

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIAM DAVITASHVILI, *et al.*,

Plaintiffs,

vs.

GRUBHUB INC. (a/d/b/a SEAMLESS), *et al.*,

Defendants.

Civil Action No. 1:20-cv-03000-
LAK and consolidated case

ANSWER AND AFFIRMATIVE DEFENSES OF GRUBHUB INC.

Defendant Grubhub Inc. (a/d/b/a Seamless) (“Grubhub”), by and through its attorneys, Weil, Gotshal & Manges LLP, hereby answers the Amended Consolidated Class Action Complaint (“Amended Complaint”) of 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, (collectively “Plaintiffs”) as follows:¹

1. Grubhub admits that Plaintiffs’ purport to bring a putative class action lawsuit against Grubhub, Uber Technologies, Inc., and Postmates Inc. (collectively, “Defendants”) under Section 1 of the Sherman Act and its state analogues, but denies that Plaintiffs are entitled to any relief. Plaintiffs’ allegations that Defendants have violated antitrust laws by “exploiting, without procompetitive justification, their dominant position in the market for delivery and takeout

¹ Grubhub rejects the characterizations and implications contained in the section headings used in the Amended Complaint, and expressly hereby denies any and every allegation made or implied herein. Likewise, unless expressly noted otherwise herein, Grubhub denies any and all allegations made or implied in the Amended Complaint’s preamble, footnotes, charts, and any other notion of the Amended Complaint that is not contained within the specifically numbered paragraphs of the Amended Complaint.

through internet-based platforms that aggregate the offerings of multiple restaurants” is a legal conclusion to which no response is required. To the extent a response is required, Grubhub denies that the “market for delivery and takeout through internet-based platforms that aggregate the offerings of multiple restaurants” is a properly defined market for Plaintiffs’ antitrust claims, and that Grubhub has a “dominant position” in this erroneously defined market. Grubhub denies the remaining allegations contained in Paragraph 1 of the Amended Complaint made against Grubhub and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Amended Complaint concerning other parties.

2. Grubhub admits that the popularity of its platform has grown as consumer usage of smart phones has increased, to the benefit of both consumers and restaurants, and that Grubhub has approximately 32 million users as of June 30, 2021. Grubhub, however, lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 2 of the Amended Complaint, and therefore denies the same, and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Amended Complaint concerning other parties.

3. Grubhub admits that most restaurant partners pay a commission, typically a percentage of the transaction, on orders that are processed through Grubhub’s platform. Restaurant partners choose their level of commission rate and may choose to pay a higher rate because the higher rate affects the prominence and exposure to diners a restaurant will have on Grubhub’s platform, which in turn can lead to increased sales for the restaurant partner. Additionally, if a restaurant partner opts to use Grubhub’s delivery services rather than retaining their own delivery services (e.g., hiring delivery drivers, retaining delivery service management, retaining customer service

options for facilitating delivery services), the restaurant partner will pay an additional commission on the transactions for which they retain Grubhub's delivery services for the use of those services. The allegations in the first sentence of Paragraph 3 of the Amended Complaint state legal conclusions as to which no response is required. To the extent a response is required, Grubhub denies the allegations. Grubhub, however, lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 3 of the Amended Complaint, and therefore denies the same, and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Amended Complaint concerning other parties.

4. The allegations in the first sentence of Paragraph 4 of the Amended Complaint state legal conclusions as to which no response is required. To the extent a response is required, Grubhub denies the allegations. Grubhub, however, lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 4 of the Amended Complaint, and therefore denies the same, and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Amended Complaint concerning other parties.

5. Grubhub admits that its standard restaurant contract includes a provision that requires menu prices on Grubhub's platform to be at least as favorable to diners as prices available on the restaurant's standard menu. However, beginning in October 2019, in response to feedback from restaurants, Grubhub began limiting its enforcement of this menu price parity requirement only relative to menus on other third-party delivery services and not the restaurant's standard menu. The remaining allegations in Paragraph 5 of the Amended Complaint state legal conclusions as to which no response is required. To the extent a response is required, Grubhub denies the

allegations made against Grubhub and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Amended Complaint concerning other parties.

6. Grubhub denies the allegations contained in Paragraph 6 of the Amended Complaint made against Grubhub and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Amended Complaint concerning other parties.

7. Grubhub denies the allegations contained in Paragraph 7 of the Amended Complaint made against Grubhub and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Amended Complaint concerning other parties.

8. The allegations in Paragraph 8 of the Amended Complaint state legal conclusions as to which no response is required. To the extent a response is required, Grubhub denies the allegations made against Grubhub and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Amended Complaint concerning other parties. Grubhub also lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 8 of the Amended Complaint vaguely referencing supposed conclusions reached by European regulators in unidentified matters, and therefore denies the same.

9. The allegations in Paragraph 9 of the Amended Complaint state legal conclusions as to which no response is required. To the extent a response is required, Grubhub denies the allegations made against Grubhub and otherwise avers that it lacks knowledge or information

sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Amended Complaint concerning other parties.

10. Grubhub admits that Plaintiff Mariam Davitashvili has made one or more orders for the delivery and/or pickup of food via Grubhub's platform. Grubhub, however, lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 10 of the Amended Complaint concerning other parties.

11. Grubhub admits that Plaintiff Adam Bensimon has made one or more orders for the delivery and/or pickup of food via Grubhub's platform. Grubhub, however, lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 11 of the Amended Complaint concerning other parties.

12. Grubhub admits that Plaintiff Mia Sapienza has made one or more orders for the delivery and/or pickup of food via Grubhub's platform. Grubhub, however, lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 12 of the Amended Complaint concerning other parties.

13. Grubhub lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 13 of the Amended Complaint, and therefore denies the same, and otherwise avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Amended Complaint concerning other parties.

14. Grubhub admits that Plaintiff Jonathan Swaby has made one or more orders for the delivery and/or pickup of food via Grubhub's platform. Grubhub, however, lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 14 of the Amended Complaint concerning other parties.

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