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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON SMALL BUSINESS

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CHAIRPERSON GJONAJ: good afternoon. I'm Councilman Mark Gjonaj, Chair of the City Council's Committee on Small Business. I'd like to welcome to you to today's hearing on digital food delivery apps and the impact that they are having on local restaurants and the food industry. Food delivery apps are estimated to be upwards of a 200 billion dollar market in the US and have dramatically changed the way customers place food orders and interact with local restaurants. Small businesses play a vital role in New York City's economy. According to the SBS there are about 196,000 businesses in New York City that employ less than 20 employees. Many of those are food establishments. According to the City's Department of Health and Mental Hygiene there are approximately 27,000 restaurants in New York City. there are number of factors that impact a restaurant's chance at succeeding, some within their control such as food quality and customer service, and then there are some factors that are not within the control such as the economy, food and labor costs, and government regulations, which many would argue is over-regulation. We live in an on-demand and instant gratification world, and we have become accustomed to communicating and shopping with a click of a button from tweeting, emails, texting, car service, grocery, video streaming, and meals, everything can be accomplished instantaneously without directly communicating with other human beings or leaving the comfort of one's home. The restaurant industry is not different. It has been spared from the consumer trend of ultra-convenience, and in fact, it changed the entire business model for businesses that rely on foot traffic. While food delivery has always been part of the restaurant business, it has tremendously grown and become much more significant to a restaurant's business. I have no indicators or information that consumers are necessarily ordering delivery at higher rates. Instead, the form in which they can place a delivery has evolved and become much more appealing to the consumers of this era. Placing orders via phone are now prehistoric, something that only old people like myself do. According to recent survey from Wells Fargo, 46 percent of surveyed participants ordered food through apps, 32 percent called into the restaurant, and 19 percent placed their orders using a computer. By far, the fasting-growing channel for food delivery is the use of delivery apps. Brands such as Uber Eats, Door Dash, Grub Hub, known as Seamless [sic] in New York City, and Post-Mates [sic] have made it easy for customers to pick up their hone, scan through menus and have access to a large variety of food establishments that can delivery directly to the door. According to a UBS forecast, online food ordering may rise by more than 20 percent each year to reach 365 billion by the year 2030. Morgan Stanley analysis forecast deliveries could eventually reach 40 percent of restaurant sales, making it close to the most significant factor in whether or not a restaurant succeeds or fails. At its most ideal, this could be a relationship of convenience that works for all stakeholders. Restaurants get a steady stream of new customers without having to develop and manage an expensive digital platform. Consumers get the convenience, diversity, and efficiency they crave, and the third-party platforms are given their fair compensation of the service they provide. On the opposite end there's a concern that it could be a system where restaurant owners are caught in an unsustainable business model that not only does it add to their bottom line, but could actually eat away at their profits and their ability to keep tier doors open. As the digital food delivery market has grown, stakeholders are starting to grapple with major issues such as fees and commissions exceeding actual profits, privacy concerns or collected data, and the possible exploitation of undocumented workers. These are just some of the issues that we're going to explore today. As Chair of this committee, I've had the opportunity to meet with several stakeholders and understand their perspective and concerns. Today's hearing is an opportunity to learn more from the stakeholders on the record so that this body may consider what, if anything, should be done to optimize the business environment for all parties and/or remove any unfair practices that might cause harm to the city's restaurant industry. We approach this hearing with an open mind and no pre-set agenda. I and other members of the committee will have fair but pointed questions as we seek to determine if there's a need for regulation or legislation solutions. With that said, I'd like to thank my Chief of Staff Reggie Johnson, our Legislative Counsel to the Small Business Committee, Irene, for all their hard work in preparing for this hearing. I now welcome Jackie Mallon and Steve Becker [sp?] from the City Small Business Services to lead off our first panel. Will you please swear in our panel so that we can deliver the opening remarks?

COMMITTEE COUNSEL: Do you swear or affirm to tell the truth, the whole truth and nothing but the truth and answer honestly Council Members' questions?

UNIDENTIFIED: I do.

UNIDENTIFIED: I do.

COMMITTEE COUNSEL: Thank you.

JACKIE MALLON: Good to go? Okay. Good afternoon, Chair Gjonaj and the members of the Committee on Small Business. My name is Jackie Mallon, and I'm the First Deputy Commissioner at the New York City Department of Small Business Services. At SBS we aim to unlock economic potential and create economic security for all New Yorkers by connecting them to quality jobs, building stronger businesses, and fostering thriving neighborhoods across the five boroughs. I'm joined by my colleague, Steven Picker, the Executive Director of our Food Service Industry Partnership. Restaurants are a critical component of

New York City Small Business Community. New York City is home to over 20,000 restaurants, and they employ over 270,000 New Yorkers. The landscape of this industry is continually evolving, and SBS aims to help business owners be nimble in adapting to changing market conditions. To assist restaurant owners, SBS offers many resources that help them start, operate, and grow. Our services to support restaurants include our Government Navigation and Compliance Advisory Services which help restaurant owners navigate the regulatory process and ensure that they are in compliance with the regulations necessary to maintain public health and safety. To date, compliance advisors have provided more than 2,600 on-site consultations for restaurants, helping these businesses avoid common violations before their inspections. We also help restaurant owners access capital, hire new employees, and fund employee training through NYC Business Solutions Centers. On an average annual basis, SBS helps open roughly 500 restaurants, fill nearly 3,000 open positions at restaurants, and connect about 100 restaurants to around four million dollars in financing. To help neighborhood businesses thrive in their communities, SBS provides eligible business owners with legal services on topics including lease negotiations, formalizing oral lease agreements, and landlord's harassment through our Commercial Lease Assistance Program. Of the more than 300 businesses served through the program, more than 25 percent are accommodation and food service establishments. I have the big font, so it takes more pages. To help neighborhoods businesses adapt to changing working condition, SBS runs the Love Your Local grant program. To date, we've awarded grant funding to 40 small businesses, including many restaurants. Through Love Your Local SBS is aiming to identify common challenges that are impacting the profitability of small businesses so that we can develop and test new business services to support the growth and retention of long-standing businesses across the five boroughs. SBS also works directly with the restaurant industry through our NYC food and beverage industry partnership which is made up of over 30 New York City restaurant industry leaders, key professional associations, and Community Board organizations that focus on skills training. The partnership allows us to work directly with the industry on priority issues impacting both employers and workers to support the growth in the sector. Key priorities include helping restaurant navigate the regulatory environment, addressing the demand for skilled workers, and providing support to adapt to the rising cost of doing business in the City. Of the major challenges elevated by the industry, members of the partnership cited the recruitment of skilled employees is one of the most important. After executing a pilot last year, SBS has refined our line cook apprenticeship program, no called First Course NYC, to further incorporate employer feedback and enhance pre-apprenticeship training. Our industry partners have also raised concerns about the cost of utilizing delivery service applications and their impact on profit margins. However, many have also reported the positive impacts these platforms can have on their business in terms of driving volume of delivery orders. The increasing consumer adoption and costs of these applications are changing market conditions for restaurants. SBS is committed to working with industry and the Council to examine solutions and services that will assist restaurants in adapting to these new technologies and patterns of consumer behavior. We know that it's a complicated issue and we look forward to learning more form our industry patterns and continue this conversation with the City Council. Thank you very much, and I'm happy to answer any questions that I can.

CHAIRPERSON GJONAJ: Thank you, First Deputy. Of the New York City food and beverage industry partnership, you have over 30 restaurant industry leaders that you work with. Has- how much of the online providers issues have been brought to you attention?

FIRST DEPUTY COMMISSIONER MALLON: As I said in testimony, I-- many have said, like this is a thing that's impacting our profit margin. It's lowering it in some cases, and others have said, this is great because I'm getting a lot more volume than I would have, you know, before. So it's sort of a mixed bag, and we're trying to learn more and try to really get under and understand how we might be of help. I don't know if you want to add anything?

STEVE BECKER: Yeah, I think they absolutely feel like it's a concern, as are all the concerns of rising costs coming from all directions at this point in time. So we're having conversations daily, weekly, about how we might be of help to help them to figure out best ways forward in the new landscape. So, there's a lot of conversations being had.

CHAIRPERSON GJONAJ: During those conversations are you at liberty to share with us any of the issues that were brought up and suggestions that you may have come up collectively? And I want to reiterate and emphasize the importance of hearings like this, it actually allows us to have a better understanding from all parties.

STEVE BECKER: Absolutely.

CHAIRPERSON GJONAJ: We don't know what's best, and these hearings allow us to learn more and determine what steps we should take if any at all. So, with that in mind, during those conversations can you think of any issues that were raised that you actually came up with suggestions?

FIRST DEPUTY COMMISSIONER MALLON: Do you want me to start, and--

STEVE BECKER: [interposing] If you want.

FIRST DEPUTY COMMISSIONER MALLON: I mean, we've talked about a number of different things. You know, perhaps just like with commercial leasing, education would be helpful in terms of really understanding the terms of the agreements with the delivery providers and the actual impact. I mean it's certainly pretty obvious that there's a lot of potential to get a lot more orders, but understanding how that impacts your actual bottom line is maybe-- there's an opportunity to do some education there. There has been a little bit of discussion around the potential to help to support the development of an app that the industry would sort of develop on their own and operate. That has been like sort of a discussion. All of these things are very early stage. I mean, would you-- is there--

STEVE BECKER: [interposing] Yeah, no, the issue tends to be that everybody adopted these electronic models and technological models because they were the way of the future, and now the future is here, and because of many of these apps' impact on the market, they are the best options for restaurants to reach their consumers in that arena. And so restaurants obviously don't want to give that up. On the flip side, it's costing money and impacting their bottom line. So they're just trying to find a way to balance that out.

CHAIRPERSON GJONAJ: So it's two issues that you brought up that resonate with me. One, so the legal services that you offer. The agreements that are made with these providers, is this something that you are now looking at perhaps that you can help our restaurants better understand the terms and conditions and what they're signing up for?

FIRST DEPUTY COMMISSIONER MALLON: Exactly and help in terms of how to project what the bottom line is going to be. That's an idea that's in progress.

CHAIRPERSON GJONAJ: Which leads to the next question. Your understanding of the profits of restaurants, and obviously there's a huge range between fine dining and the sort of dining whether it be-- I'll use French restaurant where the costs are much higher, and an Italian restaurant where the cost of food production is much lower in comparison. Not that Italian food is less-- I love Italian food for the record, and I'm not promoting any one fine dining over another. That's all wonderful. What is the profit that are customary in the food industry?

FIRST DEPUTY COMMISSIONER MALLON: You want to--

STEVE BECKER: Sure, that can really literally range anywhere from two percent to-- I mean, the old model used to be 10 to 12 percent, and you were solid and happy, and now I would say that has tended to go down to somewhere to six, seven, eight percent if you're really lucky.

FIRST DEPUTY COMMISSIONER MALLON: And you're talking just to be-- you're talking about full service restaurants, right?

STEVE BECKER: Full service restaurants, yes, correct. So, as far as a range, two to eight.

CHAIRPERSON GJONAJ: On full service restaurants, two to eight percent. Is that because of the regulations, the fines and the fees, the real estate taxes, water and sewer rates and everything else that has undermined the profitability of these restaurants? Don't answer that question. We'll come back to you at a later date.

FIRST DEPUTY COMMISSIONER MALLON: Good. Thank you.

CHAIRPERSON GJONAJ: Can't help myself occasionally. So, based on that model, what is the average cost that the online providers are charging for percentage fee to these restaurants that are partaking in their program?

FIRST DEPUTY COMMISSIONER MALLON: I mean, I-- we don’t know from like a big database that we’ve looked at because we don’t have that. I can simply just say to you what restauranteurs have been reporting to us, and I think they said anywhere between 10 and 30 percent as has been reported to us.

CHAIRPERSON GJONAJ: Alright.

FIRST DEPUTY COMMISSIONER MALLON: But no way of verifying that.

CHAIRPERSON GJONAJ: Just using-- and again, we’re going to get into the thick of it later on when we actually have the restaurants come up and we have a better understanding. But I know how to-- I believe I know how to do math. If you just explained that in fine dining the average is from six to 10 percent, is that the average we’re going to use?

STEVE BECKER: It’s a little lower, but we can go with that.

CHAIRPERSON GJONAJ: Okay, we’ll use six to 10 percent, and the cost of the percentages paid to these providers was what again?

STEVE BECKER: Ten to 30.

CHAIRPERSON GJONAJ: Isn't that a net loss?

FIRST DEPUTY COMMISSIONER MALLON: It's not 30 percent of their profit. You asked about what the cost is.

STEVE BECKER: 10 to 30 percent of their delivery.

FIRST DEPUTY COMMISSIONER MALLON: yeah.

CHAIRPERSON GJONAJ: No, no, I'm sorry. I was asking profit. So, typically, and the way I understood it always, was brought to my attention that restaurants operate at anywhere from 12 to 24 percent, depending on the establishment, was their profit on their food-- the food that they serve. Am I correct here, or you're not aware?

STEVE BECKER: I would say no.

CHAIRPERSON GJONAJ: What would you say the profit is on a restaurants serving--

STEVE BECKER: [interposing] [inaudible]

CHAIRPERSON GJONAJ: their favorite dish.

STEVE BECKER: I would say what I said, at max currently 10 percent.

CHAIRPERSON GJONAJ: 10 percent.

FIRST DEPUTY COMMISSIONER MALLON: Max.

CHAIRPERSON GJONAJ: Max. and the online providers are charging anywhere from 10 to 30 percent.

STEVE BECKER: Of deliveries, delivery sales, not overall sales.

FIRST DEPUTY COMMISSIONER MALLON: Right.

CHAIRPERSON GJONAJ: No, delivery sales. So, on that product. My favorite penne a la vodka [sic] dish is coming from, I don't know, Reggie's Restaurant. Reggie's making 10 percent profit on that order when I order myself directly from him. Are we not understanding each other?

FIRST DEPUTY COMMISSIONER MALLON: It's not apples and-- you're mixing apples and oranges there. Ten--

CHAIRPERSON GJONAJ: [interposing] There's an industry standard, right, of profitability?

FIRST DEPUTY COMMISSIONER MALLON: Yep, of net profit.

CHAIRPERSON GJONAJ: Of net profit.

FIRST DEPUTY COMMISSIONER MALLON: And the 10 to 30 percent is on delivery sales.

CHAIRPERSON GJONAJ: No, I'm asking of net profit.

FIRST DEPUTY COMMISSIONER MALLON: I don't think we know that.

CHAIRPERSON GJONAJ: You're-- well, learned that quick [sic]. It'll only take a few-- there's a standard that everything operates on, you know, whether it be any industry out there has a return on investment. This is what you expect to make. If you did X sales a week, X should-- Y should be your profit.

STEVE BECKER: Correct.

CHAIRPERSON GJONAJ: And that is a range. What is that range as you know it, if you even know it?

STEVE BECKER: I'm going to go back to my eight to 10 percent.

CHAIRPERSON GJONAJ: So then we are talking about the same thing here. So restaurants are making eight to 10 percent profit.

STEVE BECKER: Uh-hm.

FIRST DEPUTY COMMISSIONER MALLON: Net profit.

CHAIRPERSON GJONAJ: On their--

FIRST DEPUTY COMMISSIONER MALLON: [interposing] Operations.

CHAIRPERSON GJONAJ: On net-- on gross sales. Correct?

STEVE BECKER: Correct.

CHAIRPERSON GJONAJ: Okay, good. So now we're on the same page. Gross sales, 10 percent profit. What are the apps charging for an order? 10 to 30 percent?

FIRST DEPUTY COMMISSIONER MALLON: That's what they're reporting to us.

CHAIRPERSON GJONAJ: So, then we are talking about the same thing.

FIRST DEPUTY COMMISSIONER MALLON: Of delivery--

CHAIRPERSON GJONAJ: [interposing] If a restaurant makes 10 percent on gross sales, profit, a provider is charging anywhere from 10 to 30 percent for that same product. That product will yield a net loss--

FIRST DEPUTY COMMISSIONER MALLON: [interposing] That--

CHAIRPERSON GJONAJ: [interposing] or break even.

FIRST DEPUTY COMMISSIONER MALLON: delivery sales and in-person sales are at the same profit margin. Just to be fair, I don't think that you're going to be able to get from us like a specific answer to your question, right? That's how we're different. We're saying that they're reporting to us that 10 to 30 percent of the-- they're being charged on the delivery sales, which is a component of their overall sales, and the margin rates of their delivery sales may be different than their come and sit down in my restaurant sales, right?

STEVE BECKER: Correct.

FIRST DEPUTY COMMISSIONER MALLON: and that's why we're like not-- can't come to the exact same conclusion that you're coming to which is like do the math, they're losing money. It's not clear to us. We're not sure.

CHAIRPERSON GJONAJ: Deputy, around the corner--

FIRST DEPUTY COMMISSIONER MALLON: [interposing] Yeah.

CHAIRPERSON GJONAJ: is I think it's Italy Pizza, and they sell a pie--

FIRST DEPUTY COMMISSIONER MALLON: [interposing] What is the Italians today?

CHAIRPERSON GJONAJ: I know. I don't know.

FIRST DEPUTY COMMISSIONER MALLON: You know, I'm half Italian.

CHAIRPERSON GJONAJ: It's the first thing that comes to mind.

FIRST DEPUTY COMMISSIONER MALLON: My--

CHAIRPERSON GJONAJ: [interposing] So, let's say that their average 16-inch pie is being sold for 14 dollars. I don't know if that's the price, but based on the math--

FIRST DEPUTY COMMISSIONER MALLON: [interposing] Seems low.

STEVE BECKER: We'll start at 20.

CHAIRPERSON GJONAJ: That's a slice? I'm sorry. What is it now, 24 dollars?

STEVE BECKER: Yeah.

CHAIRPERSON GJONAJ: Okay, 24 dollars. Using what we just described per pie, 24 dollars, 10 percent yields that operator two dollars and 40 cents profit. What would one of these providers charge for that same 24-dollar pie that's being sold? They're paying 10 to 30 percent based on the gross sale. Let's use the bottom, 10 percent. But that would be a break even at best case scenario for the same pie being delivered whether you picked it up or delivered it through the app.

STEVE BECKER: Which is why there's a new app called Slice that has come in to help those businesses--

CHAIRPERSON GJONAJ: [interposing] Now you're really confused. I was trying to get to something, but I guess we'll get to that a little later. I think what I was trying to say is there's a real impact based on those fees that are being charged.

STEVE BECKER: Agreed.

CHAIRPERSON GJONAJ: And many of our restaurant operators may not realize that the fees that are being paid has a real toll on their bottom line.

FIRST DEPUTY COMMISSIONER MALLON: That's true.

STEVE BECKER: Agreed.

CHAIRPERSON GJONAJ: And could determine whether it's net profit or net loss. That's where I was headed.

STEVE BECKER: Got you [sic].

CHAIRPERSON GJONAJ: Thank you. Did we lose our-- I'm going to give you the floor.

UNIDENTIFIED: [off mic]

CHAIRPERSON GJONAJ: Council Member Rosenthal. Do you have any questions for SBS?

COUNCIL MEMBER ROSENTHAL: Thank you. No, you guys are doing a great job as always. Thank you for all your hard work.

FIRST DEPUTY COMMISSIONER MALLON: Thank you very much.

CHAIRPERSON GJONAJ: I was-- I hope that you're going to stick around or someone, because we have a very important hearing. I'm going to-- I hope that the stakeholders will help us better understand the relationship, the business model and how it actually works so we have a better understanding on what if anything should be done by us.

FIRST DEPUTY COMMISSIONER MALLON: Yeah, thank you very much for having me here.

CHAIRPERSON GJONAJ: I won't give you the same kudos that my generous colleague would give you. We have work to do.

FIRST DEPUTY COMMISSIONER MALLON: Yeah, but I know you feel lit in your heart.

CHAIRPERSON GJONAJ: I know. If you'll indulge me, I just want a few of the restaurant owners that are here that have to run out that we can hear from them, and then I really want to spend a little time with those providers. Andrew Rigie, Andreas-- oh, this is a good one-- Koutsoudakis, there you go, and Robert Bookman, please. That'll be our first panel.

