

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

PHILIP ELIADES, JONATHAN SWABY,
JOHN BOISI, and NATHAN OBEY,

Plaintiffs,

v.

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

Defendants.

No. _____

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, Philip Eliades, Jonathan Swaby, John Boisi, and Nathan Obey, 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 sections 1 and 2 of the Sherman Act and their state analogues by exploiting, without procompetitive justification, their dominant position in the fast-growing market for delivery and takeout through internet-based platforms that aggregate the offerings of multiple restaurants.

2. Given the convenience these platforms offer, and because most restaurants face low profit margins and the subsequent need for volume to cover their costs, the increasing popularity of these platforms has in effect required vast numbers of restaurants to use them.

3. Under those conditions, Defendants require any restaurant that sells its goods on Defendants’ platforms to pay unreasonable commissions each time a consumer orders from that

restaurant through Defendants' platforms. These commissions force restaurants to charge higher prices when they sell through Defendants' platforms to avoid losing money on each sale.

4. In a freely competitive market, the restaurants would effectively offset these increased costs by having them paid by those consumers who choose the convenience of Defendants' platforms. That is, absent restrictions, 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 contractually *prevents* the restaurants 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 sit-down. GrubHub and Uber apply these restrictions most broadly by preventing restaurants from charging lower prices for orders through similar platforms, such as DoorDash. Defendants do this because if the restaurants were to offer lower prices for sales *outside* each Defendant's platform, then such pricing would reduce the restaurants' sales *on* the platform and reduce the Defendant's profits.

6. These anticompetitive agreements prevent both restaurants and other platforms from competing with Defendants and thus force all consumers to pay supracompetitive prices. The result of Defendants' conduct, in short, is that any restaurant using any Defendant's platform charges *all* of its customers supracompetitive prices.

7. On behalf of a nationwide class of the customers of restaurants using these platforms, Plaintiffs bring this action to enjoin and to seek redress for this unlawful conduct.

II. PARTIES

a. Plaintiffs

8. Plaintiff Phil Eliades is a resident of New York, New York, and a citizen of New York. Over the relevant period, he has ordered meals for takeout, delivery, and sit-down directly from restaurants that sell their goods through each Defendant's platform. He has also placed orders through Restaurant Platforms from restaurants that sell through Defendants' platforms.

9. Plaintiff Jonathan Swaby is a resident of New York, New York, and a citizen of New York. Over the relevant period, he has ordered meals for takeout, delivery, and sit-down directly from restaurants that sell their goods through each Defendant's platform. He has also placed orders through Restaurant Platforms from restaurants that sell through Defendants' platforms.

10. Plaintiff John Boisi is a resident of Brooklyn, New York, and a citizen of New York. Over the relevant period, he has ordered meals for takeout and sit-down directly from restaurants that sell their goods through Grubhub and Postmates. He has also placed orders through Restaurant Platforms from restaurants that sell through Defendants' platforms.

11. Plaintiff Nate Obey is a resident of Brooklyn, New York, and a citizen of New York. Over the relevant period, he has ordered meals for takeout and sit-down directly from restaurants that sell their goods through Grubhub. He has also placed orders through Restaurant Platforms from restaurants that sell through Defendants' platforms.

b. Defendants

12. 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.

13. 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.

14. 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.

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

III. JURISDICTION AND VENUE

16. 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.

17. 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.

18. This Court has personal jurisdiction over Defendants because this action arises out of Defendants' conduct in this District.

IV. FACTUAL ALLEGATIONS

a. The Relevant Markets

19. Coupled with the already increasing frequency with which restaurants had come to offer takeout and delivery service, the advent of the internet even further changed the food industry. Instead of calling a restaurant to place an order for takeout or delivery, customers could order on the restaurant's website menu.

20. Defendant Grubhub was one of the first companies to build and operate an online platform through which restaurant menus in a particular region are aggregated to allow consumers to view available pickup or delivery options all at once.

21. These "Restaurant Platforms" enable consumers to search for participating restaurants in a particular locality and order food for takeout or delivery from those restaurants. Restaurant Platforms also deliver food for participating restaurants that do not want to provide delivery themselves.

22. In aggregating the offerings of multiple restaurants in a single place, Restaurant Platforms provide a service distinct from a restaurant's website or app (*e.g.*, a Domino's pizza app), which simply allow a consumer to place an order from a single restaurant.

23. Restaurant Platforms thus compete with each other in the product market for takeout and delivery orders from Restaurant Platforms (the "Restaurant Platform Market").

24. Restaurant Platforms also compete in the product market for takeout and delivery orders from restaurants (the "Takeout and Delivery Market"). That is, by providing a channel

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