

FILED UNDER SEAL PURSUANT TO ORDER OF THE COURT DATED NOVEMBER 12, 2024

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15 ATTORNEYS FOR PLAINTIFF

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 \_\_\_\_\_ )  
19 FEDERAL TRADE )  
20 COMMISSION, )  
21 )  
22 Plaintiff, )  
23 )  
24 v. )  
25 )  
26 DAVE, INC., a Delaware )  
27 corporation, )  
28 )  
29 Defendant. )  
30 \_\_\_\_\_ )

**Case No. 2:24-cv-09566-MRA-AGR**  
**COMPLAINT FOR PERMANENT INJUNCTION, MONETARY JUDGMENT, AND OTHER RELIEF**  
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31 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its  
32 Complaint alleges:



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1 this charge, Dave will pay for or donate a specified number of meals to feed  
2 hungry children. In truth, however, Dave does not provide the meals as claimed,  
3 and instead makes only a token charitable donation—usually \$1.50 or less—while  
4 keeping the bulk of the charge for itself.

5 5. Dave also charges all consumers—even those who cannot get an  
6 advance—a \$1 monthly membership subscription fee, frequently without their  
7 knowledge or consent. Consumers who realize that Dave has been charging them  
8 and seek to stop the charge often find that Dave’s mechanisms for doing so are  
9 unavailable or effort-intensive.

### 10 JURISDICTION AND VENUE

11 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
12 §§ 1331, 1337(a), and 1345.

13 7. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2),  
14 (c)(2), and (d), and 15 U.S.C. § 53(b).

### 15 PLAINTIFF

16 8. The FTC is an independent agency of the United States Government  
17 created by the FTC Act, which authorizes the FTC to commence this district court  
18 civil action by its own attorneys. 15 U.S.C. §§ 41–58. The FTC enforces  
19 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive  
20 acts or practices in or affecting commerce. The FTC also enforces ROSCA,  
21 15 U.S.C. §§ 8401–8405, which, *inter alia*, prohibits the sale of goods or services  
22 on the Internet through negative option marketing without meeting certain  
23 requirements to protect consumers. A negative option is an offer in which the  
24 seller treats a consumer’s silence—their failure to reject an offer or cancel an  
25 agreement—as consent to be charged for goods or services. 16 C.F.R. § 310.2(w).

### 26 DEFENDANT

27 9. Defendant Dave, Inc., (“Dave”) is a Delaware corporation with its  
28 principal place of business at 1265 South Cochran Avenue, Los Angeles,

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1 California. Dave transacts or has transacted business in this District and  
2 throughout the United States. At all times relevant to this Complaint, acting alone  
3 or in concert with others, Dave has advertised, marketed, distributed, or sold a  
4 personal finance mobile application that offers short-term cash advances to  
5 consumers throughout the United States.

6 **COMMERCE**

7 10. At all times relevant to this Complaint, Defendant has maintained a  
8 substantial course of trade in or affecting commerce, as “commerce” is defined in  
9 Section 4 of the FTC Act, 15 U.S.C. § 44.

10 **DEFENDANT’S BUSINESS ACTIVITIES**

11 11. Dave operates a personal finance mobile application that is available  
12 for download through the Apple App Store and Google Play Store. Dave  
13 advertises its app as a tool that offers short-term cash advances to cover  
14 unexpected emergencies and avoid the financial penalties (such as overdraft fees)  
15 that can attend them. Dave calls its advances “Extra Cash” and says consumers  
16 can receive amounts “up to \$500.”

17 12. Dave requires consumers who use its app to provide information  
18 about their bank accounts to “link” them to the Dave app. Dave uses this  
19 information to debit consumers’ bank accounts to collect on advances and other  
20 charges.

21 **Dave Deceptively Advertises “Instant” Cash Advances of Up to \$500**

22 13. Dave advertises its app to consumers online and through social media.  
23 Dave represents in its advertising that consumers can obtain cash advances of up to  
24 \$500 whenever they need them. That amount has increased over time; in earlier  
25 periods, Dave advertised advances of up to \$75, \$100, and \$250. Dave’s  
26 advertisements emphasize that consumers can receive cash “instantly,” “on the  
27 spot,” “now,” and “in under 5 minutes”; “[a]ll you have to do is download this  
28 app.” Dave reinforces these claims in the Apple App and Google Play Stores,


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1 where consumers download the app, and on the app itself, during the process of  
2 enrolling with Dave.

3 14. In reality, only a miniscule number of consumers who respond to  
4 Dave’s advertising by downloading the app are offered cash advances in amounts  
5 anywhere close to the amounts advertised, and many are not offered any cash  
6 advance at all. And consumers who are offered an advance must pay an “Express  
7 Fee” of \$3 to \$25 to avoid a delay of two to three business days in receiving the  
8 funds Dave promised “instantly.”

9 *Misrepresentations Online and in Social Media*

10 15. Since at least 2020, Dave has advertised its cash advance product on  
11 social media platforms such as Facebook, Instagram, and TikTok. Most of Dave’s  
12 users come to the app through an ad. Dave’s ads expressly and prominently tell  
13 consumers that they will be able to receive cash advances of up to \$500,  
14 “instantly,” or “in under 5 minutes,” if they download the Dave app. Examples of  
15 these ads appear below.

16  
17  **Get Up To**  
18 **\$500 instantly**

19 Simulated product experience. Terms apply. Click here for more info or visit <http://dave.com/legal>. **Designed by Dave, not a bank.** Evolve Bank & Trust, Member FDIC, holds all deposits and issues the Dave Debit Card, pursuant to a license from Mastercard®.



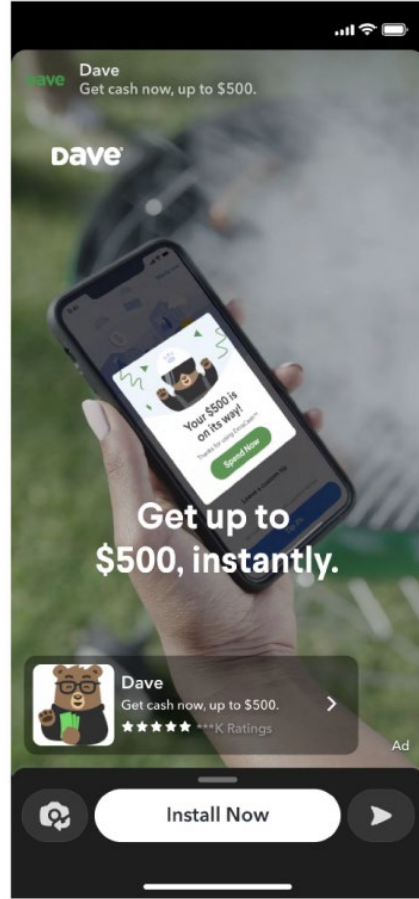
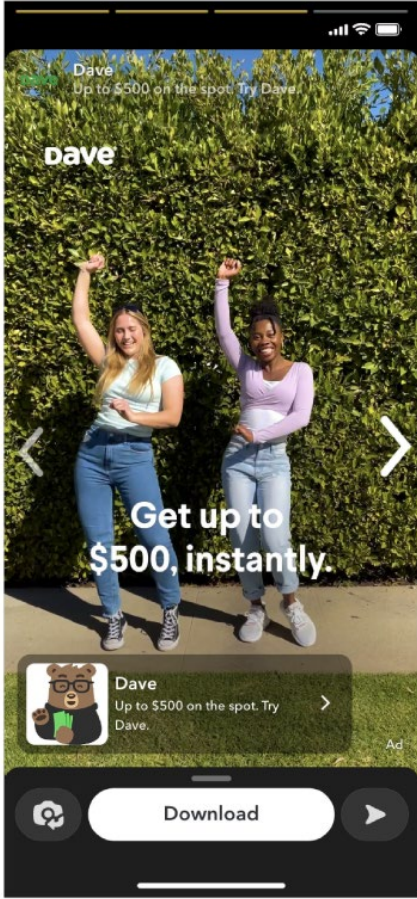
22  
23  **Get up to \$500**  
24 **in under 5 minutes** 

25 Simulated product experience. Terms apply. Click here for more info or visit <http://dave.com/legal>. **Designed by Dave, not a bank.** Evolve Bank & Trust, Member FDIC, holds all deposits and issues the Dave Debit Card, pursuant to a license from Mastercard®.