ANDREW RIGIE: Sure. Good afternoon. My name is Andrew Rigie. I am the Executive Director of the New York City Hospitality Alliance. We are a not-for-profit trade association representing the restaurant and nightlife industry in the five boroughs. I want to thank the Chair as well as Council Member Rosenthal for being here today and hosting this important hearing. So we've heard a lot in conversations over the year about delivery. Obviously New York City is a place where people love their delivery service. They love their local restaurants. They love the convenience of being able to get food delivered right to their door. Some restaurants because of the high cost of operating have started doing delivery because it generates additional revenue. There's a lot of things great, and we should acknowledge that, but there's also a lot of concerns, and we think today is a great opportunity for all of us to come together and talk about these issues and hopefully as a result of this hearing get answers. So, instead of just telling you what some of those concerns are, which I know there's restauranteurs here that will do that, I'm going to pose a list of questions that I think would be extremely helpful for the Council to be able to contemplate in determining how they proceed. So, first, do companies use their market share in any way to extract higher fees from restaurants? Are search algorithms ever used to enhance or reduce search placement, in particular when a restaurant hasn't paid a higher fee for such placement? Have sales representatives ever been privy to delivery company's search function and used it to sell higher fee placement? And what I mean by that is, is a restaurant on a platform? Do they see a huge jump in sales, and then they see a drop in sales and getting calls from a representative saying, "Hey, if you increase, you know, your fees, the percentage you pay, we will bump up your presence and placement in the search function." That is something that should definitely be looked into. When it comes to restaurant websites, are any companies purchasing URL's similar to the name of a restaurant and making it show higher in the result and then trafficking that business through that website to ensure the delivery company gets the fee versus if a customer just went to the actual restaurant website and placed an order and paid no fee or a lower fee. Why can delivery platforms take a percentage of a liquor licensed establish revenue without being on a liquor license, like every other person or entity should? Are there any exclusive contracts that you can only be on one delivery platform and not be on others? Or, I should say and/or are there provisions that would prohibit a restaurant from selecting which platform they want to be on from one company? For example, if a delivery platform has a catering platform as well as an individual order platform, are they required to be on both? Because as we've heard before and I'm sure we'll hear later, often restaurants may lose money on the individual orders, but they may make more money on catering orders. So they may only want to be on the catering platform. Can they choose to be on both or just one? A big one that's talked about these days with all technology companies is who owns the customer data? If I've been on a restaurant platform for several years and I've transacted, I don't know, 20,000 different orders, and I say I want to leave this platform, do I own that customer data? Is that my data? I'm delivering to them, they're my customer, or am I in a position where if I get off the platform I've effectively lost all of those customers which clearly could be devastating to small businesses. When it comes to some of the bogus or fees that should not have been charged to restaurants whether it's through phone calls or otherwise, restaurants are spending an extremely long time trying to go back into their records to determine whether or not all of the fees that are being charged to them are legitimate or not. Is there anything that the delivery companies can do to provide all of that information? It shouldn't be the responsibility of the restaurant to go back and look at their files for years to determine which fees may or may not be legitimate, and if there were illegitimate fees, there should be no 30 or 60-day time frame in which they will pay them back. If there are illegitimate fees being charged for a three-year period, well, they should all be given back and it should not be the responsibility of the restauranteur to go back in all their records and try to figure out which ones are or are not legitimate. And in addition to the fees that we've heard that may not be legitimate, are there other types of fees that may be fake, not being, you know, not legitimate for other types of orders. You know, we know that there's people that have issues with the phone call fees. Are there any other types of fees that shouldn't have been assessed in the first place? We should get down to that. And I think, again, I don't know all the answers to these questions. One of the questions or the many questions that we have is that many people don't know, and as was discussed on the earlier panel, these contracts can be very confusing, especially if you are a small business owner. And are there companies that have such a large part of market share where businesses feel that they cannot

not be on a platform, but feel like they really can't afford being on the platform either. Because what happens is restaurants do generate a lot of business through these delivery platforms, and that's what it's a great thing. However, if they're in a scenario where they're relying on that income to just offset their operating costs, labor, food costs, rent, they may not necessarily be making money off of that revenue, but they can't just drop the delivery because they're required to bring in that revenue to cover other operating expenses. So, I'll leave it at that, but all of these questions would be extremely helpful from all the delivery platforms, not just the ones that are here today, and I thank you for your consideration.

CHAIRPERSON GJONAJ: Thank you, Andrew. I just-- because you asked the question, struck me as odd. We've heard of the alleged phone charge, but you're indicting there's other charges out there that irrela-- illegal charges?

ANDREW RIGIE: I do not know, but if there's one call it illegal charge, if there's one charge that shouldn't have been charged, I would think a smart business owner would begin to look at all the other charges to ensure that there are no additional bogus charges. So I don't know, but I definitely think it's something that sold be discussed. Because, again, as you know restauranteurs are extremely busy, and trying to go through all the different fees on one of the million different statements that they receive--

CHAIRPERSON GJONAJ: [interposing] You're not aware of anything. That's--

ANDREW RIGIE: [interposing] I am not.

CHAIRPERSON GJONAJ: You're just asking is there potential--

ANDREW RIGIE: [interposing] I am asking questions.

CHAIRPERSON GJONAJ: and hopefully we'll have a better understanding--

ANDREW RIGIE: [interposing] Correct.

CHAIRPERSON GJONAJ: of fee structures.

ANDREW RIGIE: Yes, and perhaps there have been in the past and they have self-corrected, but I think that that would be helpful. And correct, yes, if they went on the record and said that they weren't, that would also be helpful and give us comfort.

CHAIRPERSON GJONAJ: Elaborate on customer data, what do you mean exactly?

ANDREW RIGIE: So, as a restaurant, I am generating orders through one of the many different platforms. That information is usually the customer's name, address, and their order history, this email address and other types of information that they may collect. Do I own that information? So, if I was to leave one of these delivery platforms and said, there have been 20,000 people that have ordered through your platform to my restaurant. I want all the names. I want all the emails. I want all their order history. Is that information provided to me, one, and two, is that information then being used, the customer information, being used by the delivery company to promote other restaurants? Is it my data? Do I own those customers? And that's a big question, because again, if I'm going to lose all of the people who have ordered from me over the years, well, I may not be able to leave that platform.

CHAIRPERSON GJONAJ: But based on the information that you receive from your restaurant owners, the group, what have they said when it comes to that data? What is there experience? Have they been able to request it? Were they provided that information? Was it not readily available?

ANDREW RIGIE: What I have been told is that no, they do not own that customer information. They being the restaurants do not own that customer data.

CHAIRPERSON GJONAJ: So the email addresses, the names, the phone numbers,--

ANDREW RIGIE: Correct. And now I can’t specify exactly which delivery platforms that they are, but as a general response from restauranteurs when I ask do you own the customer data or does the delivery platform own the customer data, I have been told that the delivery company owns the customer data.

CHAIRPERSON GJONAJ: And what was that about websites?

ANDREW RIGIE: Yes.

CHAIRPERSON GJONAJ: Purchasing the actual name. I want a little clarity on that.

ANDREW RIGIE: So, if I own Andrewsbarandgrille.com, I may not also own andrewsbarandgrille.net or .org or .nyc. Are delivery companies purchasing similar domains? Setting up websites similar to Andrew's Bar and Grille, so and with their sophistication, being able to make AndrewsBarandGrille.net appear higher than the real AndrewRigieBarandGrille.com. So when they go and you do a search function, is Andrewrigiebarandgrille.net coming up first, and if that is true, you know, is it directing it through to a delivery platform where I'm paying a higher fee? And I bring that up because my understanding with certain platforms is that if a customer goes directly to the delivery platform website, they will pay a higher fee. If they go directly to the restaurant website, they'll have sometimes a widget for the delivery platform on their website. In that case they may pay a slightly lower fee. However, if there's these shell websites begin set up on behalf of restaurant. One, they're setting up website for restaurants without their permission which is of concern, but two, I would imagine-- and again, these are questions. I would imagine they-- if deliveries were driven through that .net, they would be paying the higher fee, not the lower fee than if they ordered directly through the actual restaurant itself.

CHAIRPERSON GJONAJ: I want to be specific here.

ANDREW RIGIE: I'm told there's a term for this. It's called "cybersquatting."

UNIDENTIFIED: When you hijack someone's website and you basically use it for your own purposes. I don't know, maybe the terms and conditions wave that.

CHAIRPERSON GJONAJ: So, my question is direct. Is this happening to Andrewsbar.com where they're now a phantom cybersquatting Andrewsbar.net is being promoted through a provider?

ANDREW RIGIE: Yes, I have been told by several people that that is correct. And I would just--

UNIDENTIFIED: [interposing] Mr. Chairman, I don't think we were sworn in.

CHAIRPERSON GJONAJ: Well, you don't get sworn in.

UNIDENTIFIED: Okay, good. Because he's telling the truth. I want to be clear.

[laughter]

CHAIRPERSON GJONAJ: Scout's honor, right?

UNIDENTIFIED: You got it.

UNIDENTIFIED: Absolutely.

CHAIRPERSON GJONAJ: I got it.

ANDREW RIGIE: Yeah, we're here. We hear, as you know, we hear a lot from restauranteurs about this and many, many issues, and trying to juggle all of them, people just don't always have all the information. Again, it goes back to why we thank you for having an oversight hearing, because there may be issues at play, and there may not be, but this is the way that you can investigate and gesture out what's true, what's not true, and what's the best way to move forward.

CHAIRPERSON GJONAJ: Please explain placement, search placement, as you understand it.

ANDREW RIGIE: Sure. So, when you sign up on a delivery platform, your restaurant needs to be listed along with all the other restaurants on the platform. Now, I think we can understand, and while people may not like the fees, and if a restaurant is willing to pay more, perhaps they will be listed higher in the search function. However, if you are a restaurant and you were just using the, you know, basic plan, how does the algor-- and I go. We're using Italian Restaurants. And I put in Italian restaurants in my neighborhood, the Upper West Side where I live. How does the algorithm determine which Italian restaurants on the Upper West Side come up first, if they're not paying more? If they're paying more, that's something else. But in an organic search. How did they come up?

CHAIRPERSON GJONAJ: What is your understanding?

ANDREW RIGIE: I don't know, and that's my question I something that would be interesting, equal that could certainly adjusted. Again, claims that people are listed higher or lower based on the amount of delivery traffic they generate, the amount of fees they pay. You know, there can be multiple factors. Again if someone is paying--

UNIDENTIFIED: [interposing] Are they using, you know, are they using other companies, you know, as well. It's a major fear, Mr. Chairman. So it would be good to get an answer on the record on that.

CHAIRPERSON GJONAJ: And you have no understanding how the algorithms currently work for those that are not participating in additional fee service? It's not alphabetical. It's not in distance from where you're device is, or anything of that? It's just arbitrary?

ANDREW RIGIE: I don't believe it's published, and I think this is part of the much larger conversation we're having about tech in general, you know, ownership of information, how you see things in your feed, when you see them, why you see them. So, I don't know if it's available, or perhaps it is, but maybe it's not.

CHAIRPERSON GJONAJ: Okay. Thank you Andrew.

ROB BOOKMAN: Thank you, Mr. Chairman. I'm Rob Bookman. I'm the counsel to the organization that Andrew is Executive Director of, the New York City Hospitality Alliance. We represent approximately 2,000 establishments in the City of New York from small mom and pops to hotels, bars, and nightclubs, and everything in between. I want to thank you very much, you know, for doing this hearing. You are a true friend, an advocate of the small business community and your chairmanship of this committee, and I've been involved in the Council on and off for 30 some-odd years. I've never seen anything like it, so we really want to thank you. And want to also thank the New York Post if they're here for doing the stories that they did on this issue. I feel a little bit like those who have ever attended a Passover Seder where you start off with what they call the four questions, and then it goes, okay, now let's do the answer. So, Andrew started with the questions, and now let's get into some answers, which you will start hearing with from some restauranteurs. As you said, it's not the 1950's anymore. You know, it's not Ozzie and Harriet where mom is at home making a delicious, you know, home-cooked meal, you know, dinner seven nights a week. That's not where we are as a society. Take-out has become the norm, especially in large cities like New York where people are working harder and longer hours and multiple jobs and single parents, and delivery has become an increasing part of that take-out culture. So, you know, these companies are not our enemies. No question about it.

CHAIRPERSON GJONAJ: You left out that very important fact that between making it home and ordering out, I just cleaned out my kitchen drawer where I used to keep all of the menus so I would remember how to get in touch with the restaurant. But go ahead.

ROB BOOKMAN: And my three children in their 20's still laugh at me when I pull out a menu, because they say, you know, we could just Seamless tonight, you know? And that's the reality that we face. Increasingly, people don't want to even have a call directly with a person. They want to use an app. They want to not interact with people. They want to do it online, you know, on their phone. And so it is not an option to the thousands of restaurants in New York City to say either no thanks to delivery, or if you delivery increasingly it's not an option to say no to the Grub Hub and Seamlesses [sic] of the world. It's something that you can't live with them, and increasingly you can't-- you can't live without them, and increasingly you can't live with them, and that's I think why we're having this hearing. So there are three points, large points, I want to address. One is has Seamless and

Grub Hub become a monopoly, you know, in New York City? You know, now I'm not an anti-trust expert, and I haven't taken an anti-trust course since law school, which is many decades ago, but it seems to me that it's starting to look like one and act like one. As is common in the tech world when there is competition, they don't compete, they buy them out. I don't blame them. That's the way the tech world works. So, any time a good company develops they get bought out. They are secretive with their information and their algorithms. The reason why we're raising those questions is because we don't know the answers. That's typical of monopoly. They raised their prices, because they can. Because you can't live without them and so you have to live with them, and they keep raising their prices which they've done over the years to the point where now as you point out, and it's not difficult math, you're losing money on your delivery orders. And so to go back to my prior point, then why do it, it's because you have no choice today. You can't say no to delivery. You can't say no to the behemoth platforms. It's churning work. It's keeping your employees busy. You're afraid that customers won't ever come in to dine in the restaurant if they don’t have the option for the delivery, but you’re losing money on every delivery.

CHAIRPERSON GJONAJ: Can you give me a rough estimate on industry standards based on profitability of products?

ROB BOOKMAN: They were right before, 10 percent net profit used to be the gold standard for in-dining, you know, restaurants. White table cloth restaurants we used to call it, you know, fine dining, even casual dining, 10 percent net profit. That’s considered very successful in today’s day and age for all the reasons that you know, and then we testified at other hearings, labor, everything else. Eight percent, seven percent people would be happy to make today. So, yes, if you are on that 20-dollar order paying 15 percent, 18 percent to a delivery platform, you’re losing money on that order. The math is not difficult. You know, you’re losing money on that order.

CHAIRPERSON GJONAJ: That’s fine-dining, what about the other types of--

ROB BOOKMAN: Casual dining, you know, where the Chipotle type of situations where, you know, you walk up to a counter to get the food and you sit down by themselves has a higher profit margin because they have a lot less labor and a lot less labor cost.

CHAIRPERSON GJONAJ: Industry standards?

ANDREW RIGIE: 15 percent.

ROB BOOKMAN: Yeah, I think they're running around 15 percent. And you know, of course, we love all of our options. Like, you know, fine-dining is the one that provides the most amount of good paying jobs both in the front of the house and the back of the house, but we welcome all in New York. So, you know, it seems to me-- by the way, as you well know, there are restaurant owners who have come to you privately to discuss this who have expressed out fear to come here today publicly to testify. Now, I'm not saying their fear is justified. I have no idea, but what is a fact is they're fearful. They're fearful that their placements might be lowered, not tomorrow but two months from now, and that's typical reaction when you're dealing with a monopoly. So, I don't know if they're a monopoly. I don't know what their market share is, probably only they do, but it seems to me and we're calling today for both the Federal Government and the Attorney General's Office the State of New York to look into this issue. And I know the AG's Office once did, you know, with Seamless once upon a time. They did have a consent agreement or a stipulation with them where they agreed for a certain amount of time not to buy out anybody, and as soon as that expired, you know, they started to buy out other entities. So that's number one. Number two, there's a need for more transparency. As Andrew has raised many, many questions, much of that goes to the issue of transparency, both to the small businesses and for consumers in the City of New York, and that is a New York City role pure and simple.

CHAIRPERSON GJONAJ: Right--

ROB BOOKMAN: [interposing] I'm an old Department of Consumer Affairs attorney from New York City Department of Consumer Affairs. I was counsel there, and consumer protection, disclosures, so everybody in the market place knows what's going on. That's the wheelhouse of New York City government and local government, and we need to address a lot of these transparency issues.

CHAIRPERSON GJONAJ: I just want to be clear on transparency. I don't expect the Italy Pizza to tell me their secret sauce in their ingredients. I don't think we're going to expect any online provider or industry out there to tell us their industry secrets. We ought to be mindful of these things. We want to be transparent as much as possible, but certainly not infringe upon anyone's business model and undermine how they make their sauce, how algorithms actually work in a sense of if there is a model there that works, and apparently it does, we want to be mindful of what we're entitled to and what we're not entitled to. I think you understand the gist.

ROB BOOKMAN: Clearly do, and this is a national conversation going on now in Congress and elsewhere with a new industry that is now a significant industry, the entire tech industry, you know, Amazon, you know, the platforms and government is catching up, you know, and it is-- there has to be-- no regulation is not the answer. Over-regulation is never an answer either. There has to be a balance between what's your secret sauce and what everybody else has the right to know. For example, I think it is a positive issue of transparency if customers knew what percentage the restaurants are being forced to pay for each order. That's no secret sauce. Perhaps, you know, I would want to call the restaurant more directly if I knew that 15 percent; 18 percent, 20 percent, you know, of the order was going to a website that does not deliver the food. It does nothing more than transit an order. Something to me sounds like, you know, a buck sounds like about the right price for that. The data that we discussed, who owns this data, you know, that's a transparency issue. I would have no problem, and it would be a great idea of Corp [sic] Council with their 800 lawyers reviewed these contracts for these types of issues and raised it up. Last, and to wrap up, state liquor law. I'm a liquor attorney expert. That's what I do for the most part for a living. You cannot have a one percent owner of a business as a liquor license without being on the liquor license. We're not allowed to pay our vendors percentages of revenues. We have to pay them flat rates, because the liquor law says if you pay percentage you're a partner, and a partner must be on the liquor license. These delivery platforms are not on liquor licenses. I imagine they are not interested in being on 12,000 liquor licenses on the City of New York and having those issues and liabilities. This is an issue for the state liquor authority who has provided confusing guidance to the industry on this issues, and we're calling on the state liquor authority to clarify that. Thank you.

CHAIRPERSON GJONAJ: Thank you.

ANDREAS KOUTSOUDAKIS: Good afternoon. Andreas Koutsoudakis here from Tribeca's Kitchen. Dear members of the Committee on Small Business, thank you for having us today, for actually taking the time to listen to small business owners and the issues and explore possible solutions. I'm here today on behalf of Tribeca's Kitchen, a local diner where you'll find my father six to seven days a week, 10 to 12 hours a day. I can't tell you how many emails, calls, and in-store visits we get from tech companies offering some new app or product that is positioned as a no monthly fee service. In reality, I wish it was a monthly fee, because 10 to 20-- 20 to 30 percent commission models just don't work in a positive way for my business or for any other of these small businesses anymore. These are marketing machines that we're talking about here that are backed by resources that no small business can ever obtain, and thus, our customers are forever hijacked with no end in sight in terms of what they can do to change our entire local restaurant industry. The more they grow, the more market share they gain, and the more power these third-party companies will continue to have to unilaterally dictate what the terms of our relationship with them will be whether we like it or not. It's already at a destructive level, but you our elected City Council Members and this Mayor have an opportunity to think about the forgotten little guys, the small business owner who lives or dies with their business. That's all they have. If they lose, so do the other little guys, their employees, so does our city, and so does our character as a unique and creative bustling city. If you remove all of the one-off [sic] small business restaurants from our great city, will New York City be the New York City people expect and know it to be. That's an absolute no. Think long and hard about what you can do to help our local businesses. They need a strong backing, strong enough to have a level playing field with these behemoth venture capital-backed marketing machines that are taking over our restaurants and drastically changing our entire restaurant industry. Our City Council must be our backing. Right now, backing in support of small businesses by our City Council is non-existent, and that’s not okay. In closing, I ask that all our City Council Members and Mayor de Blasio start thinking about short-term and long-term impact policies and ways to support our communities and the small businesses in them. They may not be huge political wins overnight, and they may never even be realized during your term. That doesn’t mean they are not crucial to our City’s successful future. You may not be able to solve a problem head-on, but maybe you can help in other ways. Get creative. Figure it out. Or maybe we figure it out. Imagine what would happen if every mall business restaurant owner in the City shut down for a day at the same time. How much revenue would be lost? How much tax revenue would be lost? How much salaries would be lost? What would happen? Maybe that would be- catch the City Council’s attention. Thank you for your time, and I really hope my testimony was helpful to you understanding of hath is happening right now. Thank you.

CHAIRPERSON GJONAJ: I want to thank you, Andreas, first of all, for investing in this great City through sweat equity. I understand what you go through day-in and day out, and I'm a strong advocate for small business.

ANDREAS KOUTSOUDAKIS: I know you are. Thank you.

CHAIRPERSON GJONAJ: I want to make sure that you are in an environment where you can continue to thrive and flourish and that you stay in business. I value what you bring to this city. I value the number of people you employ, the tax base that you are and the service that you offer to not only New Yorkers, but to tourists that come from all over the world. So, thank you.

ANDREAS KOUTSOUDAKIS: Thank you, sir.

CHAIRPERSON GJONAJ: We'll go to the next panel. Thank you. Our next panel will be Noelle [sp?] from Uber Eats, Sammy from Grubhub, and Kevin from Grubhub. I just want to thank you all for your patience, and I hope you got something out of allowing that panel to go first so we have a better understanding of what the issues are that they bring to our attention. So, thank you. And in no particular order, I’ll start with any of you.

