon Flex app at the time of acceptance” and separately guaranteeing that drivers will receive 100% of their tips. Amazon’s original terms of service for Amazon Flex, for example, promised to “provide [drivers] with any tips you earn” (emphasis added):

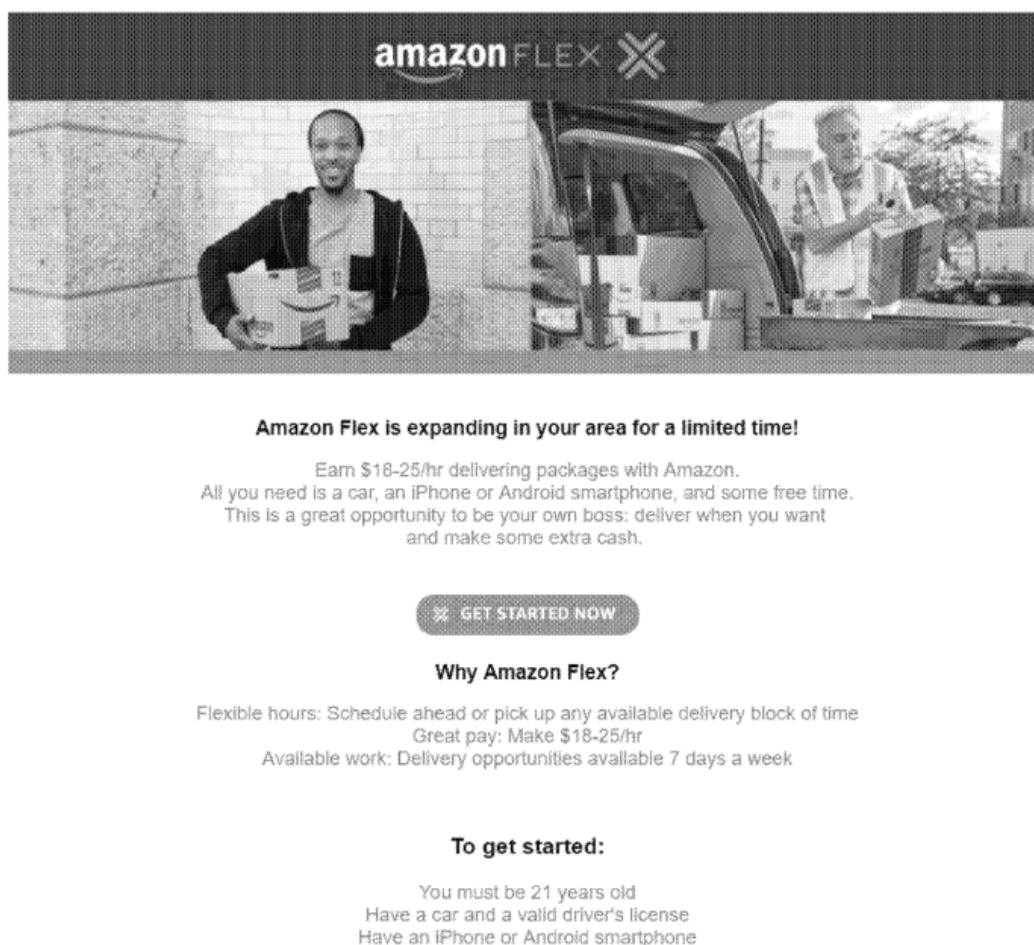
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Depending on the location in which the Services are provided and the product or business to which the Services relate, Amazon's customers may be able to provide a tip in connection with the fulfillment of their orders and **Amazon will provide you with any tips you earn.**

Amazon's current terms of service, effective September 22, 2016, promise that "Amazon will pass through any tips payable to you."

17. In conjunction with its representations about drivers receiving 100% of customer tips, Amazon also regularly advertises on its website and in recruitment ads on platforms such as Google and Craigslist that Amazon Flex drivers will earn an hourly rate of \$18 to \$25.

18. The following is a typical recruitment ad for Amazon Flex promoting driver earnings of \$18 to \$25 per hour:



The advertisement features a header with the "amazon FLEX" logo and a large image showing two delivery drivers: one holding a stack of Amazon boxes and another loading boxes into the back of a van. Below the image, the text reads: "Amazon Flex is expanding in your area for a limited time!" followed by "Earn \$18-25/hr delivering packages with Amazon. All you need is a car, an iPhone or Android smartphone, and some free time. This is a great opportunity to be your own boss: deliver when you want and make some extra cash." A button labeled "GET STARTED NOW" is centered below the text. Further down, the section "Why Amazon Flex?" lists three benefits: "Flexible hours: Schedule ahead or pick up any available delivery block of time", "Great pay: Make \$18-25/hr", and "Available work: Delivery opportunities available 7 days a week". The final section, "To get started:", lists requirements: "You must be 21 years old", "Have a car and a valid driver's license", and "Have an iPhone or Android smartphone".

amazon FLEX

Amazon Flex is expanding in your area for a limited time!

Earn \$18-25/hr delivering packages with Amazon.
All you need is a car, an iPhone or Android smartphone, and some free time.
This is a great opportunity to be your own boss: deliver when you want
and make some extra cash.

GET STARTED NOW

Why Amazon Flex?

