

**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.: 21-cv-04995 (JMF)

**MICHELI & SHEL, LLC's OMNIBUS MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY THIS ACTION**

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Plaintiff Micheli & Shel, LLC (“Plaintiff” or “Micheali’s Bakery”) respectfully submits this memorandum of law in opposition to Defendants Grubhub Inc., Grubhub Inc. d/b/a Seamless, Seamless North America, LLC (collectively with Grubhub Inc. and Grubhub Inc. d/b/a Seamless, “GrubHub”)¹, Uber Technologies, Inc., Uber Eats (collectively with Uber Technologies, Inc., “Uber”), Postmates, LLC (“Postmates”)², and DoorDash, Inc.’s (“DoorDash”) motions seeking an Order (i) compelling arbitration of the claims asserted by Plaintiff; (ii) staying the action pending the outcome of any arbitration; and (iii) granting such other and further relief as the Court deems just and proper (collectively, “the Motions”).

INTRODUCTION

On June 7, 2021, Plaintiff Micheli & Shel, LLC (“Michaeli’s Bakery”), an Israeli-style bakery located in Manhattan’s Lower East Side neighborhood, filed suit on its behalf and on behalf of all others similarly situated, against Defendants, the major third-party food delivery platforms in New York City for their violations of New York City’s legislation capping delivery fees during the COVID-19 pandemic. Defendants seek to compel Michaeli’s Bakery to arbitrate its claims against them on an individual basis claiming that the Federal Arbitration Act (“FAA”) applies to the dispute and that the Plaintiff agreed to arbitrate any and all disputes through private arbitration. However, as will be discussed, the FAA does not apply to this dispute and as such, Plaintiff should not be compelled to arbitrate its claims.

First, it would be unconscionable to enforce the arbitration agreements because, when Plaintiff contracted with Defendants for their delivery services, it certainly did not agree to arbitrate disputes stemming from Defendants’ illegal conduct. Second, the FAA’s mandate has

¹ Defendants Grubhub Inc., GrubHub d/b/a Seamless, and Seamless North America, LLC merged into one entity, Grubhub Inc. *See* Doc. No. 39.

² In or around July 2020, Defendant Uber Technologies, Inc. acquired Defendant Postmates, LLC.



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