NOELLE: My name is Noelle [sp?] from Uber Eats. Uber Eats welcomes the conversation with the New York City Council on the topic of food delivery services. Over the past several years, the process of food delivery has evolved significantly. What used to be a simple relationship among a consumer, food establishment, and a delivery person now also includes app-based technology and major national corporations. Because of the growing complexity of the food delivery business, we appreciate this opportunity to explain the brief history of Uber Eats and how our business currently operates in New York. Uber Eats began operating in April 2015 as a small operation that quickly delivered meals in Midtown Manhattan. By April the following year, the business had grown to partner with more than 100 businesses and was operating from early in the morning through late at night. Currently, Uber Eats serves customers in all five boroughs with delivery options from thousands of restaurants, eateries, delis and other food establishments across the City. One of the reasons we have been able to go grow our business successfully in New York is because we value our restaurant partners, and we demonstrate that through a quick and transparent on-boarding process. When a restaurant or other food establishment is interested in partnering with Uber Eats, a member of our team will walk the restaurant contact through the basic options included in our partnership using their own delivery worker, using Uber Eats delivery partners, or a combination of both, and explain to them the difference between each option. Once the restaurant partner has determined which delivery method they prefer, we share them on a brief, plain-language contract which outlines the cost, and upon agreement, get them up and running on our app quickly. We are committed to no hidden fees for restaurants. We don't charge for credit card processing, and we don't charge higher rates for lead generation. Our model is straightforward and transparent from the beginning. Restaurants can choose to pay a 15 percent fee and use their own delivery workers, or pay a 30 percent fee to use Uber Eats delivery partners. We provide our restaurant partners with the necessary hardware and software to manage their operations through data, and have each expert on-hand to troubleshoot any issues the partner experiences in real time. We understand that restaurants small and large are adapting to the changing landscape of food delivery across the city, and our goal at Uber Eats is to make that process as transparent and fair as possible so they can continue to grow their customer base and prosper.

CHAIRPERSON GJONAJ: Thank you, Noelle. Just explain a little bit about the business model. So, you're not providing new customers, you're just providing a service, is that what you're saying?

NOELLE: We are a technology company that offers an opportunity for restaurants to be shown to eaters who use our app.

CHAIRPERSON GJONAJ: So your add placement, is that the same?

NOELLE: I think by ad placement, do you mean on the web, or?

CHAIRPERSON GJONAJ: Right. I search Reggie's Pizza.

NOELLE: yeah.

CHAIRPERSON GJONAJ: At that point there's a slew of pop-ups that come up.

NOELLE: Yes.

CHAIRPERSON GJONAJ: One of them would be Uber Eats.

NOELLE: Yes.

CHAIRPERSON GJONAJ: And based on the click determines whether or not you get the sales transaction for that?

NOELLE: So, to clarify, when you search for Reggie's Pizza on let's say Google, the first hit may be a Google ad for Reggie's Pizza. Who knows if they paid for that add? Then the second hit may be a link to either an Uber Eats website or for example, Grub Hub's website or any of the other competitors out there. If you click Uber Eats, you will then see Reggie's Pizzas' Uber Eats page. It is very clearly marked that it would be Uber Eats.

CHAIRPERSON GJONAJ: And that's where depending on their options--

NOELLE: Yes.

CHAIRPERSON GJONAJ: 15 percent your own driver or--

NOELLE: [interposing] Yeah, or a combination.

CHAIRPERSON GJONAJ: a thirty percent all-inclusive combination which includes credit cards and so on and so forth.

NOELLE: Yeah.

CHAIRPERSON GJONAJ: How do you determine-- oh well, actually, if I searched Italian, and the list that showed up, the names of various eateries. How is that determined? Are you charging for lead placement?

NOELLE: No, so we offer a flat fee to restaurants, the 30 percent or the 15, and there is no sort of increase or a decrease in fee to do app placement, so how that restaurant appears in our add.

CHAIRPERSON GJONAJ: So, let me understand. Where would Reggie's Pizza be listed under search for pizza under Uber Eats?

NOELLE: Great question. We actually get that question a lot. So, if I am a-- the number one Reggie's Pizza customer, and I always use Uber Eats to order Reggie's Pizza, I guarantee when I open the app if I'm within the Reggie Pizza area, Reggie's Pizza will be number one. But on the converse, if I only eat Hawaiian food, then only Hawaiian restaurants would be surfaced at the top. So, our algorithm, part of it uses the individual customer's preferences to help sort which restaurants will appear first.

CHAIRPERSON GJONAJ: So, if I never ordered online-- and as God is my witness, I haven't. My boys tease me about that often. So, you have no history on me. If I search pizza and using-- and I just happen to come across Uber, where will I find Reggie's Pizza?

NOELLE: It will vary based on a number of factors that our data science team uses, but we do not charge restaurants for different placement levels within our app.

CHAIRPERSON GJONAJ: So, how-- is it alphabetical is it geographic, is it--

NOELLE: It's a data science model, and I think to the point that you alluded earlier, I don't have that information, and I think as part of our trade secrets, per say, we wouldn't share that explicitly out, the exact algorithm.

CHAIRPERSON GJONAJ: Do you understand the concerns?

NOELLE: Yes.

CHAIRPERSON GJONAJ: With many of these restaurants.

NOELLE: Yes.

CHAIRPERSON GJONAJ: You heard what those restaurant--

NOELLE: [interposing] Yes. I think for us we are very proud that we do not currently charge restaurants for different placement option or sort algorithm placement within our app. It is a fair playing field for all restaurants.

CHAIRPERSON GJONAJ: what about the data? It was just brought up that the data doesn't belong or may not belong to the actual restaurants. So, name, phone number, email address, all of that information, is that the case with Uber Eats?

NOELLE: So, at Uber and at Uber Eats we have a strict confidentiality commitment to protecting our customer's private information. So we do not share details of the customers, including their email address or their phone numbers with our restaurant partners?

CHAIRPERSON GJONAJ: What do you do with that data? Do you package it and resell it to anyone else? Do you provide it to a database of email addresses? Does anyone out there in the universe get that information from you, can purchase that information from you or is entitled to that information from you?

NOELLE: No. So, Uber Eats protects our customer data, and that is a very, very high priority for us.

CHAIRPERSON GJONAJ: So no one ever sees that information? That is just under lock and key?

NOELLE: Yes, that is oen of Uber's number one core principles, is that we protect our customer data.

CHAIRPERSON GJONAJ: What about the commissions, is there any surcharges in addition to the two options that you mentioned, 15 percent, 30 percent, and that inclusive of credit card fees? Is there any other charges or surcharges?

NOELLE: Any other fees on orders? No, there are no other fees.

CHAIRPERSON GJONAJ: No charges, no fees, this is a take--

NOELLE: So, when you sign the contract there are two fees. There is a marketplace fee which is the 15 and the 30 percent that I had referenced, and we also charge an activation fee. So, in other words, similar to a gym membership join fee when restaurants first join the platform, and that is clearly articulated in the contract that we walk our restaurants through when they join Uber Eats.

CHAIRPERSON GJONAJ: No more fees anywhere?

NOELLE: No more fees.

CHAIRPERSON GJONAJ: No hidden nothing?

NOELLE: No hidden fees, only the 15 and the 30.

CHAIRPERSON GJONAJ: Do you charge your commission based on the gross sale which includes sales tax or exclusive of sales tax?

NOELLE: Exclusive of sales tax.

CHAIRPERSON GJONAJ: They-- anyone can at any time cancel a contract with you?

NOELLE: At any time.

CHAIRPERSON GJONAJ: And they can have more than one provider in conjunction with Uber Eats.

NOELLE: Yeah.

CHAIRPERSON GJONAJ: You're not exclusive.

NOELLE: We are not exclusive.

CHAIRPERSON GJONAJ: And what-- I think that's it.

NOELLE: Great, thank you.

CHAIRPERSON GJONAJ: You may want to stay up there because we may have a question for you across the board. Thank you.

SAMI NAIM: Good afternoon, Chair Gjonaj, members of the Small Business Committee wherever they may be.

CHAIRPERSON GJONAJ: They're all watching.

SAMI NAIM: Thank you for the opportunity to testify today to talk about how Seamless or as you may know Grubhub or Seamless helps restaurants grow. My name is Sami Naim. I'm Director of Public Policy for Grubhub. With me today is Kevin Kearns, Senior Vice President of our Restaurant Network. As you may know, we've been operating in New York since 1999. We employ nearly 400 people on three floors across the street from Bryant Park. Our employees literally live, work, breathe, and eat New York. They also help drive billions of dollars of revenue to restaurant and one billion dollars in tips to delivery workers. We'd just like to provide a few specifics about our business model before answering your questions. One, our marketing platform levels the playing field for independent restaurants. Here in New York about 90 percent of the restaurants on our platform are small businesses which don't necessarily have the financial resources, expertise or scale to advertise and compete with larger teams. That's where we come in. We help drive more orders to these restaurants than they could attract on their own by providing them access to our 20 million diners. We also have a multilingual Restaurant Success Team that works with restaurant owners to ensure they get the most out of Grubhub, from designing a restaurant's menu to sending photographers out to take pictures of the food, to collaborating on promotions. We work with restaurants to craft strategies to help them attract new customers generate additional orders and earn more revenue. Two, restaurants are getting more orders through our platform. Restaurants who contract with us see a 20 percent increase in take-out orders, and a 30 percent increase in take-out revenue. The impact is even greater for smaller restaurants, which is a 50 percent increase in take-out revenue. In fact, restaurants that use our platform make six times more monthly revenue than restaurants not on the platform. Three, restaurants are making more money year over year using our platform. Since 2014, restaurants are getting more orders with larger overall take-out prices through our platform on a year over year basis. In other words, not only are restaurants getting more orders, but each order is getting bigger as well. This translates into increased incremental revenue that more than offsets any negotiated commission. Four, restaurants that track new customers using our platform. I'm sure you've see our Seamless How New York Eats ads on subways and taxis or a Grubhub TV spot. That's not by accident. In the past three years alone, we've spent more than 150 million dollars aimed at attracting more diners onto our platform including coupon, discounts, and promotional codes that ultimately earn more customers for restaurants. As one restaurant owner in the Upper East Side recently shared with us, "I consider the fees that Grubhub charges for their service is my marketing budget without having to outlay funds that I didn't have in order to be able to compete." Five, there is no cost for restaurants to join our platform. There are no start-up fees, subscription fees, equipment fees, long-term commitments, or cancellation fees. For-- on our platform, restaurants can decide whether they want to use our delivery service, handle delivery on their own, or don’t do delivery at all and simply use this for pick-up. And ultimately, we only make money when a restaurant makes money. Six, and I’ll end with this, we are an active part of the New York community and we give back. Our platform and diners have helped enable the donation of nine million dollars in September of last year. These donations have gone to charitable organizations benefiting the communities we serve, charitable organizations such as NYC Kids Rise which sets up college savings account for children, No Kid Hungry which attacks childhood hunger and poverty, and the James Beard Foundation Women Leadership Program to Combat Gender Inequity in the Restaurant Industry. On that point, additionally, we have championed the cause of increasing the number of women-led restaurants through our Restaurant Her initiative. Underlying all of this is our company mission, to be a true partner for restaurants. We provide them with the tools to attract, retain, and maintain loyal profitable customers. We are the marketing, technology, and in some cases the logistical partners that allow restaurants to focus on what they do best, making great food. We have been in business 20 years and work with tens of thousands of restaurants during that time. We feel that the restaurants cited in recent news reports may represent a minority. That in fact, many restaurants that had a different story wanted to be here today, but for reasons the Small Business Committee can surely understand, it's the middle of lunch rush. That being said, I would love to set up time for you to hear from restaurants directly on their positive experience with Seamless and Grubhub. Thank you for allowing me to testify today. I'm happy to answer any questions you may have.

CHAIRPERSON GJONAJ: Thank you, Sami. Before we continue with you, because I just want to make sure that I understand that Uber Eats wanted to make an amendment to what they just went on the record with, is that correct? No? About the fees? Okay. We're going to swing back to you because there's much, much more complicated questions, and we want to stay focused on the testimony that we just heard. Earlier we heard there's an industry standard for profitability on food service, and we've heard somewhere around 10 percent people would be-- those operators would be extremely happy. Is that your understanding as well?

KEVIN KEARNS: Hi, I'm Kevin Kearns. By the way, thank you for having us. I appreciate the opportunity to talk directly to some of our clients today. I do run a restaurant network. So, the-- I'd like to answer that question. Specifically, in terms of the profitability, I don't have the industry data. It sounds approximately right, but I want to make sure that we address the item of how restaurants, if they're helped by using a service like ours. So, if you don't mind, I'd like to talk a little bit of the pricing model and how we help restaurants with that. That's okay? Alright, thank you. So first of all, our pricing model has three components. There's a marketing fee which gets you access to our more than 20 million dollar-- our 20 million diners that are on the platform. So that marketing fee ranges up to 20 percent depending on the number of promotions that a restaurant wants. That is freely negotiated by the restaurant, and often times we will get restaurants asking to have more promotions and certainly that costs more money. The second fee that is optional is a delivery fee. So, we charge generally around 10 percent. We do charge 10 percent on a delivery fee. So, for example, a 10-dollar order we would charge one dollar to do that delivery. The important part I want to make about that is that over half of the restaurants do their own delivery. So they're not dependent on us to do the delivery. They can certainly choose to do that themselves. So over half of our clients actually choose to do self-delivery, just so you know that. The third component of our cost is order processing fees. So we do charge an order processing fee, and that covers the credit card fees, undeliverable orders, fraudulent orders, things like that. And that is something that restaurants have the-- they would pay anyway if they were using a credit card in the restaurant. But there's a couple of things I want to share about the profitability that I think is really important. Number one is that there are multiple studies in the industry that show that online orders are at least 20 percent or more higher than in a restaurant. So for example, if you're ordering a cheeseburger in a restaurant, the server isn't always exactly saying, "Do you want bacon on that? Do you want avocados on that?" Whereas an app will automatically, you know, offer different items that are generally a very high gross margin for a restaurant. So, there are many statistics that show-- I was just reading one the other day that said the average ticket is more than 23 percent higher when ordered online. The other key point I want to make is that diners that order online are highly likely to come into the restaurant over time. So, while you pay for the service of using Grubhub/Seamless or anyone in the industry, if you have a great experience with that restaurant, you're highly likely to come into that restaurant, right? So we enable restaurants to get new diners at a very high rate. So that is a really important point that we want to make. The other-- on the sense of profitability is that-- or how we affect profitability, because we have more than 20 million diners on our app we get-- generally, a restaurant when they sign up with us get incremental diners. So there's no fixed fees to cover, right? They're already paying their rent. They're already paying for the tables. They're already paying their utilities. So these are just incremental orders and diners that are coming in. so, generally that is a much higher less burden on the restaurant. We also bring orders in at off times of day when they have staff that are idle. So, that's another plus for them. So, these are some ways that can easily offset the fees that we charge for a restaurant. We want to make sure that's important. A couple of other key points. We only pay for orders that are delivered, right? So, as Sami mentioned, there's no upfront fees, and it really levels the playing field for small businesses to compete against larger regional and national chains. The other thing that we provide is world class customer service. So, I run our network, and we've tripled the size of our Restaurant Success Team, and we work every day with restaurants helping them optimize their listing, like have better photos, look at the delivery boundaries, look at all sorts of different things. There's a couple quick examples I'd like to give. One is that there's a restaurant on the Upper East Side that serves sushi, and we work with them, and we said that there's a trend for Poke [sic] Bowls, right? That's a very--

CHAIRPERSON GJONAJ: [interposing] What?

KEVEN KEARNS: A Poke bowls. They're a very common-- they use fish and-- anyway, we suggested that they start adding some of these items to their menus. They did this, and within one month the doubled their orders, and within three months, they 7x their orders to 1,600 orders a month. This is a small business that went all the way up to 1,600 orders a month, and they actually changed the name of their restaurant to put that name and poke in their restaurant because it worked so well. So these are another example-- one other quick example I would like to give, and that is-- this is on the record for testimony, but Robert EB [sic] of EJ's Luncheonette on the Upper East Side, and I quote, "Grubhub had enabled me to grow my business in the past 10 years in great proportion. Prior to the advent of Grubhub, my only options to reach new customers was through direct mailings and standing on street corners handing out take-out menus. Grubhub's model has enabled me to reach many customers in my delivery area that otherwise would have been unable to reach."

So, in general I wanted to make sure that we all understood kind of the model that we bring to the table.

CHAIRPERSON GJONAJ: Thank you, Kevin for that explanation. I ask questions that you may have answers to. If you're not sure, please don't answer. I believe you know where I'm headed on the industry profits on the sales of their products. There's an industry out there, and for the record, I worked in a pizzeria from fifth grade through college. So the markup has obviously changed over the ears and fluctuated, but there was an industry standard, and there ws an expectation that at the end of the day, if you did X in sales it yielded Y in profit. And that included labor, ingredients, overhead, fixed costs, rent, utilities, and so on and so forth. There is a specific dollar amount that-- or percentage point that's always attributed to industries, and if we're going to answer question is 10 percent the fee, the profit on gross sales, exclusive of taxes, sales tax in particular.

KEVIN KEARNS: I can't give you that specific number.

CHAIRPERSON GJONAJ: what would you, as you know it, a range?

KEVEN KEARNS: The range you put out sounds appropriate, but again I do know have specific knowledge.

SAMI NAIM: I do know that there had been industry analysts that look at this exact question. Do the economics work for restaurants and delivery, and I think we're submitted those into the record, and the answer is yes, they do work, and that the orders as Kevin mentioned are not only incremental in their additional orders, their bigger orders and the volume of orders are orders they would otherwise not get that leverage their fixed costs, and so there are multiple economists that worked and looked at this to really put us under the ringer. Are we a good business, because our business model rests on serving restaurants and making sure that the restaurants are there for us to deliver to and from? And we've submitted those to say, yes, economics actually work. The size, order and magnitude of the orders coming in make it worthwhile.

CHAIRPERSON GJONAJ: Would you be surprised to learn that-- or would you be surprised if I told you that restaurants don't make more than 10 percent profit on the sales of their products? No, right? I'm not either, because that's probably the norm. So the question is, on an order that is placed through or generated through your platform, the fee that is charged, the percentage, is up to 30 percent, correct? Twenty percent plus the delivery fee option, correct?

UNIDENTIFIED: Correct.

CHAIRPERSON GJONAJ: Is there anything higher than that that would be--

KEVEN KEARNS: There may be a few samples of that. I don't have any of that data with me, but--

CHAIRPERSON GJONAJ: [interposing] We'll go back to that. So why would-- we'll go back to Reggie's Pizza because he makes some great pizza. If he's making 10 percent on his 24-dollar pie, using $2.40 in profit. If the same pie is sold through your app, 30 percent of that is-- he would yield a net loss on that transaction.

KEVIN KEARNS: I would go back to a couple points we made earlier. First of all, this isn't-- these are incremental orders that we're bringing restaurants. So they are-- they are not--

they still have to pay their rent. So when we bring extra diners in, they are basically incremental orders to the restaurants. So there's no fixed fees that they have to pay for that. Right? They still have to pay their rent. They still have to pay their utilities, right? So when an order comes in, it's absolutely incremental to them so that changes the profit economics right there. The other thing I would say-- I would go back to the things that we cited. One is that online orders are generally larger than orders in-house. So, if you paid 24 dollars for your pizza from Reggie, you may have added a couple-- you might add wings, or you might add something that is suggestively sold in the app, and the order would be larger and hopefully a higher gross margin product on that or extra toppings and things like that. So that's another point.

CHAIRPERSON GJONAJ: Kevin, I'm going to go back the other way. Alright. Reggie just signed the agreement with you. This is day one of your platform. He's never had an order from your platform before.

KEVIN KEARNS: Right.

CHAIRPERSON GJONAJ: He knows that 10 percent of his sales are profit. On the first order through your platform, paying 30 percent is a net loss. There's no increase. It's one simple order. Your costs have not come down because it's the first order. Would you agree with me-- I'm not a dentist and I don't think I'm pulling teeth, but math is math. On that first order through your platform, Reggie's Pizza is looking at a net loss.

KEVIN KEARNS: I would say a couple things to that. Remember that it's a-- it's also marketing. He's getting a new diner, right? So he's getting a diner he's never had.

CHAIRPERSON GJONAJ: I'm with you.

KEVIN KEARNS: So he could advertise on a billboard. He could do advertising in a trade. He could, you know, do digital emails, things like that. So that is a marketing fee. Certainly, that's why we call it the marketing fee. That is one big thing, he's bringing in a new diner. When that order is placed, hopefully it's larger, but even if it's not, that diner is very like to come into his restaurant if they had a good experience. Right? So think of this as almost a customer acquisition tool and a way to market to over 20 million hungry diners that are looking for great restaurants to eat at.

CHAIRPERSON GJONAJ: I really am not attacking, and I'm just trying to get a-- some of these things have simple yes or no questions, and the math is the math, and one and one has to equal two without a spin. Kevin, that first order is yielding him perhaps a new customer. We're not sure. He could be a repeat customer or someone that's dined at Reggie's before, but that first transaction with no variables of low operating costs based on the increase in sales. So, instead of buying one case of cheese, he's buying 10 cases of cheese lowering the price per unit, I got it, but that first order did not make a difference, and that first order is a net loss using what we believe are the industry standard, the norms, of 10 percent profit on a sale of a product. It's not that difficult to answer--

KEVIN KEARNS: [interposing] Yeah, I mean, I think again--

CHAIRPERSON GJONAJ: [interposing] And I'm not going to hold you to it--

KEVIN KEARNS: [interposing] We've looked into it. Economists have looked into it, and they say the economics work. And to your point the math is the math, and it say maybe up on the monthly, weekly, annual basis it that it works out to be a value add, and so I'm not a mathematician, and I'm not good at business myself, you know, I'm not a numbers guy, but I do know that-- I do know what the numbers guys are telling me, and they're saying-- and these are analyst reports that we've submitted for the record, that the economics work.