Flexible hours: Schedule ahead or pick up any available delivery block of time
Great pay: Make \$18-25/hr
Available work: Delivery opportunities available 7 days a week

To get started:

You must be 21 years old
Have a car and a valid driver's license
Have an iPhone or Android smartphone

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19. Amazon's FAQs on its website promoted the benefits of tip-eligible deliveries, noting that drivers could earn up to \$18-\$25 per hour delivering for Amazon, and could "make more" by making deliveries that are eligible for tips:

Earnings**How much will I earn delivering with Amazon Flex?**

Delivering with Amazon Flex, you may earn up to \$18 - \$25 an hour.
Amazon pays by the delivery block.

How can I make more delivering with Amazon Flex?

Use a large vehicle: You can earn more by driving a larger vehicle, like an SUV or van that can fit more packages, to make you eligible to receive offers for longer delivery routes.

Earn more during our busiest times: During peak delivery times, delivery blocks may be offered at higher rates. A notification will alert you that increased rates are available.

Make deliveries eligible for tips: Customers are given the opportunity to tip you when ordering from Prime Now, AmazonFresh, and Amazon Restaurants.

20. Based on Amazon's representations, drivers expect that they will earn the hourly rate Amazon promised plus 100% of customer tips.

Amazon's Specific Delivery Offers to Amazon Flex Drivers

21. Once hired, Amazon Flex drivers can use the App to view and accept specific delivery gigs, known as "delivery blocks." Each delivery block consists of a certain number of deliveries to be completed within a certain period of time, typically one to four hours. The App's "Offers" screen displays the available delivery blocks, the duration of each block, and the payment offered to the driver for the block.

22. Amazon decides which delivery blocks are eligible for tips. At the outset of the Amazon Flex program, only Prime Now deliveries were eligible for tips, but Amazon expanded its tip-eligible deliveries over time to also include AmazonFresh and Amazon Restaurants.

23. For deliveries that are not tip-eligible, Amazon offers drivers a flat rate.

24. For deliveries that are tip-eligible, Amazon offers drivers a range of payment to complete the delivery block. Amazon typically offers a range of \$18 to \$25 per hour, or multiples thereof, sometimes more in certain areas, and treats the bottom of this pay range as the guaranteed minimum payment the driver will receive for completing the delivery block.

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25. For example, below is a representative screenshot of several delivery blocks Amazon offered:

OFFERS	
Monday, 4/1	22 offers
4:15 PM - 8:15 PM	
4 HR	\$76
Renton (DSE5) AMZL (1101 SW 16th St)	
9:30 AM - 11:30 AM	
2 HR	\$38-\$52
Kent Direct - Fresh (FFI6)	Includes tips
5:00 PM - 9:00 PM	
4 HR	\$78
Renton (DSE5) AMZL (1101 SW 16th St)	
3:30 PM - 7:00 PM	
3 HR 30 MIN	\$73.50
Everett (DSE4) AMZL (6611 Associated Blvd)	
3:30 PM - 7:00 PM	
3 HR 30 MIN	\$66.50
Georgetown (DSE2) AMZL (6705 E Marginal Way South)	
4:45 PM - 8:15 PM	
3 HR 30 MIN	\$73.50
REFRESH	

In the above example, only the second delivery block is eligible for tips. The first block offers the driver \$76 for four hours. The second block offers the driver a range of \$38 to \$52 for two hours and, because that block is eligible for tips, displays the phrase “Includes tips” below the range.

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Amazon's Claims to Customers About Tips

26. Apart from its representations to drivers, Amazon also assures customers who place orders for delivery through the Amazon Flex program that 100% of their tips will be passed on to drivers. When an Amazon customer places an order that is eligible for tips through an Amazon website or mobile application (for example, the Prime Now App), the customer encounters a screen displaying the order that includes a prepopulated tip for the driver.

27. An example of a screen displaying an order that includes a prepopulated tip for the driver is shown below:

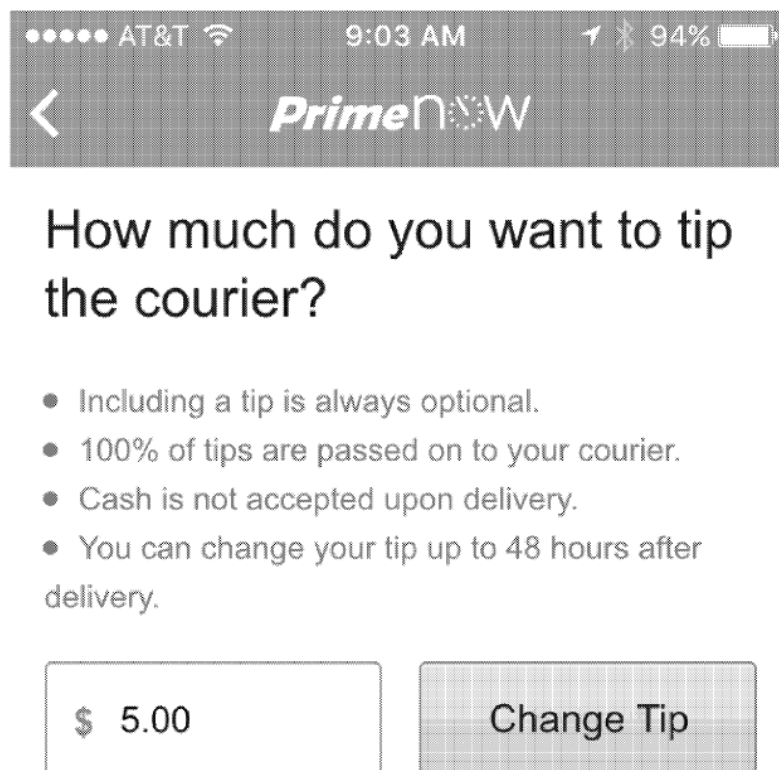
The screenshot shows the Amazon Prime Now app interface. At the top, the status bar displays 'AT&T', signal strength, time '9:03 AM', location services, and battery level '94%'. Below the status bar is a navigation bar with a back arrow and the 'PrimeNOW' logo. The main content area features a large 'Place Your Order' button. Below this is a tip selection box showing 'Tip: \$5.00 (recommended)' with a right arrow. The Amazon logo is centered below the tip box. A summary box contains the following details:

Items (3):	\$29.97
Delivery Fee:	FREE
Total before tax & tip:	\$29.97
Tax:	\$2.88
Tip:	\$5.00
Order total:	\$37.85

Below the summary box is a delivery time box showing 'Delivery Time' as '12:00 PM - 2:00 PM, Today' with a right arrow and the note 'Someone must be present'.

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28. When customers click on the recommended tip amount, the next screen explains that “100% of tips are passed on to your courier.” The screen also indicates that “Cash is not accepted upon delivery,” thereby encouraging customers to leave tips through the App:



29. Amazon experimented with different prepopulated tip percentages or amounts to determine which ones generate the highest tips. Amazon referred to this internally as its “Get More Tip\$ Project.”

Amazon Used Customer Tips to Subsidize its Payments to Drivers

30. Contrary to Amazon’s representations to its drivers and customers that it would provide drivers 100% of customer tips, Amazon used tens of millions of dollars in customer tips to subsidize its payments to drivers. Amazon concealed from drivers the amount that customers had tipped for their deliveries.

31. At the outset of the Amazon Flex program, from 2015 through late 2016, Amazon paid drivers at least \$18 per hour plus 100% of customer tips, as represented to drivers at the time of enrollment. During that period, Amazon also displayed to drivers the amount they had been tipped.

32. Beginning in late 2016, however, Amazon made changes to the program to reduce its costs. At that point, Amazon implemented what it called “variable base pay” for Amazon Flex drivers on a rolling basis in various locations across the country. Under the variable base pay

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approach, for over two and a half years, Amazon secretly reduced its own contribution to drivers' pay to an algorithmically set, internal "base rate" using data it collected about average tips in the area. The base rate varied by location and sometimes varied within the same market. But this algorithmically set "base rate" often was below the \$18-\$25 per hour range that Amazon had promised at the time of drivers' enrollment and in specific block offers.

33. Under this approach, rather than provide drivers 100% of tips in addition to the range it offered drivers in a delivery block, Amazon treated the bottom of the range as its guaranteed minimum payment and often used drivers' tips to meet that minimum. For example, for a one-hour block offering \$18-\$25, if Amazon's base rate in the particular location was \$12, and the customer left a \$6 tip for the driver, then Amazon paid the driver only \$12 and used the full customer tip of \$6 to reach its minimum payment of \$18 to the driver. In the App, Amazon then displayed driver earnings as the combined total of its base rate and any customer tip—it did not separately display to drivers the amount of any customer tip.

34. This practice contradicted Amazon's representation to drivers and consumers' expectations that drivers would receive 100% of customer tips on top of their offered pay. Through variable base pay, Amazon harmed both its drivers and its customers. Drivers received less than Amazon promised them for completing delivery blocks, and customers paid over \$61 million in tips meant for drivers that Amazon instead diverted to subsidize its own labor costs.

Amazon's Efforts to Conceal its Unlawful Practices

35. When it instituted variable base pay, Amazon decided not to seek drivers' consent or otherwise notify them that it was changing its compensation practices. Amazon did not inform drivers or the media about the changes. At the same time, Amazon also did not change the earnings claims it had been making to drivers since the inception of the Amazon Flex program, nor did it adjust its promises to customers or drivers that 100% of customer tips would be passed on to drivers.

36. In planning for the transition to variable base pay, Amazon discussed internally how to handle the change to variable base pay with drivers and "what level of detail about earnings to show" drivers. Amazon considered different versions of earnings display screens that showed or concealed the breakdown between Amazon's "base rate" and tips.

37. Ultimately, when it implemented variable base pay, Amazon decided to obscure from drivers that it was reducing their pay, and began reporting their earnings as a single lump sum that hid any distinction between customer tips and pay from Amazon. Based on the information Amazon provided, drivers could not tell whether Amazon had contributed its minimum for the delivery block or a lesser amount, nor could drivers tell the amount of any customer tip.