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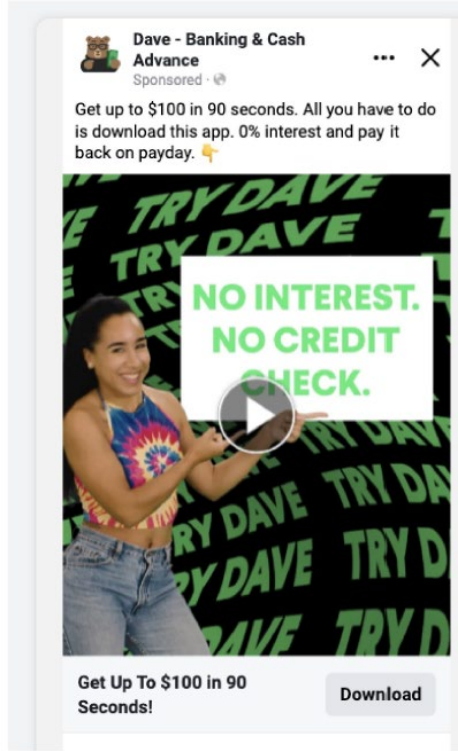
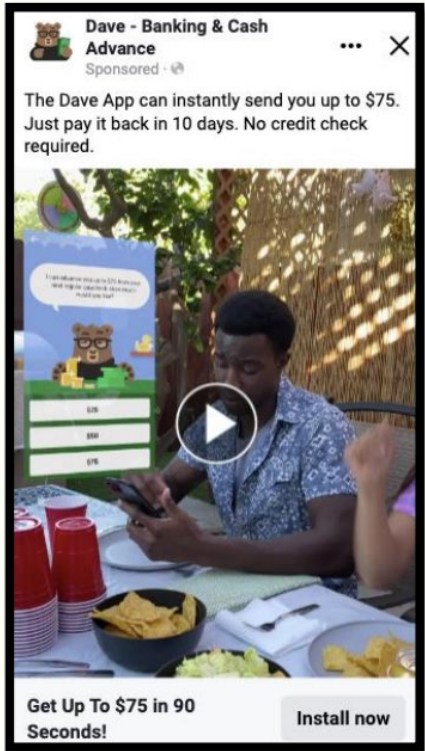


16. Dave’s ads emphasize that consumers can get up to \$500 immediately after downloading the app. Dave’s video ads often feature fictitious scenarios in which a stuffed bear representing Dave appears before an actor facing a difficult financial situation and, often through a zap of green lightning, appears to transfer \$500 to the actor’s smartphone. Phrases like “Tap for up to \$500,” “Get up to \$500 on the spot,” “instantly,” and “Get cash now” appear onscreen throughout a typical ad of this type. A voiceover in these ads typically states, “Download Dave and get up to \$500 instantly. No interest. No credit check.”

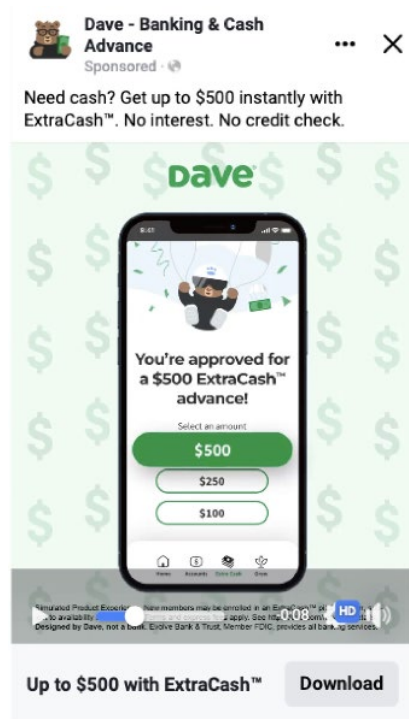
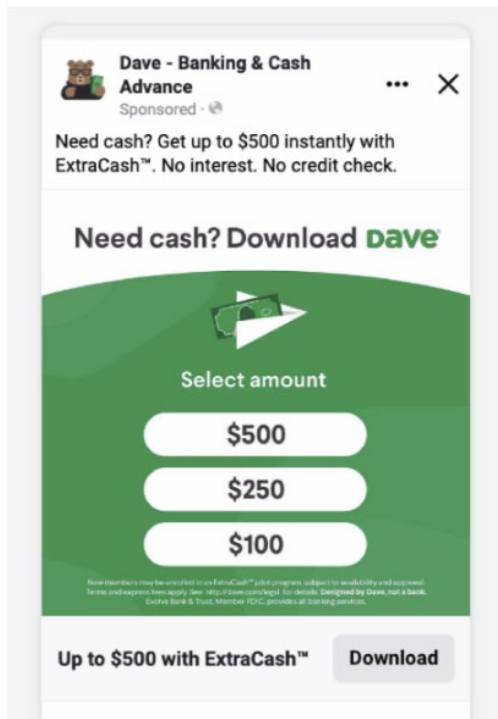
17. Dave’s ads have contained similar messages for years. When the maximum amount Dave offered was \$75 and later \$100, Dave’s ads told consumers Dave could “instantly send [them] up to \$75. Just pay it back in 10 days.” And that “All [they] need to do is download this app” to receive up to the maximum amount “in 90 seconds.” Examples of these ads appear below.

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18. Many of Dave’s ads promoting instant cash show screens from the user experience inviting consumers to select an amount up to \$500. Examples of these ads appear below.



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1           19. Other Dave video advertisements depict fictitious scenarios in which  
2 actors are shown learning about the Dave app and immediately receiving \$500. In  
3 one ad, for example, an actor is shown at a gas pump, unable to afford gas for his  
4 car. A stuffed bear appears, holding a phone that prominently shows “\$500” on its  
5 screen. The bear introduces himself as “Dave” and explains that it can get the  
6 actor “up to \$500 of your future money, now.” The actor asks, “\$500? Instantly?”  
7 The bear confirms: “instantly.” When the actor looks at his phone, the screen  
8 reads, “Your \$500 is on its way.” A voiceover in ads states, “Download Dave and  
9 get up to \$500 instantly. No interest. No credit check.”

10           20. In another video ad, a stuffed bear sits silently under two lines of text  
11 that read “Get up to \$500 instantly” and “Download Dave now.” Next, a door falls  
12 off a cabinet in the background. The bear then says, “Expect the unexpected.  
13 Download Dave. Get up to \$500 instantly, when you need it most.” The next  
14 screen contains a smartphone prominently displaying the text “\$500,” the Dave  
15 logo, and the text “Get your future money now. No interest. No credit check.”