CHAIRPERSON GJONAJ: I guess- I mean, I don't like the answer, but I have to accept it. It's your answer. I understand that this possibly the first type of a healing of this sort in the country. Are you-- any of you aware that similar hearings have happened anywhere by government body whether it be local or state?

KEVIN KEARNS: I'm not.

CHAIRPERSON GJONAJ: So, New York again continues to be a trailblazer, be at the first, and I'm proud to be a part of this historic moment. Why do you charge a percentage fee and not a monthly fee?

KEVIN KEARNS: We charge a percentage fee because we want to make sure that they only pay for-- restaurants pay only for orders that they get, so incremental orders. So, for example, if we want the other way and we charge a monthly fee, and if they weren't getting many orders, they probably wouldn't be happy with us either, right?

CHAIRPERSON GJONAJ: It also allows you to make more money based on increasing the sale volume, right?

KEVIN KEARNS: it is a partnership.

CHAIRPERSON GJONAJ: Right. And that's what this is all about. We want to have a better understanding of the partnership and why you do certain things and why it's beneficial. So when I ask-- I really hope that you'll be as transparent as possible or your means allow in answering these questions. We just want to have an understanding of your partnership with our eateries and why it's so beneficial. You heard lots of questions that come up and maybe you can answer some of them and help shed light. In particular, the one that really stuck out to me, and this came out afterwards. Is there any repercussions for a restaurant that may be testifying today that will find their placement dropped?

KEVIN KEARNS: Absolutely not. There will be no repercussions of any kind in any way, shape or form. So, as a matter of fact, I intend on staying through all the hearings and listen to what they have to say, and I will be handing out my business card to restaurants as the head of our restaurant network to help them through any issues that they may have.

CHAIRPERSON GJONAJ: So, if Reggie's Pizza has been number seven for the last month, three months from now if Reggie explains what he believes to be broken with the partnership, he's not going to move from number seven to number 77 or 777?

KEVIN KEARNS: I don't control that, and no, that will not happen. That will not happen.

CHAIRPERSON GJONAJ: That will not happen. So Reggie will consistently stay in and about where he is.

KEVEN KEARNS: And just like-- I do want to make a comment on how searches work. It's first and foremost focused on the diner preference, right? So, if you look at the search algorithm, while I can't go into every piece of our secret sauce as you called it before, I definitely want to try to be as transparent as possible in that. We first and foremost look at factors like when you're doing a search for Reggie's Pizza, the cuisine type you're looking for, the restaurant rating, the proximity to where you are, the estimated wait time, all those thigs factor in, because again, if you open up our app, you know, and you don't see the restaurants that you want or like or that are interesting to you, then that's not going to, you know, be a good experience for you at the diner, and that wouldn't be good for our business, right?

CHAIRPERSON GJONAJ: Ratings, distance-- someone like myself who's never ordered online, I'd have no history. So, what else would determine the--

KEVIN KEARNS: [interposing] Proximity, estimated delivery time. We also look at what the conversions rates are for the restaurants in the area. So, popular restaurants in the area, that's a big piece of it, and your commission rate does have one piece of the factor of the search. So that if you are in a restaurant, all things being equal, then the commission rate will be one factor of many that is considered.

CHAIRPERSON GJONAJ: What is the basic of plans that you offer percentage-wise, no frills, this is generic?

KEVIN KEARNS: No frills can be 15 percent and that's it.

CHAIRPERSON GJONAJ: So, Reggie's Pizza along with Irene's Pizza both signed up for the no thrills, generic brand of services that you offer, and both paid 15 percent, and they were both located across the street from each other--

KEVIN KEARNS: [interposing] Yep.

CHAIRPERSON GJONAJ: as pizzerias often are. And we'll even get-- go on better. They use the same alphabet-- is it alphabetical, the distance? They're same ratings. Typically pizzeria don't have much of a rating, but some may. What is determined on placement? Who goes first?

KEVIN KEARNS: You may have chosen to do more promotions, so there's sponsored ads and things in our app.

CHAIRPERSON GJONAJ: No, no frills, 15 percent straight across the board, no added.

KEVIN KEARNS: It-- I don't have the exact answer to the algorithm, nor can I explain the details of our algorithm works in extreme detail, but generally it's focused on what you're looking for and--

CHAIRPERSON GJONAJ: [interposing] Looking for pizza.

KEVIN KEARNS: Yeah.

CHAIRPERSON GJONAJ: You have no history on me. Never ordered before.

KEVIN KEARNS: Then you may have chosen to have more promotions and you paid for promotions. Some restaurants choose to do coupons on our app as well.

CHAIRPERSON GJONAJ: Never used you before. They just signed up. You had a great sales rep out there working the area. You convince both of them to sign up on June 1st.

KEVIN KEARNS: Right. Then we would l0ok at the conversion rates of the restaurants, but if they're both brand new, another factor is the rate at which you're signed up on.

CHAIRPERSON GJONAJ: Rate's the same, no frills, no conversions, who determines placement? How is placement determined?

KEVIN KEARNS: Beyond that, I'm sorry, I can't give you a straight answer on that. That's not my area of expertise.

CHAIRPERSON GJONAJ: Can you help explain?

ANDREAS KOUTSOUDAKIS: Yeah, I mean, I think he was-- as Kevin mentioned, it's-- there's a number of factors based on like how people are searching. If two restaurants are across the street from each other and are exactly the same in almost every respect and pay exactly the same commission, then-- first of all, that's a very rare instance, but I guess--

CHAIRPERSON GJONAJ: [interposing] No, this is New York City. We've got several pizzerias located on the same street.

ANDREAS KOUTSOUDAKIS: Yeah, yeah, but at the same time--

CHAIRPERSON GJONAJ: [interposing] And sometimes--

ANDREAS KOUTSOUDAKIS: [interposing] I imagine it'd be alphabetical, but I'll check in on it.

CHAIRPERSON GJONAJ: I would love to know an answer to that, and hope you really get an answer, because sometimes Irene and Reggie were partners, and then they break up their partnership and they open up across the street from one another competing for the same customers, and this is New York and these things happen, and I'm sure you've seen that all. So now I'm going to guess, you come back as a sales person, right? You send out your sales rep to Reggie. "Reggie, I will help you sell more pizzas." Right? "And here's how we're going to do it. You're going to pay 30 percent." Correct? "But I'm going to bring a photographer in. I'm going to take you from the no frills to the top of the line. You're going to get the Rolls-Royce of all services that we can afford you, and we're going to generate sales through the roof." Is that how it's done?

KEVIN KEARNS: Yes, we regularly consult with the restaurants and we do offer, when you sign up, we charge no charge for any kind of photography. We consult with you on how your menu looks online. So we'll look at things like diner appeal, right? So, if you've looked at a restaurant and you saw that there's not many pictures, or the pictures are dark and dim, we'll help you with that. We'll help you with your delivery boundaries. So, we had breakfast this morning with one of our restaurant customers, and we talked about extending their delivery boundary by a few blocks because we saw that there's a lot of diners available for them, so we'll help them figure that out as well. And so those are just a few of the things that we'll do to help them be successful. In fact, we have a Restaurant Success Team that is dedicated to working with our restaurants each and every day. We've tripled the size of that team over the last several years, and we believe it's very important. Our goal is to help restaurants be very successful in the marketplace, and we work to that end every day.

CHAIRPERSON GJONAJ: So, you approach Reggie, convinced him that you're going to make things happen and increase his sales. He's going to pay more and he'll make more. I would imagine that's how it's done?

ANDREAS KOUTSOUDAKIS: Yep.

CHAIRPERSON GJONAJ: Great. Then you go across the street again to Irene, and say, "Irene I'm going to offer you what I just offered Reggie. I'm going to assure you an increase in sales. You're just going to pay more, and here's what we're going to do: Photography, menu-- how do we know who gets listed at first billing between Reggie and Irene?

KEVIN KEARNS: We'll get you the answer to that.

CHAIRPERSON GJONAJ: Okay.

ANDREAS KOUTSOUDAKIS: It is as Kevin mentioned, though, there's cuisine type, reviews, distance--

CHAIRPERSON GJONAJ: [interposing] They signed at the same time.

ANDREAS KOUTSOUDAKIS: And I think I know what you're getting at. I just want to be clear. There is no manipulation of the search based on our interactions with Irene or Reggie. I want to be crystal clear on that. It is the factors that Kevin mentioned, and then we have the option of extra promotions with the sponsor tabs.

CHAIRPERSON GJONAJ: I'm looking forward to getting some-- when you said manipulation of search-- so you're algorithm does this. There's no one that's going to plug in a formula that yields Reggie a better return than Irene, unless Irene comes back to-- what was that program called, I thought that was fantastic that you give to.

KEVIN KEARNS: Restaurant Her.

CHAIRPERSON GJONAJ: Restaurants Her. And then as a member of Restaurant Her, will she get an increase in sales?

ANDREAS KOUTSOUDAKIS: That's--

CHAIRPERSON GJONAJ: [interposing] Placement, I shouldn't say sales, placement.

ANDREAS KOUTSOUDAKIS: No, that's corporate social responsibility action that we have is separate from the business. It's really pairing and doing mentorship programs and things outside. Again, that does not factor into the search. And I know it was mentioned earlier that, oh, you know, there's a negative interaction, we'll sink you in the search. That's not true. I wanted to be very clear on that.

CHAIRPERSON GJONAJ: The fee that you charge, 30 percent, is that inclusive of sales tax or exclusive?

ANDREAS KOUTSOUDAKIS: Exclusive, and I think on the 30 percent sales, I want to be clear, the average commission in New York City is 15 to 20 percent. It goes up to 30 percent if you use the delivery service. However, most restaurants in New York do not use our delivery service. They manage delivery on their own. So again, the average in New York, it's 15 to 20 percent.

CHAIRPERSON GJONAJ: What's the highest percentage in New York using with all of the bells and whistles?

KEVIN KEARNS: I don't know what the absolute highest is. It's probably not much over that range. We have 115,000 client, so the-- it's a big database.

CHAIRPERSON GJONAJ: In addition, is there any other fees on top of this fee, percentage rate?

KEVIN KEARNS: There are no fees on top of this fee. So you were asking before about hidden fees.

CHAIRPERSON GJONAJ: Credit card fees are on top, right?

KEVIN KEARNS: Order processing fees, yes.

CHAIRPERSON GJONAJ: So there is a fee, okay.

KEVIN KEARNS: Well, I outlined those. I outlined the three categories of fees. So there are marketing fees which are inclusive of online orders and phone orders.

CHAIRPERSON GJONAJ: What is those-- what does those fee structures look like?

KEVIN KEARNS: As we mentioned 15 to 20 percent.

CHAIRPERSON GJONAJ: No, I-- using the 30 percent with delivery service and all, what other fees are there in addition to that?

KEVIN KEARNS: Only the order processing fee, that is it.

CHAIRPERSON GJONAJ: And what's that range? Standard?

KEVIN KEARNS: Three percent.

CHAIRPERSON GJONAJ: That's basically to cover the credit card fees, correct?

KEVIN KEARNS: It covers credit card fees. It covers fraudulent orders, undeliverable orders.

CHAIRPERSON GJONAJ: What happens on a fraudulent order?

KEVIN KEARNS: What's that?

CHAIRPERSON GJONAJ: What happens on a fraudulent order?

KEVIN KEARNS: We pay that. The restaurant does not pay that.

CHAIRPERSON GJONAJ: So, if I use my-- if I use a credit card that didn't belong to me to order from Irene's Pizza, and that credit card was stolen, reported stolen thereafter, who picks--

KEVIN KEARNS: [interposing] That's on us.

CHAIRPERSON GJONAJ: That's all on you?

KEVIN KEARNS: Yes.

CHAIRPERSON GJONAJ: The credit card company doesn't pick that up? It's not reversed on a credit card?

KEVIN KEARNS: If there's liability to the-- for the order through Grubhub, Grubhub pays it. I'm not sure what you're asking--

CHAIRPERSON GJONAJ: [interposing] Typically, the credit cards absorb the fraud fees, not the consumer, which in this case or the customer which would be the restaurant. Right? Am I wrong here, folks? More complicated, like everything else in my life, not like I used to be. Do we have an idea where that comes from, or?

KEVIN KEARNS: I'm sorry?

CHAIRPERSON GJONAJ: Do we have any idea where that comes from?

KEVIN KEARNS: I do not.

CHAIRPERSON GJONAJ: Uber? You have any idea what happens with a fraudulent credit card?

NOELLE: Unfortunately, I'm not familiar.

CHAIRPERSON GJONAJ: More questions. So, we all have an understanding of the partnership, and please don't be discouraged, because I'm going to come back to you and we're going to look at a couple things together. The market and free structure will determine placement as well as other algorithms that you use, correct? The more--

KEVIN KEARNS: [interposing] Yes.

CHAIRPERSON GJONAJ: The more they buy into and take advantage of the services you offer should yield a greater return.

KEVIN KEARNS: Correct.

CHAIRPERSON GJONAJ: Whether they make a profit or not is still questionable, but at least they'll pay more and have more leads for business, is that correct?

KEVIN KEARNS: Yes.

CHAIRPERSON GJONAJ: Okay, good. What about the data that we just heard about? What happens to the names, the phone numbers, this histories, the email addresses of those that use your platform?

KEVIN KEARNS: So, we give-- we provide restaurants with all historical transactional data. However, we don't give them the customer data in detail. We do not have access to provide that customer-- or authorization to provide that customer data to the restaurants. In addition, those are-- you were talking about are restaurants customers? Remember those are incremental customers coming from the platform that were marketed through Grubhub. So it's not like we're taking their customers or anything. That might have been mentioned before. That's not the case.

CHAIRPERSON GJONAJ: And that data, is it under lock and key as Uber Eats explained, that there is no one that has access to those email addresses? You're not packaging and selling them to a third-party provider? There's no history that's given to anyone or names and addresses or anything of that nature?

KEVIN KEARNS: That is correct.

CHAIRPERSON GJONAJ: Lock and key, no one ever sees it, can't get out of your safe?

KEVIN KEARNS: Correct.

CHAIRPERSON GJONAJ: On the-- and you share that information with no one at all?

KEVIN KEARNS: That is correct.

CHAIRPERSON GJONAJ: Okay. It was earlier stated by the first panel about-- I'm trying to look at the word that they used on the phantom something or other. Where an email or a name-- oh, cyber-squatting. Have you ever heard of cyber-squatting before?

KEVIN KEARNS: I got a laugh out of that. I just never heard the term before. No, I have no idea about that. I've never seen any evidence of any cyber-squatting or any kind of copying of restaurants to try to take their business, none whatsoever.

CHAIRPERSON GJONAJ: So, Reggie or IrenesPizza.com you're not aware that someone out there is now opening up irenespizza.net?

KEVIN KEARNS: Absolutely not.

CHAIRPERSON GJONAJ: And steering that business towards Grubhub, Seamless, or any other online provider?

KEVIN KEARNS: I've-- no, absolutely not.

CHAIRPERSON GJONAJ: Okay. And you mentioned earlier, the oen that everybody's waiting to hear about is the-- as you refer to it, the rare or small group that may have been charged for phone orders that we've been hearing a lot of in the media.

KEVIN KEARNS: Right.

CHAIRPERSON GJONAJ: Where thousands of dollars are now being refunded and some are still fighting the 30-60 days, how far you can go back. Just for the record, last night at 9:30 on the way home stopped at a restaurant and the owner came running out. "Mark, I want you to talk to me. I understand that there may be a problem with my Grubhub charges." And while I was waiting for my order, she conveniently printed out from I believe it was August of last year through date all the transactions. And I don't know enough. But I just-- first time I've ever seen a Grubhub bill. It was broken down nicely, percentage and so on and so forth. But then there was a phone order line, and going on the numbers that he quickly-- she quickly added up last night since August phone line order was nearly $4,500 in fees.

KEVIN KEARNS: It could be--

KEVIN KEARNS: [interposing] Yeah, let me walk you through how we handle that. So, first of all we work to try to only charge for phone orders that are legitimate. We do have a system in place. We do-- I've read the same articles. There's a lot of statements saying like any-- we have an eight-point criteria to determine if a phone order is actually an order. So, it looks at the length of time. So, we look at first calls over 45 seconds. We look at it as if was a unique number. We look if it was answered during--

CHAIRPERSON GJONAJ: [interposing] What do you mean unique number?

KEVIN KEARNS: We have a unique number on our app so that when you pull up a restaurant on Seamless, you can hit the phone number, so we look to see if it was that. We look at was it answered during business hours. We don't charge for more than one call a day. So for example, if I made a phone order and then I called-- as I think it was written recently, that they're calling to check on the status of an order or to complain about their food. That would automatically be kicked out, because we don't do more than one per day per location.

CHAIRPERSON GJONAJ: Per number you mean?

KEVIN KEARNS: Yeah, per restaurant.

CHAIRPERSON GJONAJ: So you--

KEVIN KEARNS: [interposing] If a restaurant gets more than one call from a certain number in a day, there would only possibly be one phone order charge for that. There couldn't be-- if they called back again, they couldn't be charged again for that. Does that--

CHAIRPERSON GJONAJ: [interposing] Please elaborate. Are you saying the number that's listed on your platform changes, or are you saying that--

KEVIN KEARNS: [interposing] No, no, no. If someone calls in a phone order, right, and so it meets the criteria and it's charged as a phone order. If they call back later in the day--

CHAIRPERSON GJONAJ: [interposing] The same person.

KEVIN KEARNS: The same person.

CHAIRPERSON GJONAJ: Same number.

KEVIN KEARNS: Same number.

CHAIRPERSON GJONAJ: That’s it.

KEVIN KEARNS: And they call back later and say, “Hey, my food was late.” We don’t charge you again for that. Right? So that’s one of the criteria we look at so we’re not charging multiple times. We want to make sure that the algorithm is intended to make sure that we are not, you know, doing multiple charges for any particular order. And we also make every effort to ensure that it is not a phone order, but--

CHAIRPERSON GJONAJ: [interposing] Stay on that number on that one a day. I had a -- in my previous life I was a small business owner. My small mom and pop shop unique service that we offered in real estate had 10 phone numbers, not one, there was 10, and you picked up the next available line.

KEVIN KEARNS: Right.

CHAIRPERSON GJONAJ: Would I be charged? Would your algorithm using the same 45 second unique number, business hours, would that come up as a potential charge, phone order charge?

KEVIN KEARNS: We use the-- we have a number that we assign on our app or website, and it's only one number.

CHAIRPERSON GJONAJ: Right. So, now I called from the same office using the same phone, but it just comes up with a different number. You wouldn't know that 597-1600 is my main number, but that line was used, now it's 597-7729 that the order is coming in from where that call is. are you saying that you have the technology that would prevent that second phone call from the same location with a different phonember, using your number would not allow a charge?

KEVIN KEARNS: We don't have technology to determine that, but what we do is we look at a number of the different points, right? Is it longer than 45 seconds, and all the other points, and if it hits all of those criteria then it is charged.

CHAIRPERSON GJONAJ: So, you can have a second charge from the same location because of a variable in phone numbers. The phone they pick up, the next line that's available on my end--

KEVIN KEARNS: [interposing] I suppose it is possible, but it's not likely. I do want to say, though, that one of the things that we try to do is be completely transparent with the calls. So, all of the call orders are on the restaurant's statement within five minutes, so you can lead access to that. The call recordings are available within 24-48 hours, so a restaurant can listen to that at any moment. And the restaurant has up to two months to dispute any calls. That said, our account managers are trained to promptly, you know, address any errors, and we really work on a case by case basis if there are extenuating circumstances, be we want what everybody wants. We want our restaurant partners to be happy, and so we certainly will work with them on that.

CHAIRPERSON GJONAJ: What are the criteria, because I wanted to go down, I got stuck on that one before?

KEVIN KEARNS: It's available within five minutes on the site.

CHAIRPERSON GJONAJ: No, place phone order, you said there's an algorithm which takes calculations, you have to be on there more than 45 seconds, a unique number. Was it during business hours?

KEVIN KEARNS: During business hours, yes.

CHAIRPERSON GJONAJ: One call per-- one call per day from that number--

KEVIN KEARNS: Right.

CHAIRPERSON GJONAJ: subjected to a phone charge. What are the other--

KEVIN KEARNS: Not a new restaurant, which we'd frequently get a lot of calls, like a brand new restaurant. So, we have a window there that we would not charge for that as well.

CHAIRPERSON GJONAJ: What's the timeframe on that?

KEVIN KEARNS: I don't have the exact timeframe, but it's several weeks.

CHAIRPERSON GJONAJ: Okay, what other factors?

KEVIN KEARNS: Those are most of them. The others- I think those are the biggest ones. There's a few others.

CHAIRPERSON GJONAJ: So, the last article I saw, a restaurant owner received 10,000 dollars in a refund. Is that something I'm sure you read as well?