38. Amazon knew that its new compensation policies would reduce some drivers' earnings. Rather than seek to modify its terms of service with its drivers or inform them of the policy change, Amazon instead chose to conceal the change and to respond only to individual drivers who questioned their reduced compensation. As one Amazon employee explained it, the

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company “did not want to communicate any pricing changes to [drivers], so we are only ‘reacting’ to any questions.” In fact, Amazon prepared canned responses to questions it anticipated receiving from drivers, including “Is Amazon taking our tips?” and “Why did I only receive the minimum payment?” Amazon’s canned responses continued to reiterate that its “earnings commitment to delivery partners has not changed—delivery partners still earn \$18-25 per hour including 100% of customer tips,” which only obscured that Amazon was diverting drivers’ tips to its own use.

39. Although Amazon continued promising drivers 100% of their tips, some drivers suspected that Amazon was no longer making good on this promise. Following the implementation of variable base pay, Amazon received hundreds of complaints and inquiries from drivers expressing concern about reduced earnings and asking whether Amazon was breaking its promise to pass through 100% of their tips.

40. Many drivers reported to Amazon that they were expecting to receive 100% of their tips in addition to the rate Amazon promised. For example, one driver asked “what happened to drivers receiving 100% of all tips?” Another driver asked for clarification because he “thought [drivers] were paid \$18-\$24/hr plus 100% of the tip,” and asked if drivers were “still getting paid \$18 per hour plus 100% of [their] tips.” Other complaints stated that “amazon [wa]s supposed to pay 18.00 minimum Base pay with 100% tips” and that drivers had “not been getting 100% of the tip.” Drivers also asked Amazon for breakdowns of tips and its own payout for each delivery, including one who said he expected “to make 100% of [his] money tips as amazon promised.” Drivers also questioned Amazon’s representations to customers, including one who pointed out that “amazon states 100% of that tip goes to the driver when in fact it sounds [sic] like the customer is paying the operating [sic] cost of a delivery for amazon and not a tip like they are told.”

41. In May 2018, a driver sent an email to Amazon with the subject line, “My tips not being given to me????” The driver complained that he was “supposed to get 100% of [his] tips,” but had not received a \$5 tip that a customer showed him in the App. The driver stated that he was “shocked” and “just felt cheated as also [his] friend did as a customer.” The driver added that the customer “said he would follow up with Amazon because he also felt cheated saying he did not leave a tip for Amazon that it was for me the driver.” The driver attached to his email a screenshot of Amazon’s FAQs stating that “Amazon will pass to you 100% of tips you earn.”

42. When drivers complained, Amazon sent them the canned email responses it had prepared. These canned emails stated that Amazon was providing drivers “100% of customer tips” and did not explain that Amazon had changed its practices by paying drivers less than promised and making up the difference with their tips.

43. After implementation of variable base pay, Amazon Flex drivers also posted complaints on social media about Amazon reducing their pay or “stealing” their tips. Amazon employees monitored and circulated these complaints internally.

44. Amazon employees also acknowledged internally that Amazon was using customer tips to subsidize its minimum payments to drivers, and that these subsidies were saving

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Amazon millions of dollars at the drivers' expense. In August 2018 emails, Amazon employees referred to the issue as "a huge PR risk for Amazon" and warned of "an Amazon reputation tinderbox."

45. In late 2018 and early 2019, news articles suggested that Amazon was secretly using customer tips to fund guaranteed payments to drivers. On February 5, 2019, a reporter emailed Amazon to ask whether it employed such a practice, explaining, "there's a concern that it constitutes consumer fraud because the people leaving tips aren't made aware that the tip will cover a guaranteed minimum payment, or that by leaving a tip, they could be lowering the fraction of that minimum payment that is covered by the company." Amazon dodged the question, responding that "our pay commitment to delivery partners has not changed since we launched the Amazon Flex program – delivery partners still earn \$18-\$25 per hour, including 100% of tips – and on average drivers earn over \$20/hour." Simultaneously, however, an Amazon employee acknowledged internally that the reporter was "definitely zero'ing [sic] in on the right question."

46. Despite taking customer tips to subsidize its own advertised minimum pay in numerous markets, Amazon continued to misrepresent in its terms of service and FAQs that it would pass through 100% of tips to drivers. Amazon also continued to advertise the same pay range of \$18-\$25 on multiple platforms and the opportunity to "make more" through tip-eligible deliveries. And Amazon continued urging customers to "tip the courier" while assuring them that "100% of tips are passed on to your courier."

47. Amazon continued these practices for over two and a half years despite hundreds of complaints from drivers, critical media reports, and internal recognition that it was misleading consumers.

Amazon's Changes After Learning of the FTC's Investigation

48. Amazon changed its practices only after learning it was under investigation by the FTC. On May 23, 2019, the FTC issued a civil investigative demand ("CID") to Amazon seeking information and records relating to Amazon Flex, including Amazon's representation that Amazon Flex drivers receive 100% of their tips. The CID informed Amazon that the FTC was investigating whether Amazon had "deceived consumers regarding compensation of Amazon Flex Drivers, in violation of the FTC Act, 15 U.S.C. § 45, and whether Commission action to obtain monetary relief would be in the public interest."

49. On August 22, 2019, Amazon announced to its current drivers an "Updated Earnings Experience," which was similar to the original compensation program that had been in effect from 2015 through late 2016 at the start of the Amazon Flex program. After the August 2019 announcement, Amazon began separately displaying in the App the amount it would pay drivers and the tips for each delivery block. According to Amazon, it now pays drivers the full amount offered in a delivery block and, separately, passes on customer tips. In announcing the change, Amazon stated that, "For deliveries that give customers the option to tip, you always receive 100% of the tips."