16                           *Misrepresentations in the Enrollment Process*

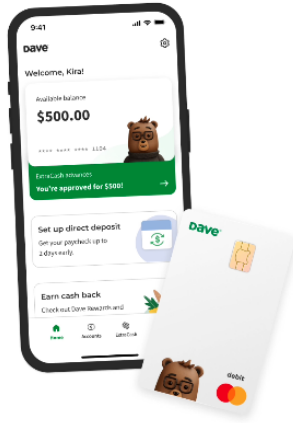
17           21. Dave’s app store content repeats and reinforces Dave’s advertising  
18 claims that consumers are just moments away from receiving “up to \$500” if they  
19 download the Dave app. Once consumers download the app, Dave emphasizes  
20 these claims again in the enrollment process through which Dave obtains access to  
21 consumers’ bank accounts by having them “link” their account to the app.

22           22. Consumers can download the Dave app to their smartphones through  
23 the Apple App Store or the Google Play Store. In the Google Play Store, for  
24 example, a search for Dave’s app will pull up a listing that invites consumers to  
25 “Advance up to 500 dollars.” A consumer who swipes through the app listing’s  
26 carousel of advertising screens will again see the claim that consumers can receive  
27 “up to \$500 in 5 minutes or less.” Similar content appears in the Apple App Store.  
28



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1           23. After consumers download and open the Dave app on their  
2 smartphones, consumers encounter a welcome screen that tells them, “Get up to  
3 \$500 when you need it\*” and shows a smartphone screen displaying an available  
4 balance of \$500. The screen includes a large, prominent green button that invites  
5 consumers to “Sign up for Dave.” An example of this screen follows:



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Simulated product experience.

**Get up to \$500 when  
you need it\***

No interest, no credit check.

[\\*See terms](#)

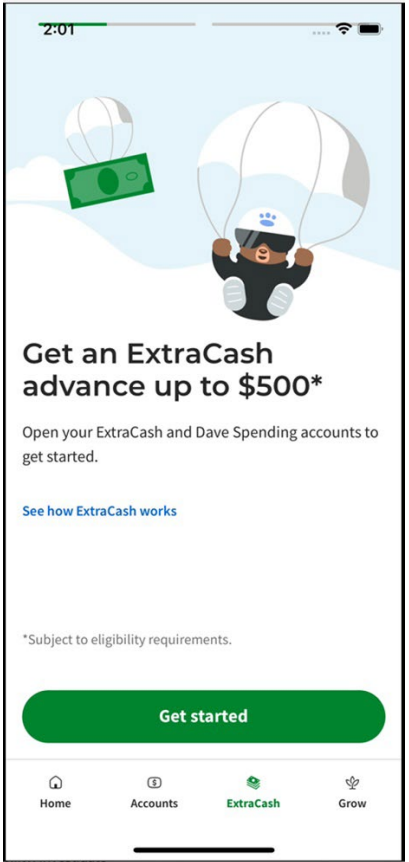
**Sign up for Dave**

Already have an account? [Login](#)

21           24. The app ushers consumers through a series of enrollment screens in  
22 which consumers must, among other things, create a sign-in ID using their email  
23 address and enter their name and phone number. Consumers are then posed a  
24 prompt—“What can we help you with today?”—for which one of the responses is  
25 “Accessing up to \$500.” A consumer who selects that option is taken to a screen  
26 which states, “Get an ExtraCash advance up to \$500\*.” An example of this screen  
27 follows:  
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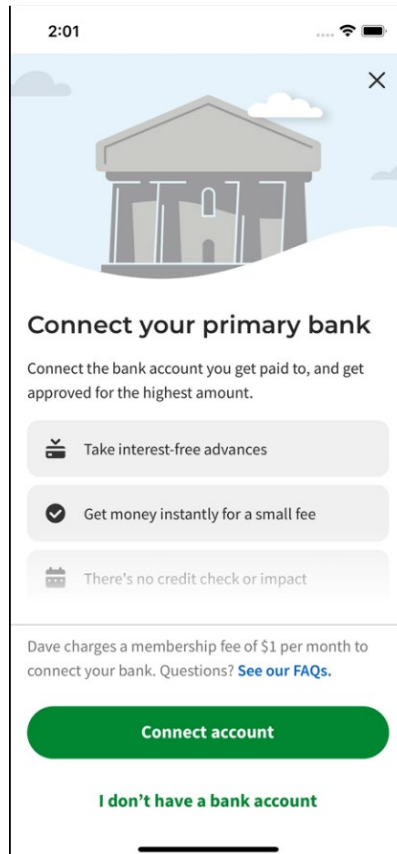
25. A prominent green button at the bottom of the screen invites consumers to “Get started.” After a consumer taps “Get started,” Dave has displayed a screen headed “Connect your primary bank,” with a bright green button at the bottom labeled “Connect account”:<sup>1</sup>

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<sup>1</sup> In the spring of 2024, while aware of the FTC’s investigation, Dave changed the button on the screen headed “Connect your primary bank” to “Agree and continue” and made other minor changes to this screen.

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26. Even if a consumer were to tap on and review the content hidden behind either the “See terms” link on the screen headed “Get up to \$500 when you need it\*” or on the “See how ExtraCash works” link on the screen headed “Get an ExtraCash advance up to \$500\*,” they would not be shown any of the following information: (i) that Dave offers cash advances at or near the amounts advertised to very few consumers; (ii) that consumers cannot obtain cash advances without waiting two to three business days unless they pay an additional fee, and the details of that fee; (iii) the steps consumers must take to avoid being subject to an additional charge that Dave refers to as a “tip”; and (iv) that Dave charges consumers a recurring membership subscription fee.

27. Immediately after consumers tap “Connect account,” Dave solicits information about their bank accounts to “link” the accounts to Dave. Dave uses this information to collect on advances and take other charges from consumers’ bank accounts.

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1           28. After a consumer has granted Dave access to their bank account and  
2 completed the enrollment process, the Dave app shows the consumer different  
3 screens depending on whether Dave is offering the consumer an advance. Each  
4 time the consumer later uses the app and accesses either the home screen or the  
5 “Extra Cash” section of the app, Dave makes a fresh determination of whether to  
6 offer the consumer an advance. If Dave offers the consumer an advance, it  
7 displays the advance amount on the screen.

8                           **Dave Offers Far Less in Cash Advances Than Advertised**  
9                           **and Charges Multiple Undisclosed Fees**

10           29. After enrolling, the overwhelming majority of consumers discover  
11 that Dave either will not offer them a cash advance at all, or will only offer them  
12 advances that are much smaller than advertised.

13           30. Making matters worse, Dave charges consumers at least three types of  
14 fees that it does not clearly and conspicuously disclose before it obtains access to  
15 their bank accounts:

- 16           a. an “Express Fee” of \$3 to \$25 to get an advance instantly, as  
17           advertised, instead of two to three business days later;
- 18           b. an additional charge—imposed in many instances without the  
19           consumer’s knowledge or consent—that Dave refers to as a  
20           “tip” and falsely claims will cause it to donate a specific  
21           number of meals to feed hungry children; and
- 22           c. a \$1 monthly membership fee, also frequently imposed without  
23           consumers’ knowledge or consent.