KEVIN KEARNS: I’m familiar with that, because that had to pass through me to be approved as a very extenuating circumstance. The restaurant owner was very unhappy. Like I said, we want to work with our restaurant owners to make-- it does us no good to make our customers unhappy. And so on that case we worked out a situation that they said that they were fine with and happy with, and then unfortunately it came up a few days ago in the paper. So, that was interesting. But I would say that, you know, the key point is that we work on a case by case basis with restaurants if there’s something outside the guidelines. But we really feel like having those phone calls available within 24 to 48 hours is key, and they have several months, two months, to dispute them. and the other point is that in working with our restaurants, one of the huge value adds to the recorded calls is that restaurants often would pay for customer service evaluation, and so when we hear many of our restaurants say that they’re listening to the calls, they’re listening to the calls for quality service, like are they answering properly, are they polite, are they upselling. And so we get a lot of restaurant owners tell us that that’s something that they would pay extra for, which they don't, because we get the phone recordings to listen to them, and we encourage them to listen to us.

CHAIRPERSON GJONAJ: Can you go back to the 10,000? You're saying two months to dispute. Did that refund go-- was that for 60 days, or did that go back?

KEVIN KEARNS: I can't comment on that specific circumstance, sorry.

CHAIRPERSON GJONAJ: I'm trying to get a better understanding. Last night I didn't even know how to answer the question myself to the restaurant who asked me, "Mark, I started with them in August." They show me the bills, and I was surprised, I really was. So what am I supposed to tell that restaurant today?

KEVIN KEARNS: They should--

CHAIRPERSON GJONAJ: [interposing] That you can only go back 60 days is my understanding, or they can actually call, and you'll figure out how to go back further than that?

KEVIN KEARNS: We will certainly work on like I said a case by case basis, and talk to them about the circumstances of each case. There's a lot of different cases out there, right? So we want to talk to them and figure out what's the best solution, and if that person called us we would have to listen to all the different factors of what was going on.

CHAIRPERSON GJONAJ: I want to mention, the best solution for that restaurant, any restaurant, is say hey, go back to the very beginning and you look into my phone charges and tell me whether or not I should be getting a credit for all of the phone charges. That would be the best case solution, I would imagine. Or the restaurant, not so sure about your business, but for that restaurant.

KEVIN KEARNS: We feel they certainly have the right to call any time and we can talk them through that and listen to the issues of case, but we feel like we're being completely transparent. It's in our agreement with the restaurant and how we do it, and we give-- we make everything very transparent for them to see, right? We post the calls within 24 to 48 hours. They have two months to go through, so we feel like that is very transparent and an appropriate amount of time for the restaurant to challenge anything that they think is not correct.

CHAIRPERSON GJONAJ: Prior to the recent media attention, how many people actually went back and listened to recordings?

KEVIN KEARNS: I guess there's a couple points I want to make on phone orders. In general, phone orders are less than three percent of all of our orders.

CHAIRPERSON GJONAJ: How much is your total--

KEVIN KEARNS: [interposing] It's a small percentage.

CHAIRPERSON GJONAJ: What is the total of-- the total sales that you generate on a yearly basis? Because if it's three percent, I'm going to assume whatever that billions of dollars is, right-- it's three percent, that'll give us an idea.

KEVIN KEARNS: It is three percent of all of our order volume.

CHAIRPERSON GJONAJ: Which is what?

KEVIN KEARNS: last year--

CHAIRPERSON GJONAJ: [interposing] Dollar amount.

KEVIN KEARNS: We're a public company, it was right around a billion dollars.

CHAIRPERSON GJONAJ: A billion dollars, so what is three percent of a billion dollars? Three hundred million? Thirty million, thank you.

KEVIN KEARNS: In New York?

CHAIRPERSON GJONAJ: In New York. I'm sorry?

ANDREAS KOUTSOUDAKIS: We don't do a billion in New York. So, that's-- it's--

KEVIN KEARNS: That's overall.

ANDREAS KOUTSOUDAKIS: That's nationwide.

CHAIRPERSON GJONAJ: What's your nationwide phone--

ANDREAS KOUTSOUDAKIS: [interposing] New York phone orders which is what, you know, is the issue of various media reports. Of all the orders in New York, this is less than three percent.

CHAIRPERSON GJONAJ: So, it's either I'm going to ask you now what are the total sales for New York or what is the percentage nationwide of phone orders? I'll let you answer either one.

KEVIN KEARNS: It's slightly less than three percent for either.

CHAIRPERSON GJONAJ: Slightly less than three percent. We'll say three percent roughly. So, now you're looking at 30 million dollars, correct? Using the one billion dollar total sales, right, three percent-- 30 million.

KEVIN KEARNS: Yes.

CHAIRPERSON GJONAJ: That's the amount that you've generated from that source of revenue from phone calls. That's a lot of money. Right?

KEVIN KEARNS: Yes, and we want to make sure that phone orders are available for our restaurant partners because we believe it's a valuable way to get orders.

CHAIRPERSON GJONAJ: So, I'm going to ask what was the percentage of that 30 million dollars that has been refunded as of today?

KEVIN KEARNS: I do not have that information.

CHAIRPERSON GJONAJ: What's the amount of challenges that were received from your restaurant owners, 24-48 hours after they were posted to contest the charges?

ANDREAS KOUTSOUDAKIS: We don't-- we take customer service calls from restaurants and from diners and from drivers. It comes up to be a relatively small percentage of our business. We don't track that specifically, so I don't have a specific number for you.

CHAIRPERSON GJONAJ: Alright, but 30 million dollars is that small? It's big by anyone's model. Thirty million dollars in additional revenue, I don't think anyone's going to walk away from that. Right? I'm just trying to get a better understanding. When you say it's a very small portion of what you do. Its 30 million real dollars. I'm trying to guess how many refunds or how many challenges have there been made? Because I come from the pizzeria world, and I say no one had time to look at that stuff. No one would spend the next 24 hours looking at every phone order and listening to the conversation to see whether it yielded a sale or not to then call back you to have a conversation with the nine dollar, seven dollar, six dollar charge that I received. I just-- in the real world, we don't-- small owners, these eateries really don't have that time. Would you agree? So I'm going to--

KEVIN KEARNS: [interposing] We get many restaurant owners that listen to them all the time as a part of customer service, as a part of auditing. We do get quite a few that listen to them.

CHAIRPERSON GJONAJ: I'm going to make an assumption that not too many restaurants go listening to those recordings.

KEVIN KEARNS: That's a fair point.

CHAIRPERSON GJONAJ: Fair point. So, chances are very few are contested because no one knows whether or not they should be contested. That's the point I'm trying to make. Restaurants are just trying fill orders and first one in, last one out, and make sure that they can survive another day in this hostile environment in small business. I don't imagine many people are looking at their bills and taking the time out of their day to look at those charges. Sure, someone's crunching numbers that made that determination way on. Hey, we don't expect many phone calls challenging or questioning this. No one has time.

KEVIN KEARNS: Look, the-- we feel like we built an algorithm that makes sense to try to as accurately depict orders as possible. So, the other fact I want to bring up is that of all the phone calls, less than 35 percent are actually charged as phone orders. So, it's not like every calls that comes through is charged as a phone order. So I want to make sure we're clear on that.

CHAIRPERSON GJONAJ: So, if I was a real-- wanted to be a real genuine partner, and I've done this in my past-- if I see that there's a potential for an error, I'm going to go back and I'm going to say let me try to figure out where else this could be, and I could show you the real partner that I am, and I'm going to have-- because I have the ability to do so, listen to all those recordings, make sure that my algorithm wasn't off, that they actually yielded an order that warranted a charge. I would imagine that would be really getting into the weeds of things and making right if there's any wrong on the three percent of your sales, revenues that is. Is that something that-- are you doing now or not doing now?

KEVIN KEARNS: In terms of the improving the algorithm and improving the way that we charge phone calls?

CHAIRPERSON GJONAJ: Yeah, going back to poor Reggie?

KEVIN KEARNS: Yeah, we regularly iterate on that and we take feedback, and I will be sitting here for the rest of the day listening to our restaurant partners and understanding what the specific issues are, and of course, if we hear something that is a good idea or interesting, we'll take that back and look at-- and see what makes best sense.

CHAIRPERSON GJONAJ: I was just told yesterday that a person went back looking at the previous bills and they couldn't get into the history. They made a phone call. You gave them more history. They can go back past the 90 days to listen to old recordings, and they would try to go further back and something popped up on their screen that said "under review." It didn't say "no longer available," but "under review," which I thought was Grubhub/Seamless reviewing all of those phone calls making a determination that maybe there would have been a glitch in an algorithm that perhaps there shouldn't have been a charge for a phone call that came in using those five points that you mentioned and someone's figuring out how much has to be returned to our customers, our partners, restaurants. Is that something that you're aware of is happening?

KEVIN KEARNS: I'm not aware of that.

CHAIRPERSON GJONAJ: So, the restaurants out there have-- if they have time are encouraged to call you, have a discussion, policy is no greater than two months to dispute, but if you argue with us, we're willing to extend that, but we don't have a clear indication to how far back.

KEVIN KEARNS: Yeah, we would review the circumstances of each case.

CHAIRPERSON GJONAJ: And there's nothing that I can tell the restaurants that are going to be calling me for the days and weeks ahead?

KEVIN KEARNS: We encourage them if they have a problem with what we've done to reach out to our Customer Success Team and have a conversation.

CHAIRPERSON GJONAJ: I guess, you know, I have to accept the answer for what it is. I may not like it, but that's your answer, and I'm going to encourage all those restaurants to call back, and I'm going to have to ask them what was their-- what were they informed. Were they able to go back as far as their contract started, initiated, and we'll determine then based on their input what I have to get back to you with? So if they're told, "Sorry, no more than 60 days," I've got to come back and say to you, "Hey, why are you allowing these small businesses to go back for the last year or since they operated business, or they signed an agreement with you to credit them back any charges that perhaps they shouldn't have been charged in the very beginning?" That's where we're going to leave it? That's what you're telling me.

KEVIN KEARNS: Yeah, we will listen to what is said today, and we will take that back, and we will determine the best course of action from there.

CHAIRPERSON GJONAJ: You know, I'm pretty tedious, and I'm going to assure you that there are restaurants out there that are going to be calling me. I'm going to ask them, each and every one of them, what their experience was when they called to challenge the fees, and if they couldn't go back for more than two months or three months or four months to actually hear the recordings to make a determination whether or not they should be challenging those fees, I'm going to be coming back. And you're not helping me now, because I really want to be the right guy here to help both sides and continue a healthy relationship that works.

KEVIN KEARNS: I will take your-- I will take your feedback as well, and we will--

CHAIRPERSON GJONAJ: [interposing] Well, my feedback is simple. Go back. Go back to the very first day that that business signed that agreement with you, assess all of the phone charges that were made. Have someone listen to each and every recording and if there was a phone charge to that restaurant for an order that never took place, that never yielded in a sale, that you would call them up and say, "Hey, Reggie, I got some great news for you. I've got a nice check being refunded to you because of an algorithm problem." That would be a great partnership.

[applause]

CHAIRPERSON GJONAJ: Thank you. I'm going to go back to-- you answered some of the questions, and I just want if it's okay with you, can we do a quick search on names, and I just want to get a better understanding of what's happening out there with searches on the websites, and let's use that one-- and this is why Uber Eats it's good for you to be here as well. What was the name of that restaurant there? Can I have it there? I'm doing a basic search of Hanko's [sic] Restaurant. We're just going to look to see what that shows up. Anyone familiar with Hanko's?

UNIDENTIFIED: [inaudible]

CHAIRPERSON GJONAJ: Uber? So we're just going to type in Hanko's Restaurant, and I just want to see what appears. And of course they're going to do this in a font where I'm not going to be able to see, but that's okay. Can you blow that up even more? I can look at it from here, right? You guys are at a disadvantage. So, that's the top of the list there? Okay. So, under this search, first time user, I'm looking for a specific name. you have no history on me, but I know-- I remember Hanko's because I've eaten there before, and I just don't remember their phone number and I want to place an order. I'm going to see listings from providers, and it starts with Seamless, then Menu Pages, Yelp, Open Table, Door Dash, and I can't read the bottom one. It's a PDF? Okay, alright. And what I'm looking at is roughly 10 returns on my search, and only two of them are actually Hanko's. The other eight are from providers and platforms such as Uber, Menu, Grubhub. If I didn't know any better and I clicked on the first search and it says Hanko's order delivery, and I click on that, that yields a sale for Seamless. I do the second one, it's going to Grubhub, which is the same company, correct? And then if I go to the third one, it's actually A Taste of Vietnamese, it's actually the owner of that restaurant. The fourth one, if I had glasses I could tell you-- what does that say? Seamless again, in case you missed number two, you can see them again on number four. And number five? Menu Pages. Isn't Menu Pages part of Seamless and Grubhub? Menu Pages is not affiliated at all in any way to Grubhub or Seamless? It is. Okay. What's number six? Yelp. Seven? Yelp. Eight? Open Table. Nine? Door Dash. Ten? Restaurant again. Uber Eats is not even on here. They don't deliver. Oh, good point. I was going to say, wow, Uber Eats, you've been outdone. Do you find it a little odd that of the 10 serachs that result-- or the 10 yielded in my search that was two to Seamless, one to Grubhub, one to Menu; four out of 10 come back to your platform, and only two out of the 10 actually go directly to that restaurant owner. So when we say driving business, and I was fortunate enough to have the-- or Reggie was smart enough to have an online presence and a website and spend the money that he-- to generate that website and put up his menu and take the photographs that are needed to promote his businesses and services, and yet when you search for him directly, he's number three on the list, and Seamless and Grubhub come before him. Isn't that unfair for Hanko's? Had I chosen number three, I could deal directly with the restaurant. I'm going to have to worry about anyone getting a percentage of their gross sales. Can you help me understand how this relationship works, this partnership?

ANDREAS KOUTSOUDAKIS: Yeah, I think as Kevin mentioned, we're a marketing platform, and the idea is to push out Hanko's to as many people as possible through every channel that we can. And so we have engineers, a lot of them based here in New York that work every day to make sure that people know when they are able to find Hanko's, and that's what restaurant pay for when they partner up with us. They want to make sure that we are able to access as many diners as possible and like folks who tell us every day they don't' have the funds to outlay [sic]. They don't have computer engineers on staff or a marketing Department or folks that can work with the Google ads and Google searches and try to figure all that out. So they partner up with us, and that's exactly what the service we provide.

CHAIRPERSON GJONAJ: But in this regard, Hanko's did have the insight and invested in a website, and try to promote themselves, but yet, they're finding their very website at a disadvantage when it comes to the platforms that are out there. Did Hank-- does even Hanko's have an agreement with you? Are you aware if they're a customer?

KEVIN KEARNS: Every restaurant that we-- every restaurant on our platform here in New York has an agreement with us.

CHAIRPERSON GJONAJ: Okay, so if they're not-- if they're not in a written agreement with you, their name would never show up on any of your platforms?

KEVIN KEARNS: Yeah. In New York we partnered with every restaurant that's on the platform in New York, yeah.

CHAIRPERSON GJONAJ: So, if they didn't pay, you don't have an agreement, their name would never appear on any of the platforms that you offer?

KEVIN KEARNS: That we offer, yeah.

CHAIRPERSON GJONAJ: And that means you're affiliates, by the way.

KEVIN KEARNS: Yeah, I'm just saying I know this has been an issue for other platforms in the industry.

CHAIRPERSON GJONAJ: Not-- okay, good. I'm going to go back to that question about-- so you've answered everything about this taking over of someone's name, and you have no idea, you've never heard of it before, and I didn't-- up until now, I didn't either. The contact information, you've answered. The customer data-- and overcharges or potential charges that should have never taken place for phone orders. Is there anything else that in addition to those percentages that can yield another charge? So besides the three percent for the credit card fees, anything else?

KEVIN KEARNS: No.

CHAIRPERSON GJONAJ: There's an add-on?

KEVIN KEARNS: No.

CHAIRPERSON GJONAJ: No minimum order, nothing of that nature, if their order is below a certain dollar amount?

KEVIN KEARNS: Restaurants can set minimum orders on our site. That's their choice.

CHAIRPERSON GJONAJ: But you don't--

KEVIN KEARNS: [interposing] No, we don't, no.

CHAIRPERSON GJONAJ: So, if I ordered a slice of pizza from Reggie's Pizza I'm just going to pay, and his slice is a dollar, I'm not going to pay more than--

KEVIN KEARNS: [interposing] The restaurants' choice to choose the minimum.

CHAIRPERSON GJONAJ: And there's no additional fee for you, correct? From a minimum order? You get your 30 percent?

KEVIN KEARNS: Correct. For charging the restaurant, yeah, that's what the restaurant pays. It's clearly spelled out in our contract.

CHAIRPERSON GJONAJ: How many pages is your contract?

KEVIN KEARNS: Get you a copy. It's not long.

CHAIRPERSON GJONAJ: It's not long at all? How--

ANDREAS KOUTSOUDAKIS: [interposing] We'll get you a copy.

CHAIRPERSON GJONAJ: Grubhub-- I'm sorry, Uber Eats, is there a minimum charge? Because we asked the question before, and--

NOELLE: The minimum charge is not to the restaurant, it's actually to the customer. So, it's not an additional fee to our restaurants, but it's actually an additional fee to our customers if the basket size is too low or if the total order amount is too low.

CHAIRPERSON GJONAJ: And is that something that Grubhub or Seamless does as well, charge the customer, or is that-- there's no additional fee. Flat fee?

ANDREAS KOUTSOUDAKIS: We don't have a small order fee, I believe. And again, I think as Kevin mentioned, though, like, restaurants set the minimum fee. So, it's not-- a lot of times, I believe it's not in their interest to have a small order. They want to have big orders, and so they'll set the minimum high or to whatever works for them. A lot of them start off high, and then they see the business is really good, and they'll move it all down, but it's set by the restaurant.

CHAIRPERSON GJONAJ: How many restaurants do you have in New York City that you're offering your services for? And that would be Seamless, Grubhub or any affiliated partner that you have, from Menu Pages, and I can't think of the rest, but whatever they are. You have the number of--

KEVIN KEARNS: [interposing] We have a 115,000 approximately total. I do not know the number for New York specifically.

CHAIRPERSON GJONAJ: And that's Seamless, Grubhub, or?

KEVIN KEARNS: Yeah.

CHAIRPERSON GJONAJ: So none of the other affiliates?

ANDREAS KOUTSOUDAKIS: Under the Grubhub platform.

KEVIN KEARNS: Yeah.

ANDREAS KOUTSOUDAKIS: All the companies.

KEVIN KEARNS: Yes, correct.

CHAIRPERSON GJONAJ: Can a restaurant negotiate besides the fees that you charge the terms and conditions of your agreement, or this is your agreement?

KEVIN KEARNS: Yes, they can. Our contracts are negotiable.

CHAIRPERSON GJONAJ: And they're all-- all these fees and charges are outlined in there in easy to read format? Someone like me who needs glasses, doesn't wear them, could be able to see them?

KEVIN KEARNS: Yes, correct.

CHAIRPERSON GJONAJ: I'm looking forwarded to seeing that contract. So, that's two things you're going to get to me. Is that three percent fee, is that the fee that you're actually charging the credit cards, or is that the fee that you just pass on? So, is it a pass-through or is there a little cushion there as well. It covers-- it covers their credit card fees. It covers fraudulent orders, undeliverable orders, things like that. So, that's the fee we charge.

CHAIRPERSON GJONAJ: Alright, but that's not the fee-- it's not a pass-through.

KEVIN KEARNS: No.

CHAIRPERSON GJONAJ: So, if it was two percent from the credit card, and you mark it up by a percent.

KEVIN KEARNS: To cover other costs.

CHAIRPERSON GJONAJ: I'll just ask the question. So what's the fee that you are charged from the credit cards?

KEVIN KEARNS: I do not have that specific information with me.

CHAIRPERSON GJONAJ: That's number three, okay. Where's the average-- and you couldn't tell me about the average mark-up, so. Each of you have established contracts with some of the major chains, so whether it be McDonalds or Dunkin Donuts, I believe is a recent acquisition, right? I would imagine they're able to negotiate much better deals for themselves, because of the sheer number of locations that they have?

KEVIN KEARNS: We can't give contract specifics, but certainly there's national buying power, yes.

CHAIRPERSON GJONAJ: So, if we had a national or a retail association that negotiated for all their clients, would be willing to sit down with them again to renegotiate the fees?

KEVIN KEARNS: We would listen to what they had to say. I mean, there's obviously a lot of variables in that, in what you're saying. We'd listen to what you have to say.

CHAIRPERSON GJONAJ: Good, I'm looking forward to that also, because I want to be the champion of small business mom and pop shops. And you're also going to let me know how far they can go back on the back orders, correct?

ANDREAS KOUTSOUDAKIS: Yes.

CHAIRPERSON GJONAJ: You get a statement, actually listening [sic], you'll let me know about that. You know, the ability of not-- it's under review, whatever that indicator is that popped up. You don't target eaters based on past history, do you? So if I'm accustomed to eating Reggie's Pizza on every Wednesday, and one Wednesday I am not ordering out or I'm not here, I shouldn't get an email reminding me or a text message or geo fencing that'll pop up some kind of message to remind me that Reggie's Pizza--

KEVIN KEARNS: [interposing] Not that I'm aware of.

CHAIRPERSON GJONAJ: Not that you're--

KEVIN KEARNS: [interposing] I mean, that's a marketing question, but--

CHAIRPERSON GJONAJ: Yeah.

KEVIN KEARNS: I don't think so.

CHAIRPERSON GJONAJ: Oh, boy, did I just give you another idea? I hope not. I hope it's one that won't yield another charge. Are restaurants able to run loyalty programs on your respective platforms?

KEVIN KEARNS: Yes, they are.