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**Count I
Deceptive Tipping Claims**

50. In numerous instances in connection with the Amazon Flex delivery service, Respondents have represented, directly or indirectly, expressly or by implication, that Amazon would give drivers 100% of customer tips in addition to the pay Amazon offered.

51. In fact, in numerous instances in which Respondents have made this representation, Amazon has not given drivers 100% of customer tips in addition to the pay Amazon offered. Therefore, the representation is false or misleading.

Violations of Section 5

52. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this 9th day of June, 2021, has issued this Complaint against Respondents.

By the Commission.

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Federal Trade Commission Act.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent

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Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:
 - a. Respondent Amazon.com, Inc., a Delaware corporation with its principal office or place of business at 410 Terry Avenue North, Seattle, Washington, 98126.
 - b. Respondent Amazon Logistics, Inc., a Delaware corporation with its principal office or place of business at 410 Terry Avenue North, Seattle, Washington, 98126. Amazon Logistics, Inc. is a wholly owned subsidiary of Amazon.com, Inc.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. “Respondents” means Amazon.com, Inc., and Amazon Logistics.com, Inc., and their successors and assigns, individually or collectively, or in any combination.
- B. “Driver” means someone, regardless of employment status with Respondents, who provides delivery services by accepting individual offers to make a single delivery or set of deliveries to Respondents’ customers.

Provisions**I. Prohibited Misrepresentations**

IT IS ORDERED that Respondents, and Respondents’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any delivery program or service using Drivers, must not misrepresent, expressly or by implication:

- A. The income a Driver is likely to earn;
- B. The amount Respondents will pay Drivers;

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- C. That Respondents will give Drivers customer tips in addition to Respondents' contribution to Drivers' earnings;
- D. The percentage or amount of any customer tip a Driver will receive; or
- E. That any amount customers pay is a tip.

II. Prohibition Against Unauthorized Use of Tips

IT IS FURTHER ORDERED that Respondents, Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any delivery program or service using Drivers, must not change the extent to which they use a Driver's tips toward the Respondents' contribution to the Driver's earnings without first obtaining express informed consent from the Driver.

III. Monetary Relief

IT IS FURTHER ORDERED that:

- A. Respondents must pay to the Commission \$61,710,583, which Respondents stipulate their undersigned counsel holds in escrow for no purpose other than payment to the Commission.
- B. Such payment must be made within 8 days of the effective date of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.
- C. Respondents relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- D. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- E. The facts alleged in the Complaint establish all elements necessary to sustain an action by or on behalf of the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- F. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct

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redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Respondents' practices alleged in the Complaint. Any money not used is to be deposited to the U.S. Treasury. Respondents have no right to challenge any activities pursuant to this Provision.

IV. Driver Information

IT IS FURTHER ORDERED that Respondents must directly or indirectly provide sufficient Driver information to enable the Commission to efficiently administer consumer redress to Drivers. Respondents represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Respondents must provide it, in the form prescribed by the Commission representative, within 14 days.

V. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after the issuance date of this Order, each Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members of Respondents; (2) all employees, agents, and representatives of Respondents managing conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VI. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which each Respondent must:

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1. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent;
 2. identify all of that Respondent's businesses that could violate this Order by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 3. describe the activities of each business, including changes to and representations about Drivers' tips or compensation, the means of advertising, marketing, and sales, and the involvement of any other Respondent;
 4. describe in detail whether and how that Respondent is in compliance with each Provision of this Order; and
 5. provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 10 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. any designated point of contact; or
 2. the structure of any Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal

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Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.
The subject line must begin: "In re Amazon.com, Inc., FTC File No. 1923123."

VII. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, each Respondent, in connection with any delivery program or service using Drivers, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each Driver and each person who participates in conduct related to the subject matter of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints related to Drivers' tips or earnings, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material concerning the subject matter of this Order.

VIII. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the

Decision and Order

Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

IX. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on June 9, 2041, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Concurring Statement

**JOINT STATEMENT OF COMMISSIONER NOAH JOSHUA PHILLIPS AND
ACTING CHAIRWOMAN REBECCA KELLY SLAUGHTER**

The internet-enabled gig economy is substantial and continues to grow. According to one study, U.S. families earning income from the internet-enabled gig economy rose from under 2% of the sample in 2013 to 4.5% by early 2018, with more than 5 million U.S. households earning some income from this type of work by 2018.¹ Another study estimates worldwide transaction volume of \$204 billion in 2018, which will more than double to \$455 billion by 2023.²

Consumer demand for the services offered by the gig economy surely contributes to this growth. But it would not be possible without the contributions of drivers, shoppers, designers, and other gig workers, whether seeking supplemental income or relying on one gig or a patchwork of gigs to get by.

The impact of the internet-enabled gig economy on workers is a matter of robust debate in Congress, state legislatures, popular referenda, academia, and elsewhere. The two authors of this joint statement may not agree on every aspect of this debate, including whether this novel business model is, on net, beneficial for consumers and workers.