24                           *Dave Provides Far Less Than the Advertised Cash Advance*

25           31. Despite Dave’s numerous prominent claims that consumers will  
26 receive cash advances of up to \$500, few customers are offered anything close to  
27 that, if Dave offers them anything at all. In the first 14 months after Dave began  
28 advertising advances of up to \$500, when determining whether and in what amount

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1 to offer an advance to a new user, Dave offered a \$500 advance only 0.002% of the  
2 time: a rate of less than 1 in 45,000. Others did not even get close to the amount  
3 advertised – only 0.13%, or a rate of less than 1 in 750, were offered even half of  
4 the advertised \$500. When Dave did offer an advance, its most common offer  
5 was \$25.

6 32. More than three-quarters of the time, however, Dave did not offer any  
7 advance at all. In fact, on average more than 40% of new users were unable to  
8 obtain even a single offer of a cash advance from Dave in a calendar month. Even  
9 if one were to ignore this 40% of new users, and look only at those new users who  
10 received advance offers, about 0.009% of those offers—or less than 1 in 10,000—  
11 were for \$500 and only 0.56%, or about 1 in 175, were for at least half of the  
12 advertised \$500.

13 33. Consumers who are not new to Dave also receive offers that are much  
14 less than advertised. In the first 14 months after Dave began advertising advances  
15 of up to \$500, on average, more than a third of existing (not “new”) Dave users  
16 were not offered a cash advance at all in a calendar month. When determining  
17 whether and in what amount to offer an advance to an existing user, Dave offered a  
18 \$500 advance less than 1% of the time.

19 34. Neither Dave’s ads nor its app store content inform consumers that  
20 Dave offers cash advances at or near the amount advertised to very few consumers.  
21 Other than prominent representations such as “Get up to \$500,” the only references  
22 to the amount of consumers’ advances in Dave’s advertising or app store listings  
23 typically are in small print, are buried in block text, use vague or confusing  
24 language, and/or are found in obscure locations.

25 35. Many consumers believe Dave’s claims that they will get up to \$500  
26 upon enrolling. One consumer reported that Dave “[c]laims you can borrow up to  
27 500.00 dollars. But, I only was able to get 25.00. Not very helpful.” Another  
28 consumer wrote that they “have not been able to do any advances at all[;] my



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1 advance amount stays at zero but yet I get emails daily with lies that they do \$500  
2 advances[;] just a scam in my opinion.” Yet another consumer complained that  
3 Dave’s advertising was “[m]isleading....you’re not guaranteed \$400 or \$500.”

4 36. Many consumers make clear that they would not have signed up for  
5 Dave if they had known Dave would offer far less than promised. One consumer  
6 tried to cancel because “[d]espite making decent money, they wouldn’t loan me  
7 more than \$5.” Another consumer complained they “got 2 small cash advances  
8 and paid them OFF ON TIME. They kept promising 500 for the past month and  
9 NEVER delivered. I Uninstalled this useless app from this useless company.” Yet  
10 another consumer said “I downloaded Dave because I needed some money[;] they  
11 say u can get up to 500 well they only allowed me 25 . . . to me it was just a waste  
12 of my time. . . . I paid them back and will be deleting this account.” Still another  
13 consumer reported, “Every time you’ll tell me you’re going to give me \$500[  
14 Advance I put in my bank Information . . . . And then you never do it. . . . Stop  
15 with the lies.”

16 37. Internal documents reflect that consumers believe they will be offered  
17 Dave’s advertised advance amounts and are surprised to receive less. A Dave  
18 internal analysis of customer service data found that “Low advance amount,” “Low  
19 advance limits and approval,” and “Advance request denied” were among the top  
20 “drivers” of consumer contacts with customer service. Similarly, a Dave internal  
21 survey found that “Not enough money” was a top source of dissatisfaction for all  
22 Dave users, new and old.

23 38. Thousands of consumers contact Dave each month to cancel their  
24 accounts because the offered advance amounts are smaller than promised or  
25 because Dave offers them nothing. Multiple analyses Dave has performed on its  
26 customer service data have found that of customers who reach out to cancel their  
27 accounts, “most don’t qualify for an advance or get a smaller than expected  
28 advance.”

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1                                    *Dave Charges an Undisclosed Fee to*  
2                                    *Get Cash Advances “Instantly,” as Advertised*

3            39.    Although Dave advertises that consumers will receive funds  
4 “instantly,” “on the spot,” “now,” and “in under 5 minutes,” Dave in fact requires  
5 consumers to wait two to three business days before receiving their advance unless  
6 they pay Dave a previously undisclosed “Express Fee” of \$3 to \$25.

7            40.    Consumers who open the Dave app for the first time and proceed  
8 directly to attempt to take an advance will see the Express Fee only after they have  
9 connected their bank accounts and are accepting an advance offered by Dave. An  
10 internal Dave presentation, discussing the screen that demands an Express Fee to  
11 receive “money now,” notes that “[w]hat we promised [to consumers] is not what  
12 they see.” The presentation recommends that Dave should “[s]et expectations  
13 much earlier on the true cost of the money [consumers] are borrowing.” Dave did  
14 not adopt that recommendation.

15           41.    Instead, the earlier screens that a consumer encounters in attempting  
16 to take an advance include only a vague statement on this topic. The screen  
17 headed “Connect your primary bank,” pictured in Paragraph 25 above, contains in  
18 text that is smaller and fainter than either the screen’s bold-print heading or the  
19 large green button labeled “Connect account,” the statement “Get money instantly  
20 for a small fee.” This statement does not inform consumers that, if they do not pay  
21 the unspecified “small fee,” Dave will require them to wait two to three business  
22 days before receiving their advanced funds. This statement also does not inform  
23 consumers of the amount of the fee, which ranges from \$3 to \$25.

24           42.    Similarly, neither Dave’s ads nor its app store content inform  
25 consumers that Dave in fact requires consumers to wait two to three business days  
26 before receiving their advance unless they pay Dave an “Express Fee” of \$3 to  
27 \$25. While Dave makes prominent representations that consumers will receive  
28 funds “instantly,” “on the spot,” “now,” and “in under 5 minutes,” Dave’s only

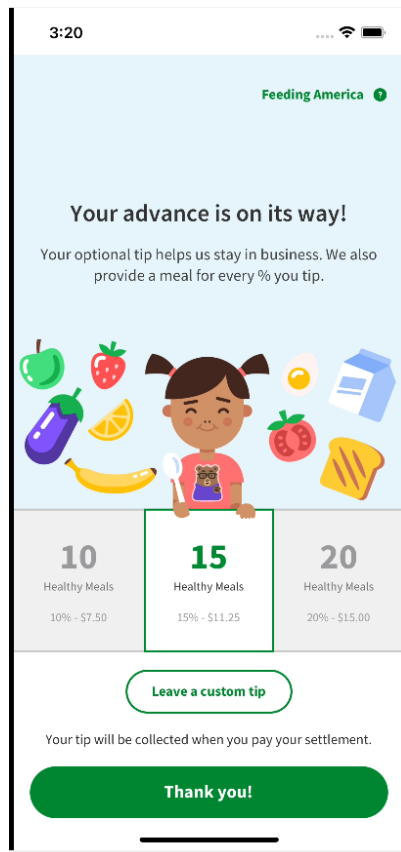
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1 references to Express Fees in its advertising or at the app stores typically appear in  
2 small print, are buried in block text, use vague or confusing language, and/or are  
3 found in obscure locations, and do not state that unless consumers pay an Express  
4 Fee, Dave will require them to wait two to three business days before receiving  
5 their advance.