CHAIRPERSON GJONAJ: And part of that, can they negotiate if they ordered both catering and fine-dining fees for both, or is it going to be a standard fee? One of the issues that came up earlier was that if they ordered off-site catering versus single order, you offer the same charges? There's no renegotiating on--

KEVIN KEARNS: [interposing] You mean, adding catering to their existing--

CHAIRPERSON GJONAJ: [interposing] If they're going to place an order, and it's going to be

I need catering for 30 people, and that includes the dishware, the silverware and coffee cups and everything else that I'm going to order. Your contract, does it take into consideration these larger orders, or it's going to be the same percentage points that was negotiated across the board, whether it be a single order of pasta or catering event for 30 people?

KEVIN KEARNS: It would depend on the contract that was originally negotiated. So if circumstances change, then certainly the question can be asked about renegotiating.

CHAIRPERSON GJONAJ: You're not aware of anyone that has that type of an arrangement with you now?

KEVIN KEARNS: Not specifically, but we can certainly check on that.

CHAIRPERSON GJONAJ: So, I'm not going to keep you here anymore on the panel. I think you've answered everything that you possibly could in the format that you wanted to, but there's certainly more testimony that we're going to hear from some of our restaurant owners, and I just want to-- and again, up until today I haven't heard it. Retaliation is one of those things that I frown upon, and I really would hate to hear from a restaurant that their online orders have fallen because they appeared or submitted some type of testimony.

ANDREAS KOUTSOUDAKIS: I want to make it very clear that-- there is-- that fear is unfounded. That will not happen. It has never happened. We've been in business for 20 years. We've operated with tens of thousands of restaurants. That's not something we would ever, ever do. And I would add too that we're staying until the end of the hearing, and we're prepared to meet with everyone. I have notepad and business cards, cell phone, Senior Vice President, and we'll work through any issue that anyone has in this room.

CHAIRPERSON GJONAJ: I appreciate that. You know, not that I want to mimic Colombo, but something just came back to mind. You know, he's about to-- and he turns around and remembers something. One of the things that was brought to my attention is the actual business model and how it started. I believe initially was a modest 10 percent fee. Is that how the model began? It was offer to Wall Street and then it expanded to the open markets.

KEVIN KEARNS: Yeah, I think it started off with-- I think are you getting at like the increase in fees over time?

CHAIRPERSON GJONAJ: Yeah.

KEVIN KEARNS: I think we can speak to that, because of all the services that came with the fees and how those commissions were reinvested in the restaurant network.

ANDREAS KOUTSOUDAKIS: Yeah, so, yes, over time our fees have increased a few percentage points, but our orders have actually outpaced that by the size of the orders by a significant amount. We've also invested heavily in the restaurants. So, we have invested in marketing. We spend over 60 million dollars in the last several years to promote our restaurants on our platform and offer discounts to diners and things like that. We spend hundreds of millions of dollars on advertising again to drive demand for the smaller restaurant. We build our apps. We have more self-service tools so that they can update their menus. They can add photography. So we reinvested all of that to increase the diners and the new diners coming to our restaurants.

CHAIRPERSON GJONAJ: The reason I bring that up, in one of the meetings that I had, early on customer saw the immediate advantage going back to the early days and the fees that were being charged, and I believe he said it was upward of 10, 12 percent. I don't remember the number now. And based on the relationship that you had, your platform became an integral part of his business model, and you're flourished. As you continued to flourish the fees kept going up. And the last comment from him was simple, "Mark, with Grubhub and Seamless, the online platforms that we have, for me and my business it's a slow death. Without them it's an instant death. They came into my place of business like a Trojan horse and have taken over my entire business model." I didn't know how to respond.

ANDREAS KOUTSOUDAKIS: One, you know, we work with restaurants every day, and we work-- this business works with restaurants every day. And so we need restaurants in ways, and these industries need each other, and so that's why we have Kevin and his Restaurant Success Team to make sure that restaurants are not going through the slow death, and over the course of time, especially over the last few years reinvesting in the restaurant network, tripling the Restaurant Success Team, providing them with new technology like tablets free of charge. We're making sure that orders increase, and we've seen year over year that the order size has increased, the volume has increased, and the revenues have increased. But if restaurants feel that they have an issue, that's why we have the Restaurant Success Team to make sure that we're addressing all those issues, and that's why we're going to stay to the end of it.

KEVIN KEARNS: There's one other-- if I may. There's one other example. We met with one of our restaurant partners this morning, and we walked us through kind of the progression with Grubhub over time, and he said, "We are doing more than two million dollars a year in orders, thank you very much. We appreciate what you've done for us."

CHAIRPERSON GJONAJ: Kevin, do you ask him if he's making more money now at the end of the month-- at the end of year?

KEVIN KEARNS: Yes, yes.

CHAIRPERSON GJONAJ: Does he show a bigger profit?

KEVIN KEARNS: Yes.

CHAIRPERSON GJONAJ: Okay, it’s interesting. Like I said, I mean-- my last-- I promise this is it. There’s also a fear and a speculation that online platform delivery service apps are potentially operating in partnership today with someday opening up what they call “dark kitchens.” See, the idea is that perhaps someday if the continued growth of online orders, you no longer need a brick and mortar, you don’t need to be on Park Avenue, on Broadway out here because you’re not going to rely on foot traffic anymore. As your apps continue to grow in usage and continue making the deliveries and whether through partnership with Uber Eats or anyone else, is there a fear that someday we’ll have operators out of a second floor, third floor, warehouse or basement conversion with a simple kitchen, no seats, no service offered where your platform will be the means, and the fear is that you’ll actually be an owner of that “dark kitchen” with no name, don’t need one. Someone out there is buying .net and .this and .that, and coming up with the phantom entities, and you put poor Irene’s Pizza out of business-- and I don’t mean you. I’m painting an ugly picture here. Although she owned that business for generations and put everything into that Irene's Pizza is no longer Irene's, that there's someone making something like Irene's Pizza and they're ordering it through a third-party online platform from another kitchen. Is this something that's even conceivable?

KEVIN KEARNS: It's not part of our business plan for sure.

CHAIRPERSON GJONAJ: But is it conceivable?

KEVIN KEARNS: You know, I'd say this again, these industries need each other, and there'll always be restaurants, and you're always going to need places to go, and what we've seen is the data shows that delivery actually encourages more dine-in customers. We're not cannibalizing dine-in experience. We're actually driving more customers through restaurant doors and having that dine-in experience. And that's kind of where I think again like these industries complement one another. We're providing incremental orders, new customers both delivery and dining.

CHAIRPERSON GJONAJ: But I ask the question, can that scenario ever happen?

KEVIN KEARNS: I don't see a scenario where there are no restaurants as part of restaurant delivery.

CHAIRPERSON GJONAJ: In particular Irene's Pizza, can you see Irene's Pizza being operated by a ghost that's using your platform that undermines Irene's similar to the restaurant we just saw, that their own website is nowhere to be found or two out of the 10 choices are actually going directly to that restaurant?

KEVIN KEARNS: We're a marketing tool for restaurants. So, like, we're working with Irene. We sit down, we enter into an agreement with Irene to drive orders to Irene to be not only delivery, again, but also customers that get attracted to Irene's Pizza through our platform and then go visit Irene's Pizza, which is across the street, I believe, from Reggie's Pizza.

CHAIRPERSON GJONAJ: Correct.

KEVIN KEARNS: And--

CHAIRPERSON GJONAJ: You've been there before.

KEVIN KEARNS: I found it on Seamless. And but that's the crux of the business model, and that's-- again, a lot of this is not new. We've been in business for 20 years here in New York and the restaurant industry has grown with us, and we've grown with the restaurant industry.

CHAIRPERSON GJONAJ: And the online-- and the-- again, never hearing this before, the possibility of anti-trust and monopolizing-- how much do you-- what's the market share that you guys have now? Is it somewhere in the 80 percent of all online orders, or in New York City, are being done?

KEVIN KEARNS: There's a lot of competition. We do not have the ability to market share [sic]. [Off mic]

ANDREAS KOUTSOUDAKIS: Again, I'd say this, I think there was a question of monopoly and--

CHAIRPERSON GJONAJ: [interposing] Yeah, that's what I'm referring to.

ANDREAS KOUTSOUDAKIS: And retaliation and setting up dummy accounts or having extra fees, again, we've been in business 20 years openly and transparently here in New York City. We've operated with tens of thousands of restaurants. In fact, the industry has gotten more players than they do now, in the last four years than the previous 16. So, I'm not clear what the monopoly--

CHAIRPERSON GJONAJ: [interposing] How many companies have you acquired in 23 years?

ANDREAS KOUTSOUDAKIS: I'm not sure on the number, but I'm speaking to the fact that there's more competition, specifically, for example, the person to my right. There's Door Dash, Postmates [sic], Caviar, a number of companies that are in this space. So, I think the competition has only gotten increased over time, not decreased, which is the opposite of what a monopoly trend would look like.

CHAIRPERSON GJONAJ: Does anyone that has affiliates have more than 50 percent of the market of online orders?

ANDREAS KOUTSOUDAKIS: Of total online orders across the country.

CHAIRPERSON GJONAJ: No, no, let's talk about New York first. More of a country is--

ANDREAS KOUTSOUDAKIS: I'm not sure what the market share is in New York.

KEVIN KEARNS: I don't have the specific New York data.

ANDREAS KOUTSOUDAKIS: I would say--

KEVIN KEARNS: [interposing] Not nationally for sure.

ANDREAS KOUTSOUDAKIS: Yeah, I don't know what the market share is in New York, but I do know that we've been here 20 years, and we take pride in the fact that we're iconic take-out brand for New York. And again, the issue is we need to work with restaurants, and we've done so for the last 20 years, and we've helped restaurants grow, and we have a number of restaurant owners that will speak to that. Unfortunately, a lot of them couldn't be here today, but we will make sure that we will connect you and the Small Business Committee with them.

CHAIRPERSON GJONAJ: Thank you. Thank you so much. And Uber, thank you for your patience. The next panel is Steve Bulger from the US Small Business Administration, SBA.

MATT COLEMAN: [off mic]

CHAIRPERSON GJONAJ: Yes.

MATT COLEMAN: [off mic] my name is Matt Coleman and I'm the Regional Communications Director for the US Small Business Administration [inaudible] Region II. [inaudible] Council today on behalf of my boss, SBA Regional [inaudible] Steve Bulger-- Oh, there we go. I knew it wasn't working. On behalf of my boss, SBA Regional Administrator Steve Bulger who oversees all of our cabinet-level agencies federal operations throughout New York, New Jersey, Puerto Rico, and the US Virgin Islands. The following is Regional Administrator Bulger's testimony for this proceeding's official record and for your consideration. Good afternoon Council Members and participants in today's committee hearing. Thank you, Chairman Gjonaj and Council Members for inviting me to testify on this important matter. I appreciate the opportunity to share my comments. While official duties elswere in the region, namely upstate, prevent me from physically being here in person like I was yesterday, I would like to express my deep thanks for allowing our federal agency to participate today. As SBA Regional Administrator overseeing agency operations in New York, New Jersey, Puerto Rico and the US Virgin Island, I'm committed to the priority of ensuring small business owners and entrepreneurs see SBA as the go-to resource for counseling and funding opportunities no matter what stage of life cycle this is in. Together, with our lending and resource partners across the five boroughs, and in communities across New York and the entire Atlantic region we can continue to help drive our economy. Productively collaborating on initiatives to help the New York City small business community is a testament to the productive, bi-partisan relationship I've developed with Councilman Gjonaj. What impresses me most is that Councilman Gjonaj understands like I'm hopeful ever member of this committee and the entire Council does, that small businesses and hardworking entrepreneurs are the lifeblood of our economy. However, those are more than just words. It's the God's honest truth. One of my colleagues in Washington recently asked me if we could go one day without a dozen small businesses impacting our lives. What about just one small business? If you try answering those questions yourself, the answer is a resounding no. small business is woven into the fabric of the United States and City of New York. Small businesses are everywhere, your dry cleaners, the independent coffee house you frequent, your doctors and dentist office, and most importantly today, your favorite local restaurants. They are all undoubtedly small businesses. With SBA's participating in today's hearing and our collaborative work with the committee, this actually marks the first time the City Council and the Federal Government are working together to assist the New York City small business community. It's a much-needed step in the right direction, and quite frankly, what small business owners deserve, but what is a small business? A small business is defined by the Federal Government as any commercial venture with 500 or fewer employees. These types of companies make over 99 percent of businesses throughout the nation. While micro businesses or those businesses less than 20 employees constitute closely 90 percent of them, and the New York restaurant industry is a mosaic of thousands of small businesses indeed. It is an economic engine that revs on what the National Restaurant Association estimates to be the daily operations and revenues of over 24,000 restaurants across the City of New York's 12 Congressional Districts. That immense number of small businesses encapsulates 48.3 percent of all New York State's restaurants. By the numbers, almost half the Empire State's restaurant establishments, small businesses by definition, are located right here in the five boroughs. What's more, these numbers consist of both the table and limited-service segments of the restaurant industry. While small businesses like restaurants do not need to register with the SBA or the Federal Government to operate, the figures quoted above are the most accurate numbers of the small business size restaurants in the City that we at the SBA actually have. Strangely, these figures are not from the City or any local government entity. It was actually quite productive to hear the SBS officials up here, but these figures come from restaurant industry group. Why? Because neither the City of New York nor the Department of Small Business Services actually requires restaurants or small businesses to register with the City or that department in order to operate. So, no exact count is actually possible. Nevertheless, the SBA stands ready, willing, and able to assist small businesses, owners and entrepreneurs grow their ventures and create jobs by providing resources and tools like access to capital. It is a proven time-tested way to create a blueprint for an economy built to last. SBA achieves this with several methods, but specifically access to capital. From the smallest needs in micro-lending to substantial debt and equity investment capital. We also power small business owners to know of opportunities in federal contracting, access to entrepreneurial education, and disaster assistance. In fact, the SBA helps build a more supportive environment for entrepreneurship and innovation day-in and day-out. We're not a federal regulatory agency like our colleagues at Justice or the Commerce Departments, but rather an advocacy agency that supports our small business community. In fact, the SBA Office of Advocacy and our case, our SBA Regional Advocate, regularly meets with small business owners of every industry you can think of to hear their frustrations of overlapping laws and excessive government regulations. We're always eager to listen and to help to the extent the law allows by bringing small business owners and governments to the table to talk in order to help local commerce thrive. Our federal agency consistently acts to better support the efforts of entrepreneurs which spur job creation, drive competitiveness and innovation and strengthen the national economic ability for growth. Since Fiscal Year 2011, the SBA has guaranteed 870 7A loans totaling more than 353 million dollars to the New York City small business community specifically in the restaurant industry. That's eight years, in an eight-year period of time, 353 million dollars including 50 million dollars in SBA-guaranteed loans for last year, January 1st, 2018 to present. That's about 14 percent of the total number I just cited. 7A loans are our agency's primary program for providing financial assistance to small businesses. They enable small business owners and entrepreneurs to reduce risk and enable easier access to capital. The type of 7A loan dictates the SBA guaranteed percentage and the maximum loan amount. Those figures are actually quite impressive compared to the rest of the nation. They've helped hundreds if not thousands of small business owners, many who could be here today, start, grow and expand just in the past few years here in the nation's largest city. But the SBA also assists businesses and individuals in disaster recovery. Here in New York City, the most recent large scale activity of this function came after Hurricane Sandy battered the shoreline and decimated many communities, but we actually have SBA disaster assistance personnel right now in King's County in Brooklyn today providing aid and assistance to victims of an April apartment fire that displaced a large amount of residents. In both cases, SBA and our ODA were right on the ground heling affected home owners, small business owners recover from-- starting on day one. We do this as well as help with capital access by offering low interest long-term loans, spciicaly in disaster assistance to replace real estate, personal property, machinery, and equipment inventory and business assets that had been damaged or destroyed by the declared disaster. Specifically in Sandy’s aftermath, 122 restaurants in the affected area received 21.125 million dollars in affordable, timely, as accessible financial assistance from the US Small Business Administration in one event. However, like any agreement an individuals or entity enters with the United States, the Federal Government is the primary debtor for repayment. Our SBA-backed loans get repaid first. That’s part of any agreement any one signs with the federal government, and that’s one of our agency’s prime interest here today ensuring our SBA-backed loans can be repaid in the face of higher and higher fees tacked on to the cost of doing business in New York City by third party companies. However, the hidden cost of doing business in America’s most populated city are actually shameful. Many of them are imposed by Mayor de Blasio and his Administration without foresight or thought, but rather on a political whim or for political expedience. That's just not a way to govern. The city Preliminary Budge, for example, that as proposed by the Mayor earlier this year, so at a three bid increase in expenditures in making up the 92.2 billion dollars fiscal document for fiscal year 2020. That represents an actual 23 percent hike in spending since Mayor de Blasio took office, and that budget is actually larger than the individual budgets of 46 of the states in the union. In addition to property taxes, where does all the money the City has-- where does it come from? I'm not a city finance specialist by any means, but have spoken to hundreds upon hundreds of small business owners during my tenure as regional administrator. The archetypical mom and pops who see this, these fees, the higher and higher spending coming from their bottom line. Fines slapped on small mom and pop stores often on a whim, which are quick revenue raisers to pay for an ever-expanding and expensive municipal government. Earlier this year, this City Council rightly took action to stem -- a Mayor's

