

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MARIAM DAVITASHVILI, ADAM  
BENSIMON, MIA SAPIENZA, PHILIP  
ELIADES, JONATHAN SWABY, JOHN  
BOISI, NATHAN OBEY, and MALIK  
DREWEY, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

GRUBHUB INC., UBER TECHNOLOGIES,  
INC., and POSTMATES INC.,

Defendants.

Civ. No. 1:20-cv-03000-LAK

**JURY TRIAL DEMANDED**

**AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs, Mariam Davitashvili, Adam Bensimon, Mia Sapienza, Philip Eliades, Jonathan Swaby, John Boisi, Nathan Obey, and Malik Drewey, individually and on behalf of all others similarly situated, bring this action against Grubhub Inc. (“Grubhub”), Uber Technologies, Inc. (“Uber”), and Postmates Inc. (“Postmates”) and allege as follows:

**I. INTRODUCTION**

1. Defendants have violated Section 1 of the Sherman Act and its state analogues by exploiting, without procompetitive justification, their dominant position in the market for delivery and takeout through internet-based platforms that aggregate the offerings of multiple restaurants.

2. Over the past decade, as smart phones have become ubiquitous, the popularity of these platforms has skyrocketed. Because most restaurants face low profit margins, they require

significant volume to cover their costs. To achieve such volume, restaurants must sell through Defendants' platforms, which each have tens of millions of active users.

3. Defendants use their market power to force any restaurant that sells goods on Defendants' platforms to pay unreasonable commissions, typically equal to 30% of every order, each time a consumer orders from that restaurant through the platform. These commissions are so large that, when restaurants sell through Defendants' platforms, they must increase their prices just to avoid losing money on each sale.

4. In a freely competitive market, these restaurants could offset these increased costs by increasing prices for consumers who choose the convenience of Defendants' platforms, while maintaining lower prices for consumers who order directly from the restaurants. That is, these restaurants would offer their customers different prices depending on whether they used Defendants' platforms or placed orders directly through the restaurant.

5. Insulating their platforms, however, each Defendant *prevents* the restaurants by contract from offering lower prices for sales *outside* its platform. For each Defendant, these restrictions apply to direct orders from the restaurants for takeout, delivery, or dine-in meals, even if those consumers do no business with Defendants. Grubhub and Uber apply these contractual restrictions most broadly by also preventing restaurants from charging lower prices for orders through similar platforms, such as Doordash.

6. Defendants do this because if the restaurants were to offer consumers lower prices for sales *outside* each Defendant's platform, then the restaurants' sales *on* the platform would decrease, and Defendants' supracompetitive profits would be threatened.

7. The contractual restrictions that Defendants impose on restaurants thus prevent both restaurants and other platforms from competing on price with Defendants. As a result of

Defendants' conduct, any restaurant using any Defendant's platform charges *all* of its customers supracompetitive prices.

8. These agreements thereby cause substantial anticompetitive harm that, including with respect to the millions of consumers who are not even using Defendants' platforms, lacks procompetitive justification. Indeed, although the courts in this country have not yet had occasion to do so, European regulators have repeatedly concluded that nearly identical contractual restrictions cause anticompetitive harm. In fact, bans on such provisions have resulted in lower prices for consumers.

9. Accordingly, on behalf of a nationwide class of the customers of restaurants using these platforms, Plaintiffs seek to redress and enjoin Defendants' unlawful conduct, occurring from April 13, 2016, to the present (the "Class Period").

## **II. PARTIES**

### **a. Plaintiffs**

10. Plaintiff Mariam Davitashvili is a resident and citizen of New York. Over the relevant period, she has ordered meals for takeout, delivery, and dine-in directly from restaurants that sell their goods through Defendants' platforms.

11. Plaintiff Adam Bensimon is a resident and citizen of New York. Over the relevant period, he has ordered meals for takeout, delivery, and dine-in directly from restaurants that sell their goods through Defendants' platforms.

12. Plaintiff Mia Sapienza is a resident and citizen of New York. Over the relevant period, she has ordered meals for takeout, delivery, and dine-in directly from restaurants that sell their goods through Defendants' platforms.

13. Plaintiff Phil Eliades is a resident of New York, New York, and a citizen of New York. Over the relevant period, he has placed orders for takeout, delivery, and dine-in directly from restaurants that sell their goods through each Defendant's platform, and indirectly from such restaurants through Doordash.

14. Plaintiff Jonathan Swaby is a resident of New York, New York, and a citizen of New York. Over the relevant period, he has placed orders for takeout, delivery, and dine-in directly from restaurants that sell their goods through each Defendant's platform, and indirectly from such restaurants through Doordash.

15. Plaintiff John Boisi is a resident of Brooklyn, New York, and a citizen of New York. Over the relevant period, he has placed orders for takeout and dine-in directly from restaurants that sell their goods through Grubhub and Postmates, and indirectly from such restaurants through Caviar and Doordash.

16. Plaintiff Nate Obey is a resident of Brooklyn, New York, and a citizen of New York. Over the relevant period, he has placed orders for takeout and dine-in directly from restaurants that sell their goods through Grubhub, and indirectly from such restaurants through Caviar.

17. Plaintiff Malik Drewey is a resident of Queens, New York, and a citizen of New York. Over the relevant period, he has placed orders for takeout and dine-in directly from restaurants that sell their goods through each Defendant's platform, but he has not used any of those platforms.

**b. Defendants**

18. Defendant Grubhub is a Delaware corporation with its principal place of business in Chicago, Illinois. Grubhub says it "connects more than 300,000 restaurants with hungry diners

in thousands of cities across the United States and is focused on transforming the takeout experience.” Grubhub’s 2019 revenues were \$1.31 billion.

19. Defendant Uber is a Delaware corporation with a principal place of business in San Francisco, California. Uber says its Uber Eats service “allows consumers to search for and discover local restaurants, order a meal, and either pick-up at the restaurant or have the meal delivered.” Uber’s 2019 revenues from this service were \$2.5 billion.

20. Defendant Postmates is a Delaware corporation with a principal place of business in San Francisco, California. Postmates says it is “transforming the way goods move around cities through [its] revolutionary Urban Logistics platform that connects customers with local couriers who can deliver anything from your favorite restaurant or retailer within minutes.” Postmates is not a public company; its reported valuation is approximately \$2.4 billion.

21. On July 6, 2020, Uber announced an agreement to acquire Postmates in a \$2.65 billion all-stock takeover.

### **III. JURISDICTION AND VENUE**

22. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because the matter in controversy exceeds the value of \$5,000,000, exclusive of interests and costs, and is a class action in which any member of a class of plaintiffs is a citizen of a state different from any defendant. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337(a) and 15 U.S.C. § 15.

23. Venue lies within this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391 because Defendants resided, transacted business, were found or had agents in this District, and a substantial portion of the alleged activity affected interstate trade and commerce in this District.

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