

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

Micheli & Shel, LLC, *individually and on behalf of  
others similarly situated,*

Plaintiffs,

v.

GRUBHUB INC., GRUBHUB INC. d/b/a SEAMLESS,  
SEAMLESS NORTH AMERICA, LLC, UBER  
TECHNOLOGIES INC., UBER EATS, POSTMATES  
LLC, and DOORDASH INC.,

Defendants.

Case No.:

**CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Micheli & Shel, LLC (“Micheli & Shel” or “Plaintiff”), brings this class action on behalf of itself and those similarly situated (the “Class”), by and through the undersigned attorneys, against Defendants GrubHub Inc. (“Grubhub”), GrubHub Inc. d/b/a Seamless. Seamless North America LLC (“Seamless”), Postmates, LLC (“Postmates”), Uber Technologies Inc. (“Uber”), Uber Eats (“Uber Eats”) and DoorDash Inc. (“DoorDash”) (collectively, “Defendants”). The allegations are made on information and belief, and pursuant to investigation by Plaintiff’s counsel.

**NATURE OF THE CASE**

1. On March 7, 2020, due to the widespread COVID-19 pandemic, Governor Andrew Cuomo declared a state of emergency for the entire State of New York.

2. On March 16, 2020, Governor Cuomo issued Executive Order Number 202.3 prohibiting restaurants and bars in the State of New York from serving food or beverages on-premises due to the spread of COVID-19 and limiting orders to takeout or delivery only.

3. Effective March 22, 2020, Governor Cuomo's "New York on Pause" Program began requiring all non-essential businesses to close in-office functions.

4. In the following days, weeks and months, as part of Governor Cuomo's "New York State on Pause" executive order, New York City residents were encouraged to stay home to prevent the spread of COVID-19. Additionally, restaurants and bars were limited to providing take-out and delivery services only creating an unprecedented demand for delivery services.

5. On May 13, 2020, the New York City Council, in an effort to curb the imbalance of power between small locally owned restaurants and powerful national third-party delivery companies, passed emergency legislation placing a cap on the exorbitant delivery fees that third-party delivery companies such as Defendants were charging restaurants for their services.

6. Effective June 2, 2020, Local Law No. 52 of 2020, Council Int. No. 1908-B of 2020 (the "Delivery App. Legislation") placed a twenty percent (20%) cap on all fees that Defendants could charge their customers with a specific cap of fifteen percent (15%) on all fees charged for delivery and a five percent (5%) cap for any additional fees including for marketing, credit card processing or any other fees.

7. The Delivery App. Legislation was amended pursuant to Local Law No. 88 of 2020, Council Int. No. 2054-A of 2020 (the "Amended Delivery App. Legislation"), effective September 14, 2020, to allow for "pass-through" costs, such as credit card fees, to be charged to the restaurant above the fifteen percent (15%) and five percent (5%) fee caps.

8. Despite the passage of the the Delivery App. Legislation and the Amended Delivery App. Legislation, Defendants proceeded to continue their prior practices of bleeding New York

City's restaurants dry while collecting millions of dollars at their expense in blatant disregard for the laws of the City of New York.

9. In fact, despite the passing of the Delivery App. Legislation and the Amended Delivery App. Legislation, Plaintiff and the Class members, continued to be charged in excess of the fifteen percent (15%) delivery fee cap and five (5%) cap on all additional fees.

10. Notably, these fees are in addition to the fees Defendants' also collect from the individuals placing the delivery orders. Put in another way, Defendants continue to profit on both ends of the transaction, yet nevertheless still refused to abide by the mandated fee caps.

11. Defendants restructured their fees to appear to comply with the laws, but in actuality continued to charge Plaintiff and the class members above the permitted fee caps. In some cases, for example, Defendants charged a flat twenty percent (20%) service fee without clearly identifying what the fee was for. This ambiguity violates both the delivery fee and the additional fee cap as neither fee may be twenty percent (20%) under the law.

12. Other Defendants disingenuously appeared to comply with the cap by keeping their delivery fee under the fifteen percent (15%) fee cap, charging thirteen percent (13%) or fourteen and half percent (14.5%), but then overcharged Defendants with respect to the category of "other" non-delivery fees. These other fees were charged for several categories of fees each individually under the five percent (5%) threshold, but cumulatively added up to well over the five percent (5%) threshold.

13. Upon information and belief, Defendants also fraudulently inflated their credit card processing fees in order to further extort fees from Plaintiff and the Class members.

14. This Class Action seeks to hold Defendants accountable for their predatory behavior on businesses most impacted by the COVID 19 Pandemic. The Defendants extorted the

Plaintiff and other similarly situated Class members that were desperately dependent on their delivery services during a time when the restaurant industry was experiencing a historic decline in sales and the largest disruption the restaurant industry had faced in NYC since Hurricane Sandy in 2012 and the September 11, 2001, terrorist attacks.

### **JURISDICTION AND VENUE**

15. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) and (5) because this is a class action in which: (i) the proposed Class consists of more than 100 persons or entities; (ii) the amount in controversy exceeds the sum or value of \$5,000,000 in the aggregate; and (iii) at least some of the members of the proposed Class have different citizenship from Defendants.

16. This Court has personal jurisdiction over Defendants because Defendants are authorized to do business and regularly conduct business in this District, and a substantial number of the events giving rise to the claims alleges herein took place in New York.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the alleged claims occurred in this District, Defendants are authorized to conduct business in this District, and Defendants regularly conduct and transact business in this District and are therefore subject to personal jurisdiction in this District.

### **PARTIES**

18. Micheli & Shel is a limited liability company existing and operating in good standing under the law of the State of New York with its principal place of business located in New York County, New York. Micheli & Shel operates an Israeli-style bakery located in Manhattan's Lower East Side neighborhood.

19. Upon information and belief, Defendant GrubHub is a corporation organized and existing under the law of the State of Delaware with its principle place of business located at 111 W. Washington Street, Suite 2100, Chicago, Illinois 60602. GrubHub is the parent corporation of Seamless and, upon information and belief, also separately operates as doing business as Seamless. GrubHub is authorized to do business in the State of New York.

20. Upon information and belief, Defendant Seamless is a limited liability company organized and existing under the law of the State of Delaware with its principle place of business located at 1065 S. Avenue of the Americas, New York, NY 10018. Seamless is a subsidiary of GrubHub and is authorized to do business in the State of New York.

21. Upon information and belief, Defendant Postmates is a limited liability company organized and existing under the law of the State of Delaware with its principle place of business located at 425 Market Street, Suite 8, San Francisco, CA. Postmates is a wholly owned subsidiary of Uber and is authorized to do business in the State of New York.

22. Upon information and belief, Defendant Uber is a corporation organized and existing under the law of the State of Delaware with its principle place of business located at 1455 Market State, Suite 400, San Francisco, California 94103. Uber is the parent corporation of Uber Eats. Uber is authorized to do business in the State of New York.

23. Upon information and belief, Defendant Uber Eats is a wholly owned subsidiary of Uber with its principal place of business located at 1455 Market State, Suite 400, San Francisco, California 94103 and conducts substantial business in the State of New York.

24. Upon information and belief, Defendant DoorDash is a corporation organized and existing under the law of the State of Delaware with its principle place of business located at 901

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