Where we do agree—and what this case reflects—is that the platforms that facilitate this gig economy must treat their workers fairly and non-deceptively, just as they must consumers, and that the Federal Trade Commission should work to ensure that they do. That is why this case resolving our investigation into Amazon.com, Inc. and its subsidiary Amazon Logistics, Inc.’s (collectively, “Amazon”) treatment of delivery drivers is so important.

1 See Diana Farrell, Fiona Greig & Amar Hamoudi, *The Online Platform Economy in 2018: Drivers, Workers, Sellers and Lessors*, JPMorgan Chase & Co. Institute (2018) at 23, <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-ope-2018.pdf>. Particularly because of high turnover, with many workers spending only a few months participating, estimates of the gig economy are difficult and inconsistent. Another study estimated that there were 1.6 million American workers in the internet-enabled gig economy in 2017, or 1% of the entire workforce, still a substantial number. See U.S. Bureau of Labor Statistics, *Electronically mediated work: new questions in the Contingent Worker Supplement*, U.S. Dep’t of Labor (Sept. 2018), <https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm>.

2 See Mastercard & Kaiser Associates, *The Global Gig Economy: Capitalizing on a ~\$500 Billion Opportunity* (May 2019) at 2, <https://newsroom.mastercard.com/wp-content/uploads/2019/05/Gig-Economy-White-Paper-May-2019.pdf>. Another study estimated that spending on gig platforms was increasing 43% year-on-year in 2018. See Uber, *Working Together: Priorities to enhance the quality and security of independent work in the United States* (Aug. 10, 2020) at 5, <https://ubernewsroomapi.10upcdn.com/wp-content/uploads/2020/08/Working-Together-Priorities.pdf> (“Uber Report”) (citing Staffing Industry Analysts, *The Gig Economy and Human Cloud Landscape* (2019)). By way of example, the number of Uber drivers in the U.S. has grown from 160,000 in 2014 to 1 million in 2020. See Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber’s Driver-Partners in the United States* at 1 (Princeton U. Indus. Relations Section, Working Paper No. 587, Jan. 2015), <https://dataspace.princeton.edu/bitstream/88435/dsp010z708z67d/5/587.pdf>; Uber Report.

Concurring Statement

The conduct alleged in the complaint is outrageous. According to the complaint, Amazon recruited delivery drivers (and, possibly, attracted customers) by promising that drivers would collect all the tips awarded them by Amazon customers. At a certain point, it decided to divert thirty percent of those tips from drivers to the company to subsidize the amounts it had committed to paying its drivers. The complaint alleges that Amazon then went to great lengths to ensure that no one would figure out what it was doing, by changing the way it presented earnings to drivers and drafting misleading answers for service representatives to give to drivers upset at being short-changed.

Our settlement with Amazon ensures that these drivers will get back every dollar that was promised, every dollar that a customer chose to give as a tip for their service. That is a good result for an enforcement action under the FTC Act, the law we apply today. But we believe that, given the importance of candor and fairness to workers in the gig economy, our current authorities could be improved. Congress can give us direct penalty authority to deter deception aimed at workers in the internet-enabled gig economy and rulemaking authority under the Administrative Procedure Act to address systemic and unfair practices that harm those workers.

Clear rules and the threat of substantial civil penalties can deter wrongdoing. The authors of this statement do not always agree on the proper scope of rulemaking and penalty authority, but we do agree here. Authorizing the FTC to assess penalties to deter similar lawbreaking will help gig workers and make labor markets more efficient. The internet-enabled gig economy is new, innovative, and growing. We believe that the modest reforms we propose here can help gig workers have a fairer shake at getting their benefit of the bargain from that growth, too.

STATEMENT OF COMMISSIONER ROHIT CHOPRA

Today, the FTC is sanctioning Amazon.com (NASDAQ: AMZN) for expanding its business empire by cheating its workers. In 2015, Amazon launched Flex, a package delivery service that was widely seen as a challenge to FedEx and UPS.¹ To recruit drivers, the company promised to pay them a minimum of \$18 to \$25 an hour, plus tips.² But once the service was off the ground, in late 2016, Amazon changed course. The Commission's complaint charges that the company secretly began cutting its payments to drivers, and siphoning their tips to make up the difference.³ In total, Amazon stole nearly one-third of drivers' tips to pad its own bottom line.

1 See Laura Stevens, *Amazon Drives Deeper Into Package Delivery*, WALL STREET J. (June 28, 2018), <https://www.wsj.com/articles/amazon-drives-deeper-into-package-delivery-1530158460>.

2 Compl., In the Matter of Amazon, Inc., Fed. Trade Comm'n File 1923123, ¶¶ 17-20.

3 *Id.* ¶¶ 30-34.