6 *Dave Deceives Consumers About Whether*

7 *They Are Being Charged for a “Tip” and Whether the Charge Is Avoidable*

8 43. After accepting an advance offered by Dave and selecting a transfer  
9 method, consumers are taken to a screen headed “Your advance is on its way!”:



25 44. A large green button labeled “Thank you!” appears at the bottom of  
26 the screen. Dave charges consumers who simply tap the “Thank you!” button an  
27 extra 15% of their advance. Dave calls this charge a “tip.”

28 45. Many consumers who tap the “Thank you!” button are surprised to

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1 later learn that Dave has charged them an extra 15% of their advance. Dave does  
2 not mention the charge in its advertising, and consumers who open the Dave app  
3 for the first time and proceed directly to attempt to take an advance do not  
4 encounter any mention of this charge, or how to avoid being subject to it, before  
5 granting Dave access to their bank accounts.

6 46. Many consumers have been unknowingly subject to the extra charge  
7 that Dave calls a “tip.” Many others understood this extra charge to be an  
8 unavoidable part of Dave’s advance process. Consumer complaints include the  
9 following:

- 10 a. “They will add a tip without your knowledge.”
- 11 b. “[I]t forces you to tip.”
- 12 c. “[M]akes you tip them . . . .”
- 13 d. “[I]t does not give me an option to not leave a tip.”
- 14 e. “Don’t hit ‘thank you’ on tip screen, you’ll see many ppl say  
15 this. It counts as agreeing to high tip & IS SNEAKY.”
- 16 f. “The interface is set up to trick you into giving the tip. . . . I  
17 feel cheated/scammed by this whole process.”
- 18 g. “[T]hey make you give a tip when you don’t want to give  
19 one . . . .”
- 20 h. “App is very deceptive and impossible to get help. It asks for a  
21 ‘tip’ when you get an advance, and it’s not obvious or clear  
22 how NOT to tip.”
- 23 i. “Deceptive, riddled with fees and default 15% tip. This app is  
24 toxic and exploiting those who want honest financial products.  
25 Shame on you.”
- 26 j. “Absolute awful app, tricks you into giving them a tip  
27 whenever you advance money. DO NOT USE!!!!”  
28

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1           47. Internal Dave documents acknowledge both that Dave charges  
2 consumers for “tips” without their awareness and that Dave’s interface leads  
3 consumers to believe that such charges are unavoidable. For example, an internal  
4 analysis of customer service data states that “[m]embers are still unaware they left  
5 a tip when they advance” and that consumers are “upset” about these charges. The  
6 analysis notes that consumers are “having a hard time” avoiding being charged  
7 Dave’s preset tip of 15% and recommends that Dave “provide better visibility”  
8 about how to avoid the charge. Dave did not implement the recommendation to  
9 make clear to consumers how to avoid the charge.

10           48. An internal Dave presentation describes these screens as a “[d]ark”  
11 user interface and states that “selecting custom tip is unnoticeable and some didn’t  
12 know this was possible.” The presentation recommends that Dave “[m]ake sure to  
13 have the option to not tip be clear.” Dave did not implement the recommendation  
14 to have a clear option for consumers to avoid the charge for a “tip.”

15           49. An internal Dave study found that “Didn’t want to pay tip” was one of  
16 the top sources of Dave user dissatisfaction. Another internal Dave document lists  
17 “[n]o clear option to not tip” as a “Pain-Point[]” for consumers. The document  
18 also recommends, as the top of a list of “Future Initiatives,” adding a “[n]o tip  
19 button.” Dave did not add this button.

20           50. In an online chat between two Dave employees who collected and  
21 examined app store reviews that mention tipping, one commented that “customers  
22 do not understand on how to edit their tip amount or how to add no tip and this is  
23 the biggest customer pain.” The other agreed, adding that app reviews state that  
24 Dave “do[es]n’t give you a chance not to tip.” The second Dave employee also  
25 observed that “[p]eople expect an obvious ‘no tip’ button.” The employee  
26 described Dave’s interface as a “dark pattern” that had been criticized by  
27 “designers and members.”  
28

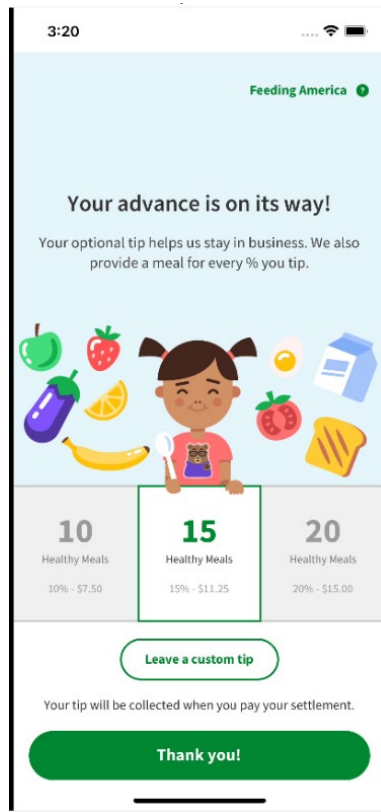


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1                    *Dave Deceptively Represents That It Will Pay for or Donate*  
2                    *a Specified Number of Meals Based on the “Tip” Charged to the Consumer*

3                    51. In addition to deceiving consumers about whether they are being  
4 charged and whether the charge is required, the screen headed “Your advance is on  
5 its way!” deceptively represents that, based on the consumer’s payment of a charge  
6 that Defendant refers to as a “tip,” Dave will pay for or donate a specified number  
7 of “healthy meals” for children in need.

8                    52. The content between the bold-print “Your advance is on its way!”  
9 heading and the large green “Thank you!” button features images of a smiling  
10 cartoon child holding a spoon who is surrounded by various food items:



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25                    53. Beneath the images of the child and nine food items are three boxes  
26 labeled “10 Healthy Meals,” “15 Healthy Meals,” and “20 Healthy Meals.” If the  
27 consumer taps on “20 Healthy Meals,” the number of food items around the child  
28 increases to twelve. If the consumer taps on “10 Healthy Meals,” the number of

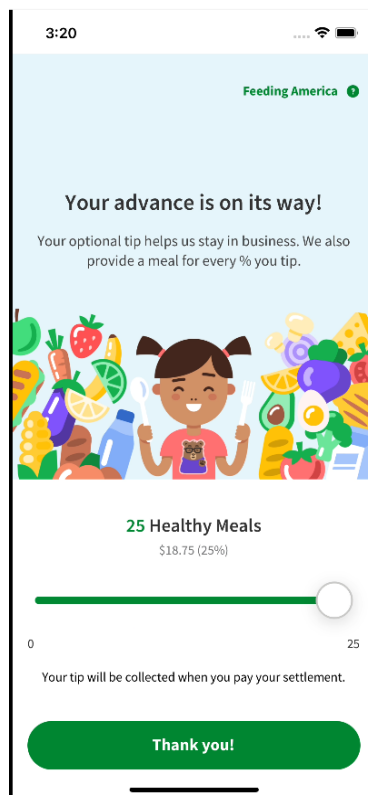
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1 food items around the child drops.

2 54. Many consumers tap the prominent green “Thank you!” button on this  
3 screen. Dave charges these consumers between 10% and 20% of their advance  
4 amount.