Office scheme by passing the Awnings Act, and after an overzealous Building Department official began a panic among small business owners in the small business community by issuing tickets in the amounts ranging before 4,000 and 8,000 dollars for each case of supposed improper store signage violations. Again, that's not a way to govern, do business, or lead. In a recent New York Daily News op-ed, one of your City Council colleagues, Chairman, Council Member Justin Brannan from South Brooklyn jointed the New York Senator and the Brooklyn Chamber of Commerce President in rightly saying that New York City businesses were on the brink. They could not have been more correct. Technology companies, such as the topic of this hearing today, pertaining to food delivery apps like Grubhub, Uber Eats-- excuse me-- Door Dash, Postmates, and Caviar just to name a few. There were stories upon stories and some empirical evidence and concern that actually correlates with this hypothesis. The usage of this technology has immensely added cost of doing business in America's largest city. It is incumbent upon local government and municipalities to stand up for their economic engines and take the appropriate and necessary steps to ensure the small business community remains whole, not preyed upon by predatory companies and third party venture. Fairness is key. Fairness is paramount. Stories like one that was just cited in the panel before, taking 10,000 dollars in fees from just one restaurants over a period of time and the refunding it shows that something may actually be wrong. Just as is obtaining capital and financing is a requirement to show viability of a small business as it's needed for a myriad of reasons, growth, new equipment, staff, investment opportunities, and so forth. Its counterpoint is the revenue from its operations, the money from the goods and services purchased by the general public. When revenue is significantly lowered due to artificial factors such as predatory delivery-related expenses controlled not by a company, by a third party vendor, the downward spiraling of economics of running a restaurant at dining establishment or bar in the City of New York and elsewhere across the region, my region of country, unfortunately and sadly continues. Food delivery apps, the subject of today's committee hearing are supposed to help small businesses and entrepreneurs market their product and themselves to new customers and eaters every second of every day. That at least was the original intent. They were envisioned to be a supplementation of the classical small business or restaurant model, an added bonus, if you will, to restauranteurs, chefs, foodies, and consumers alike who utilize that, connecting good food with the very people looking for it 24/7. Again, that was the intent. Today, that may be and could very well be a reality of being very far from the case. These third party companies charge a user fee on both ends. The consumer utilizing them, as well as small businesses offering their goods through their services. A number of small business owners have shared this concern with our office and the Office of Advocacy. A valid point shared by small restaurants is that these companies are taking too much from their bottom line in an already over-regulated in tax business atmosphere. Small business margins in the restaurant industry are, as everyone in this room must know, very slim compared to other industries. The overwhelming majority who have approached the SBA and me at meetings, and through our district offices have spoken about high fees from 10 to 15 dollar connection fee, as discussed in the panel before and covered in local media, where someone calls a restaurant, their bar, through the delivery app on their cell phone perhaps for information or to see if special arrangements could be made but orders nothing, to monthly user fees, plus an additional dollar to $1.15 charge to restaurant for a customer making a reservation on different appps other than those here today like Open Table, for example. That's not even mentioning the API integration fees for any third-party software integration which is also often an additional fee of hundreds of dollars placed upon a small business owner and their enterprise. [inaudible] SBA nor I will provide commentary or speculate on the business models of these technology companies or applications. We will, however, take the side of the over-burdened, over-taxed and over-regualted small business owners who operate in New York City, the nation's largest, and we will stand with our small business owners and entrepreneurs as I did yesterday. These 25,000 New York City restauranteurs who employ 330,500 people to the national Restaurant Association. Again, they employ over 330,000 New Yorkers, also happen to face a hostile, unjust business atmosphere chalked full of fines and red tape that negatively impacts their bottom line day in and day out. That's, I guess, a topic for another day and other hearing According to a recent Gallup Poll-- everybody knows Gallup-- online food delivery companies have a market share of, like the Chairman said, 84 percent of United States adults ordering delivery or takeout at least one time a month. That's Gallup Polls. That's not the industry number. That's a Gallup Poll that's publicly available, but in terms of census data, that's about 84 percent of 284 million people aged 18 and above. That's an immense, an immense, number. When potentially reaching an anti-trust threshold which was mentioned before, that could be considered by the Justice or Commerce Departments. Again, SBA is not an enforcement agency. However, as a federal cabinet level agency it's our position that small business owners must be informed about the costs and risk associated with all fiscal operations and decisions in terms of business operations, especially when it comes to fees or interest rates. Knowing the Street organization or complementary government-- I'm sorry. These figures, user fees, pre-payment, processing delivery fees or so on could be provided up front with an entrepreneur so they can assess whether it’s in their best interest to utilize the service that’s charging them. Third party vendors should not be preying upon their customers. No industry organizations, a complementary government group that we know of is privy to the exact free structure utilized by restaurants using third party delivery apps. But as an aside, we’re happy you’re getting the [inaudible] contract. I will let the regional administrator know that. But from conversations with small businesses who have reached out to our agency due to negative applications to their won bottom line, it appears that just the fees charged by third-party technology apps may vary business to business. It’s an indeed worrisome, and it worries the SBA that there’s no pricing standard, but instead what appears to be an ad hock one, negatively affecting mom and pop stores throughout the diverse neighborhoods that make up the City of New York. What we do know anecdotally, however, is that overly burdened fees cut heavily into small business margins. Yet, as previously indicated, these app delivery models have become so widespread that restaurants more or less need to participate in them in order to stay relevant, stay noticeable, and be accessible to patrons. And the fees and rising costs of doing business in the City of New York do not need to be attributable solely to delivery apps. Overzealous local governments seeking to raise revenue often penalizes companies by simply keeping their doors open and operating, hurting job creators who add heavily to our local, regional, and national economies, and while many food retailers struggle, especially in the City of New York where they’re faced with sky-high rents, astronomical real estate prices if they’re looking to buy, but for the agency even with the help of an SBA-backed 504 loan, new minimum wage requirements, supposed ground-breaking employee laws, dwindling foot traffic due to new traffic patterns, and an outdated Moses era planning. Small businesses now have to contend with third-party technology apps charging non-uniform fees for unspecified usage of their products. We’ve heard it time and again from entrepreneurs, it’s a brave new world out there. The New York City restaurant industry is known worldwide for its flexibility, but these predatory fees are placing an undue hardship on small businesses, many here today, from the textbook mom and pop storefront operations to slightly larger small businesses with a handful of locations, employing several dozen workers or more, from Staten Island and the Bronx to Queens, Brooklyn, and Manhattan. That's why it will be refreshing to hear from the state of small businesses owners themselves speaking about their own experiences with these technological applications. But let me be clear, fees charged by food delivery apps are akin to predatory lending most often than not. Not only is it costly and pervasive in the industry, but they set up their users for failure. Occasionally and most often burning them with high user fees for even simplest of things such as making a phone call. These fees prey on small business owners seeking to expand their restaurant's reach and add to the daily cost of doing business. It is incumbent on this body to determine if this passes what we call the smell test in your municipality. All of these stressors that small business space operating in the City of New York are worsened by the fees charged by food delivery apps. Therefore, it's no surprise that in the first quarter of 2019, that marked the 12th consecutive quarter of shrinking year over year traffic for-- for the foot traffic to the broader restaurant industry. That's not me coming up with that figure. That's the Wall Street Journal publishing statistics from US restaurant tracker Miller Pulse [sic]. The issue of restaurant fees-- the issue of fees, rather, charged by technology companies to small business for use of their food delivery applications is one that should be scrutinized by local government, and I applaud Chairman Gjonaj and this committee for doing so. I stand ready and willing to partner with the Council, Speaker Corey Johnson, Chairman Gjonaj, and individuals Council Members to achieve one hopefully over-arching goal: offer a more small business friendly environment and atmosphere in the City of New York and assist the mom and pop small businesses including those in the restaurant and hospitality industry here today thrive. Also, if you'd like to work on an issue, partner together, or take advantage of the programs, training, or mentoring's provided through our resources partners in anybody's community here in the City, do not hesitate to reach out to me in my office. The SBA regional office is headquartered a block and a half away from City Hall and this building right here. We're at 26 Federal Plaza on the 31st floor, and with phone numbers on www.sba.gov in the regional or district office, and on behalf of Regional Administrator Bulger, I thank you very much.

CHAIRPERSON GJONAJ: I want to thank you for that fully-embodied testimony that is now part of the record. The challenges that we have ahead of us are going to require city, state, and federal agencies working together to improve the small business environment that's under siege and under threat. We see it in our commercial corridors, the number of vacancies. Of the 353 million dollars that SBA has loaned out, do you see an increase in default rates? Is there anything that you can share with us that would be alarming?

MATT COLEMAN: I do not have those number myself. Those would be handled by the New York District Office and the SBA Office of Disaster Assistance, the ODA. Nothing comes to mind. I've been with the agency now since December. Nothing comes to mind as standing out or being noticeable. I'm personally unaware. I can look into that and get that to you, sir, as well as the Committee as a whole, or Reggie, you know, either or.

CHAIRPERSON GJONAJ: You also mentioned in your testimony anti-trust protection violations. Are you aware of anything that should be brought to our attention?

MATT COLEMAN: We are not aware. That would not, as I mentioned, the US Small Business Administration is not an enforcement agency. We're an advocacy agency. We back-- primarily back loans in private money. We give them the SBA guarantee, meaning we've reviewed small business owner or entrepreneur's business plan. They've gone through multiple levels of counseling. So with our resource partners, many of whom people here must have heard of like Score or Women's Business Centers, or VEBOC, Veterans' Business Owned Centers. Yeah, so there's a threshold they have to meet to make us comfortable backing a loan. I haven't been made aware of anything, but you know, that you're asking, but--

CHAIRPERSON GJONAJ: Have these borrowers of SBA funds from SBA have they brought to your attention any potential issues with their future as they integrate with these online platform providers?

MATT COLEMAN: No, but what gives the Regional Administrator pause, and what he's illustrated to me in our conversations in the office, if the Federal Government is the primary debtor, people have to repay their loan to satisfy the SBA guarantee. So we're off the hook and they can go on their way to prosperity, if you will, small business prosperity. If there are additional factors, you know, impacting loans, for example, we've gotten multiple reports out of-- around the country for the Fentek [sic] industry and how there are several companies, of which I won't mention any to get in trouble, that are just direct debiting, you know, daily receipts, taking money out of their account immediately to satisfy, you know, their start-up fees that they would have gotten, from you know, from a bank or, you know, through a bank with the SBA guarantee if they met the SBA application for a 7A loan, but they went to, you know, whatever online lender, and they're just debiting them daily. That, if they had an SBA loan, that would greatly interest us like it does here, you know, where a tech company is taking out a percentage no matter what the business owner has done, because they're on the hook for an SBA loan, and it's not like we're giving out tax payer money, but the tax payers are certifying that the Federal Government knows what's a solid business and how a loan will be repaid even if it's a personal obligation to do so. Sorry for that long-winded answer.

CHAIRPERSON GJONAJ: No, no. I want to thank you. Your testimony has been submitted in writing and we're going to now take all this into consideration and figure out what we can do collectively.

MATT COLEMAN: Thank you very much, and---

CHAIRPERSON GJONAJ: [interposing] I hope you'll sit around for the other testimony.

MATT COLEMAN: Absolutely. We have a strict 4:45 policy or 5:00 policy because I'm not eligible for overtime, but I will stick around as long as I can.

CHAIRPERSON GJONAJ: Well, Matt, welcome to my world. I don't get paid overtime either.

MATT COLEMAN: I know, totally different. Again, I joined in December, I was not a federal employee before that, but it’s a unique experience. I can tell you that.

CHAIRPERSON GJONAJ: Thank you, Matt.

MATT COLEMAN: Thank you, sir.

CHAIRPERSON GJONAJ: Can we see who’s here that is signed up to testify with a show of hands? I just want to make sure we have enough here. Okay, one, two, three, four, five-- All six of you come up, and I think we’ll find a seat for you. Can you-- We’ll just add two additional seats. Thank you. In no particular order. How about we start the ladies first? Please introduce yourself and if you’re affiliated with any particular company. Oh, press the red button.

JENNIE ROMA: Thank you for asking me to testify. My name is Jennie Roma [sp?], and I’m here today on behalf of Upstream, a nonprofit organization working to spark innovation, innovative solutions to the plastic pollution problem. New York City has one of the best food scenes in the world, and so much of the world’s cuisine is at your fingertips, and the food delivery companies put it all within your reach. There’s so much to choose from and it’s so convenient. But convenience comes at a cost with all the throw-away plastic cutlery and napkins, all the stuff that you don't actually need, not to mention the bags and single-use containers that come as a matter of course. Now, think about this, these same actions repeating millions of times a day for the people living in New York day after day, year after year. The City currently spends more than six million dollars each year to manage unwanted packaging, much of it food packaging. But the good news is that innovation is happening right now. All over the world, businesses, institutions, communities are saying no to disposable packaging and designing re-use systems that are convenient and sustainable. We're developing a throw-away free model and it could happen right here. I wanted to share a couple of stories to paint a picture of what the future could look like, in Portland--

CHAIRPERSON GJONAJ: [interposing] Jennie, I want to make-- maybe you're not, but we're talking about the online food ordering. I don't want you to start promoting your products. Talk to me like you're--

JENNIE ROMA: [interposing] Okay, I'm not promoting a particular product, but I'll get to the point a little bit. There's a couple of things we're talking about the future of food delivery in New York City, and so two things that we're really specifically asking for. I work for an organization that's focused on plastic pollution, and I've been involved for the last eight years with plastic pollution in New York City. I wrote the-- I helped-- I was pro-bono counsel to Council Member Lander and Chin on the bag law which does not apply to restaurants currently. But we really wanted to look at innovation and to work with businesses to solve these issues. One thing is really having an opt-in system to getting all of the extra utensils and everything that comes with all the food delivery orders as an easy way to address plastic pollution, and it's a way to save businesses money, too, if they're paying for the thing that they're providing that's just getting thrown away. So an easy option that we've seen in other places is just requiring it to be an opt-in, so when you're ordering you check a box that you do want utensils rather than opting out, which usually doesn't get paid attention to anyway. So, for everyone in the room, that's just oen thing. And then another thing is to really-- to have a pilot program focusing on reusable containers. There is a demand. I know myself when I worked at a corporate law firm and had a stipend for ordering food, I didn’t, because I didn’t want to have all the plastics that I couldn’t avoid. And so having some kind of a pilot project with oen of the delivery companies to maybe have just a very specific area that was covered, specific restaurants where there was a reuse option to maybe pay a deposit of a dollar or two and get that deposit back when you returned it. So, I will not go into the rest of my spiel, but those are two things that we’d really like to look into and we look forward to working with Council Members, with Department of Sanitation, and hopefully with delivery services as well.

CHAIRPERSON GJONAJ: Jennie, I want to thank you, and we should actually meet in the near future and can follow up on your list of proposals. I think the opt-in one is something that can be done instantly, and I think would go a long way. There’s certainly--

JENNIE ROMA: [interposing] Should be easy.

CHAIRPERSON GJONAJ: There's much to do on that issue as well. Thank you, Jennie.

KATHLEEN REILLY: Good afternoon. My name is Kathleen Reilly. I'm the New York City Government Affairs Coordinator for the New York State Restaurant Association. We are a trade group representing food and beverage establishments in New York City and State. We are the largest hospitality trade association in the state, and we've advocated on behalf of our members for over 80 years. Our members are one of the largest and most widely impacted constituencies in the City as nearly every agency regulates some aspect of this industry. To ensure the continued viability of the restaurant industry, New York City must prioritize regulations that enable these hardworking New Yorkers to continue earning their livelihoods. Today, I'm here to speak about the impact of third-party delivery platforms on the restaurant industry. First and foremost, we want to acknowledge that the modern restaurant industry has come to rely heavily on delivery as a means of getting food to customers. We know that third-party delivery platforms have taken on a major role in this model, ad oftentimes it's practical for restaurants to work with delivery platforms rather than hire their own delivery workers. With this in mind, we want to advocate for a mutually beneficial relationship between restaurants and delivery platforms and to ensure that clarity, fairness, and profitability are able to coexist in this relationship. We are hopeful today that restaurants will all fully embrace the opportunity to share their experiences with third-party delivery platforms so we can have a more complete understanding of the status quo. I know we heard from a restaurant earlier today, at least one more today, and hopefully there's some written testimony as well. That'd be great. Annecdotally, we know that restaurants have various types of fee structures, may have a presence on more than one delivery platform and may have mixed experiences using them. Before we begin to suggest any improvements for the relationship between restaurants and these platforms, we want to hear a number of firsthand accounts. That being said, oen issue that came to our attention earlier this year had to do with fees being mistakenly charged on phone calls that were not orders. I know we discussed this a little bit earlier today. Based on the experience of one of our board members, who's actually sitting to my left, we learned that some phone calls, typically those lasting longer than about 45 seconds, were being improperly classified as orders. In fact, they were all sorts of calls including questions about the menu, making a reservation or other inquiries. Unfortunately, the only way to verify whether or not a call was actually an order is to check back through the phone call log, which is a time-consuming task. That being said, we urge all restaurants who use third-party delivery platforms to do this kind of audit so we can understand how widespread this issue truly is. We suspect that this problem is simply the product of mistaken procedure, and we'd like to work together to find a good solution. We also hope to hear more from both restaurants and delivery platforms on this topic and have started to do so today, because as of now we're working off of limited information from a few cases. In conclusion, the New York State Restaurant Association is committed to a profitable and cooperative relationship between restaurants and third-party delivery platforms. We hope that his hearing will provide the opportunity to gather more information about the status quo. From there we plan to be active and collaborative participants in making this relationship the best it can be. We appreciate your attention today and your patience and applaud your focus on these crucial and interconnected industries. We look forward to continued efforts to create a clear, fair, and flourishing business environment for all New Yorkers. Thank you.

CHAIRPERSON GJONAJ: Thank you, Kathleen. If it's okay, because I think you are part of the board.

MARCO CHIRICO: Yes, sir.

CHAIRPERSON GJONAJ: Follow up to that story, and then-- thank you.

MARCO CHIRICO: Good afternoon. My name is Marco Chirico [sp?]. I'm from [inaudible] in Brooklyn. I also have another establishment that I disclosed. So, a few months ago--

CHAIRPERSON GJONAJ: [interposing] Say your name again, Mark, please? Mark?

MARCO CHIRICO: Marco Chirico, C H I R I C O. A few months ago-- I've been with Grubhub/Seamless for a number of years, about almost five years, and I never increased my percentage. I always kept it the same, and over past last few months I was actually looking at a recent order. I went to look up a receipt, and noticed these phone charges that, you know, I saw commission on it, and so it raised a red flag, and I looked over it. And when looking through it because I never got actually-- I never realized before that I can actually listen to the call. Most of the calls were non-orders. One of the calls were a customer that usually orders from us all the time, and it was catering order. So, I get charged $9.08 on that order. Looked into it more, I called a customer of mine personally because we know them; they order from us all the time. And I said, how'd you call us? How'd you, you know, find a number, because we were charged commission from Grubhub? Did you go on Grubhub site and call from there? She says, "Simply, I just googled you guys. I didn't remember a number, and I called you." So, again, that raised a red flag. I looked over my past orders. Tried to go back a few months I couldn't' go past a certain amount of months. Within those time months' frames I looked over the orders, I listened to calls. Again, non-orders. People calling to check on their delivery, check on if they can add something or if they can-- if we had something off the menu that they can add. Again, charged a certain amount of money. All different estimates, $3.40 to $9.08. After that, looking over it, I let the New York Restaurant Association know. Then there's been a bunch of other people calling back and letting us know that it's happening to them the same. We reached out to Grubhub/Seamless. I haven't heard back from them from those orders. I know they said they have great customer care, but on those issues, after sending them the phone orders and receipts, we haven't heard back or I haven't had an apology either on the commissions that they were taking. Those commissions help pay my rent, help pay my employees, help pay other expenses that we need to survive and go through the businesses, a daily business every day. As you saw the numbers before, six to eight percent is our profit zone. Taking 15 percent to 20 percent hurts us. Deliveries you don't make-- you make pennies on deliveries. You pay labor, you pay food cost, menu pricing, the rent, plastic ware, paper ware, all your expenses goes into delivery. So after a 15-20 percent taken from an order, you're not making anything. On top of that you cannot change your pricing from a Grubhub menu to your, you know, restaurant menu. You cannot put 15 dollars for a pizza pie, margarita and then online you can put it to 20 dollars. I's not right. It's not right for your customers either. So this-- there's no room for that. All we ask is fairness. All we ask is for these third parties to understand how it is to run a business on a daily basis. Take it from the owner's perspective, you know. We work six to seven days, 15 hours a day. Our employees we're not trying to hurt. Our employees are family because you're-- more than eight hours a day they become your family members. So, to hurt small business I feel like is not right. I feel like it's a lot against us, and all we try to do is feed our family and our employees' families. And all I ask for them to review all these non-order calls, all these-- you know, as you saw on the website, too. You're googling the name. We're like pretty much last on the list, and they get the profit. So, all we want is to fix those issues. We love the deliveries. We love the monitoring, you know, obviously technology takes control. We have nothing. We can't fight it. We have to go along with it, but there's-- some fairness has to be done.

CHAIRPERSON GJONAJ: Marco, how long ago did you make the request for looking into those fees?

MARCO CHIRICO: One restaurant we actually are able to look back further, so I'm still actually going through a lot of paperwork to look at those. But the one request that we did was about-- since I discovered this-- about a few months ago.

CHAIRPERSON GJONAJ: And you haven't-- have you followed up and they still haven't resolved you're--

MARCO CHIRICO: Resolved some calls. We got our refund back, but I have never had a call or a follow-up call from their company.

CHAIRPERSON GJONAJ: You specifically mentioned the catering one. Were you able to get a refund? Do you feel that you're entitled to a refund on that?

MARCO CHIRICO: Yes, uh-hm.

CHAIRPERSON GJONAJ: And that was because it was a customer that was calling you and placed an order for catering that shouldn't have gone through Grubhub.

MARCO CHIRICO: Yeah, because the week before they ordered catering, and she actually like ordered from us. We never got charge from a third party. The following week she called, but she didn't have the number, because she had to google the restaurant number, and then we got charged nine dollars for that one. So, as fairness, that shouldn't-- I shouldn't have nine dollars to come out of my pocket for someone just to find a number for my restaurant.

CHAIRPERSON GJONAJ: Do you have any charges that you're aware of that shouldn't-- besides that one that never yielded in a sales transaction?

MARCO CHIRICO: A follow-up calls like we got a charge-- a lot of like-- even like, when you go on the transaction list there's like the-- they have the ID numbers. The ones that have just the line through there's certain-- there's a lot of like I have no answers for them or I just have questions. They just follow up with a call and then we got charged also like $4.60 for that, and just follow-up calls.

CHAIRPERSON GJONAJ: But--

MARCO CHIRICO: [interposing] So, they placed--

CHAIRPERSON GJONAJ: no transaction?

MARCO CHIRICO: They place an order, which we get charged 15 percent from.

CHAIRPERSON GJONAJ: Right.

MARCO CHIRICO: And then with the follow-up call we got charged $4.60 for. So, that's more than 15 percent.

CHAIRPERSON GJONAJ: Did you get the $4.60 back?

MARCO CHIRICO: No.

CHAIRPERSON GJONAJ: So you were charged $4.60 for a phone call that did not yield in a sale.

MARCO CHIRICO: Exactly.

CHAIRPERSON GJONAJ: And you brought that to their attention and they did not refund it to you?

MARCO CHIRICO: Not yet, no.

CHAIRPERSON GJONAJ: We're going to stay in touch Marco.

MARCO CHIRICO: Sure.

ROBERT GUARINO: Hi. Okay. Good afternoon. Thank you Councilman Gjonaj for having us here today. I want to thank you for holding the hearing to discuss this important issue. My name is Robert Guarino I am one of the owners of New York City's own Five Napkin Burger. I'm also a Board

Member of the New York Hospitality Alliance. Five Napkin Burger is a full-service burger restaurant founded in Hell's Kitchen in 2008. We currently have four Manhattan locations and employ over 200 people. What I would like to focus on today is the part of this whole scenario that scares me the most about our current reality. The early movers in tech figured out over the last 15 years that the big money wasn't in operating brick and mortar businesses, or even in selling products. The big money comes from controlling all of the customer information and data. The Amazons and Open Tables and Grub Hubs of the world figured out that the technology was the easy part. Once they created useful technologies they were able to gain entry into restaurants or other businesses. Once inside they were able to start vacuuming up all of the data about our customers. They speed up this process by employing outside digital marketing budgets on Google and Facebook Ads to advertise directly to our customers. Once they have the data, they earn the power to siphon margin from the businesses without even needing to sell a product. To explain clearly how powerful this is, think about it this way. I have customers who spends thousands of dollars with us whose names I do not know, while at the same time, Grubhub has all of the data about these guests and their history with my business. Whenever Grubhub likes they can allow a competitor of mine willing to pay a higher fee access to my most valuable customers. With this information the future will involve all of the delivery providers opening their own delivery-only restaurants whenever they like, or in gouging restaurants desperate to keep their doors open. As an aside, this is starting to happen, if you research a company called Delivered [sp?]. It's oen of the bigger providers in Europe. They've opened brick and mortar businesses. There's articles that says Uber Eats is looking to buy them. It's part of the future. With the data, knowing what customers like, knowing who the valuable customers are. As further growth is needed in the future to justify big evaluations, there's no doubt in my mind that it will happen. As an entrepreneur I'm a staunch believer in the value of the free market. I'm confident that my team is capable of creating a brand and a product that will allow us to survive in the years ahead. We have a size and scale and exposure that give us a fighting chance. However, I worry deeply about businesses smaller than ours who are now in a position where they cannot be financially viable without using these services. These businesses are completely at the mercy of these companies to decide whether they live or die. As others will discuss today, there needs to be much more transparency in how the company charges for their services. Additionally, they must do a fair job of sharing customer data with the businesses they partner with. Both of these are areas where I believe local government can take steps to help level the playing field and to help protect the small businesses of our city. Thank you for your time today.