Concurring Statement

This theft did not go unnoticed by Amazon’s drivers, many of whom expressed anger and confusion to the company. But, rather than coming clean, Amazon took elaborate steps to mislead its drivers and conceal its theft, sending them canned responses that repeated the company’s lies. The complaint charges that Amazon executives chose not to alter the practice, instead viewing drivers’ complaints as a “PR risk,” which they sought to contain through deception.⁴

Amazon’s scheme ended after it was exposed, but it likely produced significant benefits for the company. First, by promising a higher base pay initially, Amazon was likely able to recruit drivers more quickly, particularly as the company tried to stand up Amazon Flex in time for the holiday season.⁵ Second, and most directly, Amazon’s bait-and-switch allowed the company to pocket more than \$60 million in workers’ tips.⁶ And finally, by allegedly misleading its workers about their earnings, the company made it less likely that drivers would seek better opportunities elsewhere, helping Amazon attract and retain workers in its quest to dominate.⁷

By the time this scheme was exposed in late 2019, Amazon Flex was far more established. In fact, that same year, the company quietly disclosed that it was slashing drivers’ minimum pay by more than 15 percent, relative to what it promised in 2015.⁸ This conduct raises serious questions about how Amazon amassed and wielded its market power. Fortunately, today’s action to redress the company’s victims does not prevent the FTC or state attorneys general from assessing whether Amazon has engaged in a broader pattern of unfair practices in violation of the antitrust laws.

Today’s order provides substantial redress to the families victimized by Amazon’s anticompetitive deception. However, this cannot be the only action we take to protect workers and families from dominant middlemen. The FTC will also need to carefully examine whether

4 *Id.* ¶ 35-47.

5 Shortly after launching Flex, Amazon noted that it was trying to “ramp quickly” in anticipation of the holiday season, Prime Day, and other periods of high demand. See Becky Yerak, *Uber for packages? Amazon looking for drivers to deliver goods*, CHICAGO TRIBUNE (Oct. 9, 2015), <https://www.chicagotribune.com/business/ct-amazon-flex-chicago-1009-biz-20151009-story.html>.

6 Compl., *supra* note 2, ¶ 8.

7 During the period of the alleged lawbreaking, gig workers were reportedly in high demand. See Christopher Mims, *In a Tight Labor Market, Gig Workers Get Harder to Please*, WALL STREET J. (May 4, 2019), <https://www.wsj.com/articles/in-a-tight-labor-market-gig-workers-get-harder-to-please-11556942404>.

8 After Amazon’s scheme was exposed, the company indicated that it would begin paying drivers a minimum of \$15 per hour. See Chaim Gartenberg, *Amazon will no longer use tips to pay delivery drivers’ base salaries*, THE VERGE (Aug. 22, 2019), <https://www.theverge.com/2019/8/22/20828550/amazon-delivery-drivers-tips-end-base-salaries-flex>. This was a significant reduction from the \$18 promised in 2015, particularly when adjusted for cost of living.

Concurring Statement

tech platforms are engaging in anticompetitive conduct that hoodwinks workers and crushes law-abiding competitors.⁹

The Commission has historically taken a lax approach to worker abuse, entering no-consequences settlements even in naked wage-fixing matters that are criminal in nature.¹⁰ Despite broad pronouncements about a commitment to policing markets for anticompetitive conduct that harms workers,¹¹ the FTC has done little. I hope that today's action turns the page on this era of inaction.

I also agree with Acting Chairwoman Slaughter and Commissioner Phillips that preying on workers justifies punitive measures far beyond the restitution provided here, and I believe the FTC should act now to deploy dormant authorities to trigger civil penalties and other relief in cases like this one.¹²

Companies should succeed only when they compete, not when they cheat or abuse their power. While Amazon.com is one of the largest, most powerful, and most feared firms in the world, the company cannot be above the law. Regulators and enforcers in the United States and around the globe can no longer turn a blind eye.

9 I have previously outlined certain steps that regulators can take to address anticompetitive practices in labor markets. Comment Submission of Commissioner Chopra to Department of Justice Initiative on Labor Market Competition (Sept. 18, 2019), <https://www.ftc.gov/public-statements/2019/09/comment-submission-commissioner-chopra-department-justice-initiative-labor>.

10 In 2019, the FTC agreed to a no-consequences settlement with respondents charged with blatant wage-fixing. See Dissenting Statement of Commissioner Rohit Chopra In the Matter of Your Therapy Source, Neeraj Jindal and Sheri Yarbray, Fed. Trade Comm'n File No. 1710134 (Oct. 31, 2109), <https://www.ftc.gov/public-statements/2019/10/dissenting-statement-commissioner-rohit-chopra-matter-your-therapy-source>. Respondent Neeraj Jindal was later indicted by the United States Department of Justice. Press Release, U.S. Dep't of Justice, Former Owner of Health Care Staffing Company Indicted for Wage Fixing (Dec. 10, 2020), <https://www.justice.gov/opa/pr/former-owner-health-care-staffing-company-indicted-wage-fixing>.

11 See, e.g., Press Release, Fed. Trade Comm'n, FTC and DOJ Release Guidance for Human Resource Professionals on How Antitrust Law Applies to Employee Hiring and Compensation (Oct. 20, 2016), <https://www.ftc.gov/news-events/press-releases/2016/10/ftc-doj-release-guidance-human-resource-professionals-how>.