5 55. To avoid this outcome, consumers must first notice and tap the “Leave  
6 a custom tip” button, which is about half as long as the “Thank you!” button and—  
7 unlike the “Thank you!” button, which is colored green against a white  
8 background—is colored white against a white background. If consumers tap this  
9 button, the three labeled boxes are replaced with a horizontal “slider.” Initially,  
10 above the slider in large, bold-print text appear the words “15 Healthy Meals” and  
11 an image of the cartoon child holding a spoon and surrounded by ten food items.

12 56. If the consumer moves the slider to the right, the number of “Healthy  
13 Meals” displayed increases incrementally up to 25. As the count of “Healthy  
14 Meals” increases, more food items appear around the cartoon child, with twenty-  
15 five items filling the screen when the count of “Healthy Meals” reaches 25:



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1           57. If the consumer moves the slider to the left, the number of “Healthy  
2 Meals” displayed decreases incrementally down to 0. As the slider moves to the  
3 left and the count of “Healthy Meals” decreases, food items disappear from around  
4 the child. If the count of “Healthy Meals” reaches 2, the only items around the  
5 child are bread and water.

6           58. To prevent Dave from charging them, the consumer must move the  
7 slider fully to the left to reduce the count of “Healthy Meals” to zero. The slider  
8 then turns from green to red, the text of the large green button at the bottom of the  
9 screen changes from “Thank you!” to “No tip,” and the image of the child is  
10 replaced by an image of an empty plate with a fork and spoon.

11           59. The combination of the prominent imagery of multiple food items  
12 surrounding the cartoon child and the bold-print language about the provision of  
13 10, 15, or 20 “Healthy Meals” leads consumers to believe that, if the consumer  
14 permits Dave to charge a large “tip,” Dave will pay for or donate a specified  
15 number of meals for children in need.

16           60. In truth, however, Dave does not pay for or donate a specified number  
17 of meals to children in need based on the consumer’s payment of a charge that  
18 Defendant refers to as a “tip.” Instead, for each percentage point of a “tip” charged  
19 to a consumer, Dave donates only 10 cents, and keeps the rest. For example, in the  
20 screen shown at Paragraph 52, if the consumer were to tap the “Thank you!”  
21 button, Dave would not pay for or donate “15 Healthy Meals” as stated in bold  
22 print surrounded by images of numerous food items, but would instead donate only  
23 \$1.50 to a hunger relief organization. For that organization to provide 15 meals  
24 requires not merely \$1.50 but also approximately 18 pounds of food, which Dave  
25 does not provide.

26           61. Dave has acknowledged in internal documents that its “Healthy  
27 Meals” screen content is misleading. For example, a Dave executive described the  
28 “Healthy Meals” content of these screens as involving a “dark / guilt inducing

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1 design pattern” that helps drive revenue. Similarly, two Dave executives discussed  
2 this interface as a “dark pattern.” The two agreed that the “hungry child  
3 def[initely] leaves us open for criticism” and exhibits “very questionable design  
4 decisions.” An internal document further notes that the “Healthy Meals” content  
5 of Dave’s interface “has been called out by industry advocates and media  
6 publications as manipulative and misleading.” Despite this, Dave continues to  
7 subject consumers who use its app to the “Healthy Meals” content.

8 62. Dave’s deceptive “Healthy Meals” content succeeds in affecting  
9 consumer behavior. Dave ran an experiment in which some consumers used a  
10 version of Dave’s interface that did not include the “Healthy Meals” content.  
11 Without this content, the percentage of new users who were charged for a “tip”  
12 dropped by about a third and overall “tip” revenue dropped by almost a quarter. A  
13 Dave internal analysis found that, although Dave allowed only a small minority of  
14 its users to encounter versions of the interface that did not involve the “Healthy  
15 Meals” content, the experiment nonetheless caused a substantial fall in Dave’s  
16 monthly revenue. The analysis recommended that Dave immediately resume  
17 showing all consumers the “Healthy Meals” content.

18 63. Similarly, Dave ran an experiment in which some consumers used a  
19 version of the interface that did not include the initial screen, shown at  
20 Paragraph 52, with three “Healthy Meals” boxes. Instead, the consumers in this  
21 experiment were taken directly to one of several variations of the “slider” screen  
22 shown at Paragraph 56. Some variations included Dave’s “Healthy Meals”  
23 content, while others did not.

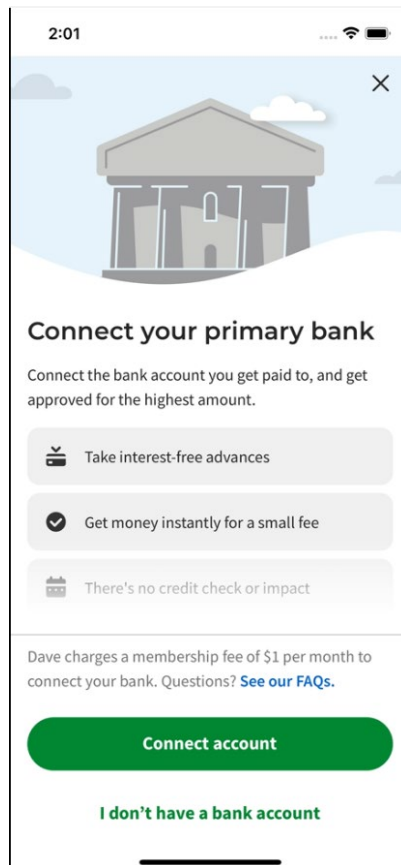
24 64. A Dave internal analysis of this experiment found that, when the  
25 initial screen with the three “Healthy Meals” boxes was eliminated, the number of  
26 consumers charged for a “tip” and the amounts of those charges both fell. These  
27 numbers fell most dramatically for the variations that also eliminated the “Healthy  
28 Meals” content from the “slider” screen. A subsequent Dave internal analysis

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1 expressed concern about the fall in Dave’s revenue resulting from the experimental  
2 changes and recommended that Dave resume showing “Healthy Meals” content to  
3 all users included within the experiment. Dave has continued to present the initial  
4 screen with the three “Healthy Meals” boxes to the overwhelming majority of  
5 consumers who use its app.

6 *Dave Takes an Undisclosed Monthly Charge From Consumers’ Accounts*

7 65. Immediately before obtaining access to consumers’ bank accounts,  
8 Dave displays a screen headed “Connect your primary bank,” with a bright green  
9 button at the bottom labeled “Connect account”:



25 66. Unbeknownst to many consumers, Dave enrolls consumers who tap  
26 the “Connect account” button in a subscription that automatically renews each  
27 month. Dave charges these consumers \$1 monthly on a recurring basis unless the  
28 consumer takes affirmative action to stop the charge. As Dave has acknowledged



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1 in an internal document, “[p]eople don’t know they’re paying [the] \$1”  
2 subscription fee and it can be “a surprise to members” to discover that Dave has  
3 taken \$1 each month from their bank accounts. Similarly, an internal Dave  
4 analysis of a customer survey notes that “our members say” that Dave “doesn’t tell  
5 you it’s going to charge a monthly fee when you first sign up . . . .” Dave’s  
6 customer service has received, on a monthly basis, hundreds of communications  
7 from consumers on the topic “What is the \$1 charge?”

8 67. Consumers have complained that they did not agree to be charged the  
9 membership fee and did not know it existed until after they were charged.