CHAIRPERSON GJONAJ: Thank you. Have you been subject to any fees that are questionable?

ROBERT GAURINO: You know, I'm less focused on the call-in fees. I do think it's-- you know, it shows a good amount of bad will that they are now-- that this has been identified that they're not just going back and refunding. I don't see how they're not going to be party to a class action lawsuit. And if like you've suggested earlier, if they are truly partners, go back, do the right thing, and then what I heard today was that they have and algorithm that guesses with a certain degree of accuracy which calls-- how many calls generated orders. That doesn’t seem like a viable solution. It’s a rounding error for a company that’s worth 800 billion dollars or whatever it is-- 650 million dollars yesterday. No, excuse me, that would be me. They are seven billion dollars. It’s a small number. Make it right. They have all the data to go back and refund all of those charges and put something more transparent in place. I think that would be a great show of good will. But, really, you know, a couple of other notes that I took as we were going through the day-to-day, and it’s certainly the algorithm using-- you know, must-- I’m sure that it must use the rates that customers are paying, and the higher rates that generate more profitable orders. It has to somehow be factored into placement. Popular restaurants with large order sizes and higher price points are the ones that generate the high-paying customers. So, it’s one thing to have the data about the restaurants. They have the data about how the best customers are, and now to find more of those customers-- if you’ve ever heard the term a “look alike audience,” they need-- they have characteristics of those audiences that allow them to market directly to other people who look like them, similar demographics, similar neighborhoods, similar-- you know, similar backgrounds who are more likely to be placing high orders at restaurants. That's how, you know, the Amazon's of the world market. They market directly to the best customers. And they have the data to do that.

CHAIRPERSON GJONAJ: I want to thank you. Have you-- when you do a search on Five Napkins Burger,--

ROBERT GAURINO: [interposing] Yeah.

CHAIRPERSON GJONAJ: does yours show up first, or?

ROBERT GAURINO: No. I mean, so the other thing-- we didn't-- you touched on when you were showing the screen shares is, you know, they-- a lot of this companies, and not just Grubhub but Uber Eats and also Open Table in the reservation world, they're placing ad words that say "Five Napkin Burger Reservations," or Five-- you know, they're spending ad money directly because they know that my businesses generate a lot of orders. So, it's a little flippant to say, you know, very confidently that every order placed is incremental. You know, we have very expensive Manhattan real estate for our four stores. We have a well-known brand. You know, a lot of people fortunately search for our products and start by searching for our products, and there's now a middle man between me and my customers in every vertical, reservations, delivery, menus, you name it. So now I'm forced again to market back to my customers, and that's really the challenge that I thought all of us are dealing with. And I-- again, I think that these companies have played a service, and they do-- you know, they have generated a lot of volume. You know, it's also-- you know, I've also heard some flippant comments today about generating revenue. You know, revenue doesn't go to the bank. Profits go to the bank at the end of the day, and it's not the same thing. You know, if I could just-- if you don't mind I'll give a little--

CHAIRPERSON GJONAJ: [interposing] I have a direct question.

ROBERT GAURINO: Yeah.

CHAIRPERSON GJONAJ: And maybe share this tomorrow [sic]. What is your profitability on products that you sell?

ROBERT GAURINO: Yeah, so--

CHAIRPERSON GJONAJ: [interposing] it's within a percentage point of what?

ROBERT GAURINO: So, I think the number was-- I think the way we talked about numbers today was a little confusing. So the example I wrote down here is let's just use a 20 dollar item for round numbers. Generally restaurants got to pay 30 percent for the cost of the food, 25 to 30 percent. So let's say that 20 dollar sale costs the restaurants six dollars in food costs. Now they have 14 dollars left to pay their labor or to pay their rent, to pay their utilities. Once they start paying 30 percent to a delivery provider, now they have 20 dollar item, they pay six dollars in food. They pay six dollars to a delivery provider, and instead of having 14 dollars left, they have eight dollars left now to pay the rent and pay the labor an day the utilizes. So, the gross profit declined by 42 percent in that example, and that's why yes, we are generating I mean significant topline revenue with third party delivery providers, but I have restaurants that will pay more in third party delivery fees this year than they'll generate in bottom line profit. Fortunately, not all of them, but that's the case. And you know, it's-- you know, we mentioned quickly I don't think some of the smaller operators and less sophisticated operators really understand the economics of what's at play and really understand how vulnerable they are in the future. You know, a brand like mine, now we have our own ordering solution directly on our website. Very inexpensive technology nowadays. You can pay 150 dollars a month to have your menu posted online and receive an order just the way you do on Grubhub. The question is how you get-- you know, how you make a user experience for your customer that's as good as Grubhub's or how you acquire those customers, and to compete with public companies, you know, multinational public companies to do that, is not an easy task. So that's, you know, that's kind of the future. You know, just as far as data, like if you look at Open Table as an example, when somebody makes a res-- they've-- it's a whole 'nother [sic] hearing, but it's-- you know, when somebody makes a reservation on Open Table, which has been providing the reservation service to the rest of our community for 20 years, there's a check box where the guests can opt in to receive marketing material directly from the restaurants. That's a huge difference than what happens in third party delivery. Even something like that, I have no way to market back to the customers. And to send them any type of--you know, any type of offers or any type of marketing. And you know, it's understandable why they don't want that, because if I had that I-- now that the technology has gotten cheaper, I wouldn't need to be paying the percentage. But that, you know, that's the challenge of where we are today. You know, I don't think regulation is the key to solving every problem, but if there's a way that regulation can, you know, level the playing field and help all of us, you know, compete and work together in a more profitable fashion. I think that's good for communities and it's good for jobs, and it's good for the future.

CHAIRPERSON GJONAJ: Thank you. Thank you for your time.

CHAIRPERSON GJONAJ: You're welcome.

ISAIAH WEPRIN: Alright. Well, my name is Isaiah Weprin, and I'm speaking on behalf of the Association for a Better New York. Good afternoon and thank you for the opportunity to testify regarding the changing market for food delivery. As you may know, the Association for a Better New York is a 48-year-old civil organization that promotes the effective cooperation of public and private sectors to improve quality of life for all New Yorkers. The food and restaurant industry are increasingly more important to the New York City economy. The Center for Urban future recently cited that over the past 10 years it is our second-fastest growing industry, up 115,000 employees since 2009. Additionally, the number of restaurants in New York City has increased 1,574 between 2013 and 2017 according to the Department of Health’s records. Not only are restaurants and bars an increasing employer of our food establishments-- not only are restaurants and bars an increasing employer, our food establishments are a substantial draw and reason to come to New York City, nearly a quarter of receipts at bars and restaurants coming from both domestic and international tourists. Therefore, we applaud the Administration and the City Council for focusing on the issues surrounding the industry to ensure that these jobs which are a critical part of the economic development ladder are sustainable and respectful means of employment. We also appreciate that the Administration and the Council strive to provide our City's small businesses' owners and managers, workers and customers with a sound and rational regulatory framework that is protective of New Yorkers while providing employers an opportunity to innovate and thrive. The oversight of food sector delivery apps like other technologies in traditional New York sectors has provided a significant level of disruption, as well as a significant level of opportunity. The introduction of these services two decades ago, in many ways, leveled old playing fields of location, location, location, driving the successes of businesses, particularly those with heavy proportion of deliveries and introduced new playing fields of ratings and visibility on the app itself. It has increased the ease of food delivery which has affected the way restaurants are starting and growing in New York City. In a 2018 USA Today article the NPD group quoted that New York City over the last five years revenue from deliveries jumped 20 percent while the over number of deliveries increased 10 percent, indicating a more profitable growth model for restaurants that deliver. In the same article, Wesley Wabless [sp?], creator of Pinky Space, was quoted as saying, "When we signed up with Grubhub, that changed everything for the business. Our first day online our business tripled." With any level of growth this significant in a short period of time, you'd expect that the demand market may change faster or slower than supply chain, causing growing pains in an industry, and we applaud the City Council for shining a light on the issues to ensure a quick resolution. However, we urge the City Council to allow ample time and accommodations for the private sector partners to address the issues it spotlights prior to introducing any legislation or mandates that may mix a solution to a specific time or a set of circumstances. Particularly in dash tech industries where tech companies will service traditionally strong sectors of the New York City economy such as Fin Tech [sic], fashion tech, or food tech. We want to maintain an inviting environment for companies to start here. The same Center for Urban Future report cites that with the addition of 63,000 jobs to the New York City economy, tech is the fastest growing higher wage industry in New York City. Therefore, we hope that any discussion resulting from today would encourage economic development for all workers in our City. Thank you for the opportunity to testify.

CHAIRPERSON GJONAJ: Thank you. I want to thank you for your time. Is there anyone else that signed up to speak that has not spoken? We got one more. Okay, thank you. Will you please introduce yourself and who you're affiliated with?

GREGORY FRANK: Good afternoon. My name is Gregory Frank. I'm an attorney and an expert in antitrust and consumer law. I'm a partner at the law firm Frank LLP. Unlike many others who have testified here today, I am not a stakeholder. I've been asked by the Committee to give testimony concerning the various antitrust implications of Grubhub's market power in the New York City marketplace. Our system assumes that fair competition between service providers benefits everyone. Competition lowers prices, fosters better consumer choice, encourages innovation, and rewards hard work. However, in highly concentrated marketplaces, companies may use their marketpower to dominate the marketplace instead of competing fairly. This can lead to outsized and unfair prices, limited consumer choice, the restriction of fair competition, the debilitation of labor markets, and unsustainable prices that can drive downstream customers out of business. Evidence demonstrates that Grubhub has substantial monopoly power in the highly concentrated New York City online ordering marketplace. Grubhub's overwhelming market power in the New York City marketplace raises serious concerns from an antitrust perspective. The Federal Trade Commission uses a formula called the Herfindahl-Hirschman Index, or HHI to estimate when the concentration of market power in a marketplace is so dangerous as to be harmful to that market. The FTC uses HHI when evaluating whether to block a merger. In essence, the FTC does not all mergers in high HHI marketplaces because of the negative effects of a concentrated marketplace. HHI is calculated by squaring the percentage of the market share of each market player and adding them. Thus, for example, the HHI for a marketplace with 20 firms, each of whom has five percent of the marketplace is 20 times 5-squared, or 20 times 25 for an HHI of 500. In order to understand the HHI scale, an HHI above 2,500 is considered highly concentrated, leading to substantial regulatory scrutiny. A market with an HHI between 1,500 and 2,500 is considered moderately concentrated, and a market with an HHI below 1,500 is considered unconcentrated [sic]. Furthermore, according to the FTC, a merger that results in a highly concentrated markets that involve an increase in HHI of more than 200 will be presumed to likely enhance market power. In one case, an appeals court observed that an increase in HHI of 510 points quote, "creates a wide margin of presumption that the merger will lessen competition." Just a few days ago the data firm Second Measure posted evidence that Grubhub controls 69 percent of the New York City marketplace. Uber Eats controls 14 percent of the marketplace, and Door Dash controls 10 percent. Such a market concentration would indicate an HHI of over 5,000 for New York's online ordering marketplace. Even 5,000 is generous. Data provided by restaurant business online last year indicates that Grubhub may have a market concentration in New York of almost 85 percent, which would mean an HHI of over 7,200. By way of comparison, the famous breakup of AT&T had a pre-breakup HHI of about 8,000, and the FTC has not allowed the telecom marketplace to have an HHI above 3,000 ever since. Indeed, the Justice Department blocked the merger of AT&T and T-Mobile in 2001 because it would have resulted in a nationwide HHI of about 3,100, with an HHI above 2,500 in 96 of the largest hundred marketplaces. Among the dangers of a concentrated marketplace is outsized pricing power for market participants. Pricing power is the ability to raise prices without risk of losing business to competition. High pricing power exists in monopoly markets. High pricing power from monopolists places a heavy burden on both consumers and restaurants. The burdensome pricing power in the online ordering marketplace in New York is demonstrated by the testimony we've heard today. We have heard how the often 10 to 30 percent in fees are modern restaurant economics which involve inflexible budgets anchored by mostly fixed costs such as food costs, labor costs, rent, and other utilities and overhead. Further, online customers are willing to pay the premium to participate in the online ordering marketplace, demonstrating what anti-trust regulators call pricing power. As the Supreme Court has observed, "Market power is the power to force a purchaser to do something that he would not do in a competitive market." It has been defined as the ability of a single-seller to raise price. Lastly, I would like to draw attention to online ordering platforms recent growth in market power in the physical ordering business. Grubhub's revenue model has been historically focused on its online digital platform which connects customers and restaurants. However, in recent years, Grubhub has increased its market presence in the ancillary business of providing physical delivery services of restaurant delivery orders. The leveraging of Grubhub's online ordering near monopoly in New York City into the separate product marketplace for physical delivery of orders creates other causes for concern. Reports indicate that Grubhub has grabbed substantial market share of the New York delivery market. Many of its customers use both the marketing and delivery services. Further investigation is merited to determine the effects on this labor marketplace and also the effects on the restaurant marketplace. Consolidation of the delivery labor market can result in depressed wages and fewer employment options for workers. Moreover, it can ultimately lead to less restaurant choice for consumers and other potentially negative concerns. Those are my prepared remarks.

CHAIRPERSON GJONAJ: I want to thank you for that. This is all math that-- or calculus and I hated calculus. Please repeat that HHI; 2,500 is heavy concentration, and that would be a clear indication of an antitrust monopoly in the industry, is that--

GREGORY FRANK: [interposing] Okay, well, first--

CHAIRPERSON GJONAJ: [interposing] interpretation of courts?

GREGORY FRANK: is I want to distinguish between lawful and unlawful monopolies. I-- there exists lawful monopolies. If you build a better mousetrap and customers come to you, you know, you're-- you gain monopoly power through lawful means. And I have not made any statemnts-- I have not seen any evidence before me of any unlawful conduct. But even lawful monopolies can have very negative effects on the marketplaces in which they exist. In order to determine whether or not the market players in the marketplace have monopoly power, this HHI calculation is used, and my admittedly back of the envelope rough estimate demonstrates an HHI, as I mentioned, potentially as high as 7,000, which based on recent evidence, you know, if companies were attempting to merge in today’s age in order to achieve that HHI, I don’t believe the FTC would ever allow such a merger because the HHI of the New York City online delivery marketplace indicates very, very concentrated marketplace with substantial monopoly power to particularly the largest player which is Grubhub.

CHAIRPERSON GJONAJ: The number of 80 percent of the market is controlled-- or Grubhub is 80 percent of all online orders through its platform. Where did you get that number from?

GREGORY FRANK: Sure. I found that from an entity known as Restaurant Business Online which provided that estimate about a year ago. I don’t have deep knowledge as to the sources that they gained from that-- where they gained that information.

CHAIRPERSON GJONAJ: And the HHI measures or the merger which is at the 500 threshold would be a clear indication of any concerns, if there was additional mergers by these platform providers?

GREGORY FRANK: Yes, exactly. That in an existing concentrated marketplace there is a lot of concern with additional mergers or anything that could further concentrate the marketplace because built into this HHI system is a presumption that it is automatically for some degree harmful to marketplaces to have an HHI above really 3,000 at this point because of the potential unearned economic rent and other negative factors. Ultimately, pricing power is correlated to market power more so than it's correlated to fairness or to quality of service. It correlates your ability to negotiate to get as high of a fee as you can get. And so with very highly concentrated market power comes the ability to gain really outsized fees that often times are not correlated to the service that is being provided.

CHAIRPERSON GJONAJ: I'm just-- Gregory Frank, correct? Gregory, I want to thank you for your testimony. You've given me more to work on now, to look into. Have you submitted your testimony in writing?

GREGORY FRANK: I will.

CHAIRPERSON GJONAJ: Please. Thank you.

GREGORY FRANK: Thank you.

JAMES CAKMAK: Reggie said two to four minutes, so two. Good afternoon. Thank you, Mr.

Chairman-- I was going to say the members of the committee-- for the invitation and opportunity to speak at this hearing. My name is James Cakmak. I'm a technology analyst, writer, as well as a small business owner. I served as a technology analyst for over 12 years working at multiple boutique investment brokerage firms in New York City analyzing and giving investment recommendations on consumer internet companies including ranging from Amazon and Google to more niche entities such as Open Table and Zillow. In this capacity I was also closely involved in analyzing major players in online food delivery, both officially for the companies publicly traded like Grubhub as well as unofficially or private entities at the time including Uber, Postmates, Door Dash, among others. My opinions were distributed to investment firms as well as distributed to media outlets both on television and print. I continue to write for a website called Techonomy Media, which basically helps its audience bridge the gap between what's happening in technology and the implications to society. Last year I left my career in the securities industry to start my own company, to cofound a company called Snails [sic]. We're an online service in smartphone applications for consumers to book at nail salons and other beauty salons across New York. We have 300 salons on the platform at the current time. There's a lot of scrutiny into the industry and we are-- the goal is to help raise the bar and reward the good actors and help consumers avoid the bad. Our business and services are not dissimilar to the companies that we're here to talk about today. So, I do-- I am acutely aware of kind of the concerns that come on-- that are communicated to us by the small business owners regarding models such as this. Turning to the objective of the hearing, the way I think about technology it's to save people time. In this instance we're talking about two constituencies. You want to save time for the consumer that can order food from home, order from the phone, and also save time by not running the risk of miscommunication of what the order should actually be. Obviously, the restaurant saves time by getting access to consumers that they otherwise might not have been able to find on their own. For this marketplace model, the middle man to work both constituencies need to benefit. Now what I will tell you is an investment analyst that there is, especially for publicly traded companies, investors do demand to see consistent improvements in the commission rates and the take rates that are extracted from the entities served, in this case restaurants, in order to continue to justify the investment. So there is pressure in that regard. These delivery platforms have done a phenomenal job to get to where we are today. I benefit from it myself. I know the question today, as the consumer benefits continue to build and accrue, are the restaurant benefits rising at the same rate at which they have been, and I'd be happy to delve kind of further into that with some stats I can share. If you have any questions-- or I can--

CHAIRPERSON GJONAJ: [interposing] Have you given us further elaboration in a written testimony?

JAMES CAKMAK: I haven't submitted the written testimony, but-- the way-- the one thing I'd say is the way to think about it is, you know, we talk about monopolies and antitrust, but in reality delivery is still about three percent of all food orders across the nation. Now that number is probably 5X that for New York. New York is a special place. Now, when you think historically, the change of consumer patterns, 50 years ago 85 percent of all food consumption was in grocery. Today,-- and 15 percent was restaurant. Today, that number is 50/50. It's further exacerbated by the adoption of the smartphone, and we have become a culture of convenience and with this constant demand for immediacy for virtually every aspect in our lives. Now, these companies can make money from three parts, right? They can make money from the consumer, charge the consumer. They can make money from the restaurant, charge the restaurant in facilitating the transaction. They can also potentially extract commission rates from the tipping, which we've seen-- I'm not sure for the companies today, but I have seen many reports of other companies. Now, the challenge is there's so much competition out there, which -- and it's virtually zero switching cost for us as the consumer to choose to order from one platform versus the other. Think about Uber versus Lyft, like when you're ordering a car. You don't really care which platform you order the car from. You only care about the price and the proximity of the car that you're ordering from, which means that in order to differentiate themselves, these food delivery companies, it’s very difficult to get your profit, get your revenue from the consumer, which means that you’re going to have to rely the bulk of your revenue to extract that from the restaurant operator themselves. And that’s why the cost burdens, you know, or make it difficult for these restaurant operators, because when you think about it the restaurant operator has-- it’s very difficult to predict on what the profit mix of your orders are going to be over time because you don’t know what percentage of your orders are actually going to come on from these delivery services. Now, more predictable patterns can be, you know, if I have-- [inaudible] model where I know exactly what I can-- what these orders will ultimately cost me. Now, I wouldn’t lump all of these companies into the same bucket because business practices to differ, but you know, it’s something to be cognizant of, and the question I pose is to these companies is: Who really is your customer? Is the customer the person ordering the food, or is the customer the restaurant that’s actually preparing the food, and it’s that

DNA, that philosophical kind of approach to gauge where the sentiments really lie.

CHAIRPERSON GJONAJ: I guess the answer to that question is who's willing to pay more?

GREGORY FRANK: I mean, ultimately. It's like I said, there's so many options. I mean, you can order from any of these companies which means that if it makes it easy to order from any entity, it's got-- the burden has to fall on the restaurant.

CHAIRPERSON GJONAJ: I want to thank you for your time. Thank you very much. I guess this concludes our hearing. Thank you.

[gavel]

<u>C E R T I F I C A T E</u>

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.

Date <u>August 7, 2019</u>