

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

MICHELI & SHEL, LLC, *individually and on behalf  
of others similarly situated,*

Plaintiff,

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

**DEFENDANT POSTMATES, LLC'S MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS**

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## PRELIMINARY STATEMENT

On behalf of a proposed class of New York City restaurants, plaintiff Micheli & Shel, LLC purports to assert claims against Postmates and other third-party food delivery services on the theory that they allegedly charged restaurants fees in excess of caps imposed by New York Local Law Nos. 52 and 88 during the COVID-19 pandemic.<sup>1</sup> Plaintiff's Complaint fails as a matter of law because neither Local Law No. 52 nor Local Law No. 88 included a private cause of action, and both have since been repealed. The plain text of those laws did not contemplate private enforcement, and the legislative history confirms none was intended. In any event, the Complaint is also bereft of well-pleaded factual allegations that could support any recovery.

Because plaintiff's claims are deficient facially as a matter of law, and because any attempt at amendment would be futile, the Court should dismiss the Complaint with prejudice and enter judgment on the pleadings in favor of Postmates.

### I. BACKGROUND

On May 26, 2020, the New York City Council passed Local Law No. 52 as part of its response to the COVID-19 pandemic. *See* ECF No. 1 ("Compl.") ¶ 32.<sup>2</sup> The law took effect on June 2, 2020, "seven days after it [became] law," and implemented a cap on "fees charged by third-party food delivery services during, and for 90 days after, a declared emergency that prohibits on-premises dining." *See* Compl., ¶ 33.<sup>3</sup> This emergency fee cap law made it "unlawful for a third-party food delivery service to charge a food service establishment a

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<sup>1</sup> This action is currently stayed pending arbitration as to all defendants other than Postmates. *See* ECF No. 79.

<sup>2</sup> *See* Local Law No. 52, N.Y. CITY COUNCIL (2020), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4344564&GUID=BAB73224-E999-411A-8C42-1BDF14C0DACE>.

<sup>3</sup> *See* Local Law No. 52, N.Y. CITY COUNCIL (2020), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4344564&GUID=BAB73224-E999-411A-8C42-1BDF14C0DACE>.

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