10 Examples include the following:

- 11 a. “They charge a \$1 a month ‘membership fee’ which is never  
12 disclosed to you once while setting up the account.”  
13 b. “DON’T SIGN UP Unknowingly started charging me \$1 a  
14 month . . . .”  
15 c. “They just started charging me a monthly fee with no notice.  
16 Watch any card you have used in this app.”  
17 d. “Huge SCAM. After signing up and realizing they would loan  
18 me \$50[,] I used another source. Then they announced they  
19 decided to charge a fee, After the fact. Without my consent.”  
20 e. “[N]oticed they are charging me a membership fee. Its only \$1  
21 but I didn’t know about it and had never taken any loan from  
22 them. Maybe if they had told me upfront I would be opted into  
23 their membership system . . . I would have been able to cancel  
24 it with no hard feelings after . . . .”  
25 f. “screw your app I never asked to get charged a subscription fee  
26 and then I later got charged for it . . . I never asked to get  
27 charged this at all and you otherwise authorized it without my  
28 permission”

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1 g. “Never agreed to a membership, but they used my checking  
2 account information to take a membership fee even when my  
3 debit card was locked. Very dissatisfied with this.”

4 68. Consumers who open the Dave app for the first time and proceed  
5 directly to attempt to take an advance only encounter any mention of the existence  
6 of the \$1 membership fee on the screen headed “Connect your primary bank.”  
7 This appears in text that is smaller, lighter, and/or less prominent than either the  
8 heading or the bright green button labeled “Connect account.”

9 **Dave Fails to Provide Simple Mechanisms**  
10 **for Consumers to Stop the Recurring Charge**

11 69. Dave fails to provide simple mechanisms for consumers to stop the  
12 recurring \$1 “membership” charge. In the words of one consumer, “I’ve tried  
13 leaving, but they literally will not let me go. I had to fight with them to delete my  
14 account, and I kept getting charged the membership fee. . . . LEAVE ME ALONE.  
15 I HATE DAVE.”

16 70. Consumers who realize that Dave is charging them every month and  
17 want to stop it have often been unable to find an in-app process to do so, either  
18 because Dave has not provided one, because Dave does not prominently inform  
19 consumers how to stop the charge, or for both reasons.

20 71. Dave has withheld an in-app process for stopping the recurring charge  
21 from many consumers. Indeed, from at least August 2021 through November  
22 2022, Dave did not allow *any* consumers to stop the recurring charge through an  
23 in-app process if they had also opened a Dave bank account (which Dave,  
24 beginning in early 2022, required all new consumers to have if they wanted  
25 advances). And for months after November 2022, Dave continued to withhold an  
26 in-app process from many consumers.

27 72. Additionally, Dave does not prominently inform consumers how to  
28 stop the recurring charge, including what options exist for stopping the charge,

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1 what rules apply to those options, or where any in-app processes for stopping the  
2 charge can be found. Instead, consumers must themselves attempt to hunt down  
3 this information.

4 73. Some consumers are convinced that there is no way to stop the  
5 recurring charge. For example, consumers have complained that “[t]hey continue  
6 to charge me \$1 every single month with no way to opt out” and “[t]here is no way  
7 to unsubscribe and they keep charging me.” An internal Dave analysis of  
8 consumer complaints made to the Better Business Bureau flagged “inability to  
9 cancel easily within the app” as a top driver of complaints, noting that consumers  
10 are “upset that there isn’t a self-cure option in-app.”

11 74. Dave has obscured information about mechanisms for stopping the  
12 recurring charge to such a degree that even Dave managers struggle to understand  
13 and use them. In an exchange on a messaging platform, two Dave senior managers  
14 discussed the option to temporarily stop the recurring charge by “pausing” an  
15 account, including their uncertainty about what it means to “pause” an account and  
16 whether one of them had been able to successfully find a pause function within the  
17 app. In part of their exchange, the two attempted to guess why one of them  
18 seemed to be unable to find or use “pause”:

19 “we can’t pause if we have a dave spending accou[nt] with money?”

20 “seems like a weird thing”

21 “I have no idea”

22 “lol”

23 75. Some consumers who are unable to find an in-app process send a  
24 message to Dave customer service asking to cancel the charge. Dave does not  
25 simply stop the recurring charge in response to such messages. Instead, Dave will  
26 do one or more of the following: (a) point the consumer to an in-app process that  
27 may or may not be available for the consumer; (b) deny that Dave customer service  
28 has the ability to stop the charge for the consumer; or (c) demand, in order to

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1 cancel or “pause” the charge, that the consumer provide multiple points of personal  
2 and/or financial account information. The information demanded by Dave has  
3 varied but has included date of birth, phone number used to sign up for Dave, full  
4 mailing address, last four digits of the consumer’s social security number, and  
5 details about the last two transactions on the consumer’s external bank account.

6 76. Some consumers find that Dave fails to act in response to requests to  
7 stop the charge. As one consumer warned, “DO NOT DOWNLOAD THIS.  
8 EXTREMELY HARD TO CONTACT ANYONE. THEY DON’T DELETE  
9 YOUR ACCOUNT WHEN ASKED.” Another consumer wrote that “[t]he Dave  
10 app won’t let me close my account . . . . I’ve literally been trying everyday for the  
11 last 2 weeks, I have emailed no response, reached out for assistance no help, why  
12 won’t it let me close it? . . . They just want to keep me locked in so that can  
13 continue to take 1\$ a month from me.”

14 77. Dave’s demands for sensitive information from consumers are another  
15 roadblock to stopping the charge. As noted in an internal Dave analysis of  
16 consumer complaints made to the Better Business Bureau, consumers who want to  
17 stop the charge often abandon these efforts in the face of Dave’s demands for  
18 sensitive information. One consumer stated that “[t]hey refuse to cancel my  
19 account and just tell me that I need to send more and more sensitive personal  
20 information in a sloppy email to someone named ‘Ambear.’ ” For another  
21 consumer who wanted to “pause” her account, it took twenty-seven days, nine  
22 messages to customer support, and a threat to contact the Better Business Bureau  
23 to get Dave to stop charging her.

24 78. Moreover, consumers who learn where to find Dave’s in-app  
25 processes for stopping the recurring charge often find that these processes are not  
26 simple. For example, Dave requires a consumer starting on the app’s main screen  
27 to take at least nine separate steps to reach and complete Dave’s current in-app  
28 cancellation process. In parts of Dave’s in-app process, consumers are diverted

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1 from cancellation if they select the most prominent option on the screen. Indeed, a  
2 Dave executive, in considering a colleague’s description of Dave’s “account close,  
3 cancel” app functionality as a “dark pattern” that is “purposefully confusing and  
4 hard,” wrote that “I’m sure it’s not good (I remember looking at it a long time ago  
5 and it was bad).” And an internal Dave analysis of its customers identified  
6 “Cancellation” as a driver of negative customer perceptions of Dave’s app, noting  
7 that “our members say” that it is “[h]ard to cancel.”

8 79. Beyond all this, in some instances, Dave has denied consumers any  
9 mechanism for stopping the recurring charge, let alone simple mechanisms.  
10 Specifically, Dave at times has refused to stop the recurring charge when,  
11 according to Dave, the consumer has not yet fully repaid an advance. In July 2020,  
12 Dave informed its customer service team that consumers who are eligible to pause  
13 are those “who \*do not\* have an open advance or an advance with pending  
14 advance payment.” And, in the following years, customer service representatives  
15 have repeatedly informed consumers that they cannot “pause” or cancel to stop the  
16 recurring charge because Dave is claiming that they have an unpaid advance.