12 Under its status quo approach, the FTC does not seek civil penalties for this type of abuse. But this can change. In the short term, the Commission can deploy its Penalty Offense Authority to apprise market participants, using existing administrative orders, that it is a penalty offense to recruit workers based on false earnings claims. See *Rohit Chopra & Samuel A.A. Levine, The Case for Resurrecting the FTC Act's Penalty Offense Authority* (Oct. 29, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256. The Commission can also codify existing precedent into a Restatement Rulemaking to trigger penalties and damages for this type of fraud. See Statement of Commissioner Rohit Chopra Regarding the Report to Congress on Protecting Older Consumers, Fed. Trade Comm'n File No. P1444400 (Oct. 19, 2020) <https://www.ftc.gov/public-statements/2020/10/statement-commissioner-rohit-chopra-regarding-report-congress-protecting>. Such a rule would impose no burden on market participants, while ensuring real deterrence for practices that undercut workers and competitors.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Amazon.com, Inc. and Amazon Logistics, Inc. (“Amazon”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

Amazon operates Amazon Flex, a gig economy program through which consumers can become “drivers” for Amazon and, using their own vehicles, deliver products and groceries to Amazon customers. Amazon pays drivers for making deliveries, and for some types of deliveries, allows customers to tip the drivers via the app or website used to place the order. Amazon consistently represents to both drivers and customers that it passes on 100% of customer tips to drivers. However, from late 2016 through August 2019, Amazon withheld nearly a third of the tips meant for drivers, about \$61 million in total, despite its representations that it would provide drivers 100% of customer tips. Amazon continued diverting drivers’ tips in this way for over two and a half years despite hundreds of complaints from drivers and critical media reports. Amazon changed its practices only after the FTC issued a Civil Investigative Demand to the company in May 2019.

The Commission’s proposed complaint alleges that Amazon has violated Section 5 of the FTC Act. In particular, the proposed complaint alleges that Amazon misrepresented to both customers and drivers that it would give drivers 100% of customer tips in addition to the pay Amazon offered.

The proposed order includes equitable monetary relief and injunctive provisions to prevent Amazon from engaging in the same or similar acts or practices in the future. Part I of the proposed order prohibits Amazon from misrepresenting to any consumer, including both customers and drivers: (a) the income a driver is likely to earn, (b) the amount Amazon will pay drivers, (c) that Amazon will give drivers customer tips in addition to Amazon’s contribution to drivers’ earnings, (d) the percentage or amount of any customer tip a driver will receive, or (e) that any amount customers pay is a tip. Part II of the proposed order prohibits Amazon from changing the extent to which it uses a driver’s tips toward Amazon’s contribution to the driver’s earnings without first obtaining express informed consent from the driver.

Part III of the proposed order requires Amazon to pay \$61,710,583, the full amount of tips that Amazon improperly withheld from drivers. Part IV of the proposed order requires Amazon to provide sufficient information about drivers to enable the Commission to efficiently administer redress to drivers.

Parts V through VIII of the proposed order are reporting and compliance provisions. Part V requires acknowledgments of the order. Part VI requires Amazon to notify the Commission of changes in corporate status for 10 years and mandates that the company submit an initial compliance report to the Commission. Part VII requires Amazon to create certain documents

Analysis to Aid Public Comment

relating to its compliance with the order for 10 years and to retain those documents for a 5-year period. Part VIII mandates that the company make available to the Commission information or subsequent compliance reports, as requested.

Finally, Part IX states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

Complaint

IN THE MATTER OF

FLO HEALTH, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket No. C-4747; File No. 192 3133
Complaint, June 17, 2021 – Decision, June 17, 2021

This consent order addresses Flo Health, Inc.’s mobile application called the Flo Period & Ovulation Tracker, which collects and stores menstruation and fertility information about millions of users worldwide. The complaint alleges that Flo Health violated of Section 5(a) of the Federal Trade Commission Act by misrepresenting their use and disclosure of consumer’s personal information, and compliance with the Privacy Shield Principles of Notice, Choice, Accountability for Onward Transfers, and Purpose Limitation. The consent order requires Flo Health to ask any party other than Flo Health, its service providers, or subcontractors, that has received “Health Information” about “Covered App Users” to destroy such information; and prohibits Flo Health from making false or deceptive statements regarding: (1) the purposes for which Flo Health or any entity to whom it discloses, collects, maintains, or uses personal information, including identifiable health information; (2) the extent to which consumers may exercise control over Flo Health’s access, collection, maintenance, use, disclosure, or deletion of such information; (3) the extent to which Flo Health complies with any privacy, security, or compliance program, including the Privacy Shield; and (4) the extent to which Flo Health collects, maintains, uses, discloses, deletes, or permits or denies access to any Covered Information, or the extent to which Flo Health protects the availability, confidentiality, or integrity of Covered Information.

Participants

For the *Commission*: *Elisa Jillson and Miles Plant.*

For the *Respondents*: *David Kantrowitz and Brenda Sharton, Goodwin Procter LLP.*

COMPLAINT

The Federal Trade Commission (“FTC”), having reason to believe that Flo Health, Inc., a corporation (“Respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Flo Health, Inc. (“Flo Health”) is a Delaware corporation with its principal office or place of business at 1013 Centre Road, Suite 403-B, Wilmington, Delaware 19805.
2. Respondent has developed, advertised, offered for sale, sold, and distributed the Flo Period & Ovulation Tracker, a mobile application (“app”) powered by artificial intelligence that functions as an ovulation calendar, period tracker, and pregnancy guide (“Flo App”).
3. Millions of women use the Flo App, giving Respondent details of their menstruations and gynecological health on the promise that the app will help predict ovulation and aid in pregnancy and childbirth. These users trust Respondent with intimate details of their reproductive health because Respondent repeatedly promised to protect the information and keep