17 80. Based on the facts and violations of law alleged in this Complaint, the  
18 FTC has reason to believe that Defendant is violating or is about to violate laws  
19 enforced by the Commission because, among other things:

- 20 a. Defendants have engaged in their unlawful acts and practices  
21 repeatedly over a period of years;
- 22 b. Defendants have earned significant revenues from participating  
23 in these unlawful acts and practices;
- 24 c. Defendants have continued their unlawful acts or practices  
25 despite knowledge of numerous complaints; and
- 26 d. Defendants have an incentive to continue to engage in  
27 violations and retain the means and ability to do so.
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1 **VIOLATIONS OF THE FTC ACT**

2 81. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or  
3 deceptive acts or practices in or affecting commerce.”

4 82. Misrepresentations or deceptive omissions of material fact constitute  
5 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

6 **Count I: Misrepresentations Regarding Cash Advance Amounts**

7 83. In numerous instances in connection with the advertising, marketing,  
8 promotion, offering for sale, or sale of its cash advance services, Defendant  
9 represents, directly or indirectly, expressly or by implication, that the consumer  
10 can get a cash advance of up to the advertised amount.

11 84. Defendant’s representations as described in Paragraph 83 are false or  
12 misleading or were not substantiated at the time the representations were made.

13 85. Therefore, Defendant’s representations as described in Paragraph 83  
14 constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act,  
15 15 U.S.C. § 45(a).

16 **Count II: Misrepresentations Regarding “Tipping” Charges**

17 86. In numerous instances in connection with the advertising, marketing,  
18 promotion, offering for sale, or sale of its cash advance services, Defendant  
19 represents, directly or indirectly, expressly or by implication, that

20 a. tapping the “Thank you!” button on the screen headed “Your  
21 advance is on the way!” simply concludes the transaction;

22 b. the charge that Defendant refers to as a “tip” is unavoidable;  
23 and

24 c. based on the consumer’s payment of a charge that Defendant  
25 refers to as a “tip,” Defendant will pay for or donate a specified number of  
26 meals for children in need.

27 87. Defendant’s representations as described in Paragraph 86 are false or  
28 misleading or were not substantiated at the time the representations were made.



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1 88. Therefore, Defendant’s representations as described in Paragraph 86  
2 constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act,  
3 15 U.S.C. § 45(a).

4 **VIOLATIONS OF THE**  
5 **RESTORE ONLINE SHOPPERS’ CONFIDENCE ACT**

6 89. In 2010, Congress passed the Restore Online Shoppers’ Confidence  
7 Act, 15 U.S.C. §§ 8401 *et seq.*, which became effective on December 29, 2010.  
8 Congress passed ROSCA because “[c]onsumer confidence is essential to the  
9 growth of online commerce. To continue its development as a marketplace, the  
10 Internet must provide consumers with clear, accurate information and give sellers  
11 an opportunity to fairly compete with one another for consumers’ business.”  
12 Section 2 of ROSCA, 15 U.S.C. § 8401.

13 90. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging  
14 consumers for goods or services sold in transactions effected on the Internet  
15 through a negative option feature, as that term is defined in the Commission’s  
16 Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.2(w), unless the seller  
17 (1) clearly and conspicuously discloses all material terms of the transaction before  
18 obtaining the consumer’s billing information, (2) obtains the consumer’s express  
19 informed consent before making the charge, and (3) provides a simple mechanism  
20 to stop recurring charges. 15 U.S.C. § 8403.

21 91. The TSR defines a negative option feature as a provision in an offer or  
22 agreement to sell or provide any goods or services “under which the customer’s  
23 silence or failure to take an affirmative action to reject goods or services or to  
24 cancel the agreement is interpreted by the seller as acceptance of the offer.”  
25 16 C.F.R. § 310.2(w).

26 92. As described in Paragraphs 11 to 79, Defendant advertises and sells its  
27 Dave membership through a negative option feature as defined by the TSR.  
28 16 C.F.R. § 310.2(w).

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1           93. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, and  
2 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of ROSCA  
3 constitutes an unfair or deceptive act or practice in violation of Section 5(a) of the  
4 FTC Act, 15 U.S.C. § 45(a).

5           **Count III: Failure to Provide Clear and Conspicuous Disclosures**

6           94. In numerous instances, in connection with charging consumers for  
7 goods or services sold in transactions effected on the Internet through a negative  
8 option feature, as described in Paragraphs 11 to 79 above, Defendant has failed to  
9 clearly and conspicuously disclose before obtaining consumers' billing information  
10 all material transaction terms, including the following:

11           a. that Defendant offers cash advances at or near the amounts  
12 advertised to very few consumers;

13           b. that consumers cannot obtain cash advances without waiting  
14 two to three business days unless they pay an additional fee, and the details  
15 of that fee;

16           c. that Defendant charges consumers an additional fee that it  
17 refers to as a "tip," and the steps consumers must take to avoid being  
18 charged; and

19           d. that Defendant charges consumers a recurring membership  
20 subscription fee.

21           95. Therefore, Defendant's acts or practices, as described in Paragraph 94,  
22 violate Section 4 of ROSCA, 15 U.S.C. § 8403, and Section 5(a) of the FTC Act,  
23 15 U.S.C. § 45(a).

24           **Count IV: Failure to Obtain Express Informed Consent**

25           96. In numerous instances, in connection with charging consumers for  
26 goods or services sold in transactions effected on the Internet through a negative  
27 option feature, as described in Paragraphs 11 to 79 above, Defendant has failed to  
28 obtain a consumer's express informed consent before charging the consumer's

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1 credit card, debit card, bank account, or other financial account for products or  
2 services through such transaction.

3 97. Therefore, Defendant's acts or practices, as described in Paragraph 96,  
4 violate Section 4 of ROSCA, 15 U.S.C. § 8403, and Section 5(a) of the FTC Act,  
5 15 U.S.C. § 45(a).

6 **Count V: Failure to Provide Simple Mechanisms to Stop Recurring Charges**

7 98. In numerous instances, in connection with charging consumers for  
8 goods or services sold in transactions effected on the Internet through a negative  
9 option feature, as described in Paragraphs 11 to 79 above, Defendant has failed to  
10 provide simple mechanisms for a consumer to stop recurring charges from being  
11 placed on the consumer's credit card, debit card, bank account, or other financial  
12 account.

13 99. Therefore, Defendant's acts or practices, as described in Paragraph 96,  
14 violate Section 4 of ROSCA, 15 U.S.C. § 8403, and Section 5(a) of the FTC Act,  
15 15 U.S.C. § 45(a).

16 **CONSUMER INJURY**

17 100. Consumers are suffering, have suffered, and will continue to suffer  
18 substantial injury as a result of Defendant's violations of the FTC Act and  
19 ROSCA. Absent injunctive relief by this Court, Defendant is likely to continue to  
20 injure consumers and harm the public interest.

21 **PRAYER FOR RELIEF**

22 101. Wherefore, the FTC requests that the Court:

23 A. Enter a permanent injunction to prevent future violations of the  
24 FTC Act and ROSCA;

25 B. Award monetary and other relief within the Court's power to  
26 grant; and

27 C. Award any additional relief as the Court determines to be just  
28 and proper.

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Respectfully submitted,

Dated: November 5, 2024

/s / Daniel O. Hanks

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