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12

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16

17 AIRBNB, INC.,

18 Plaintiff,

19 vs.

20 CITY AND COUNTY OF SAN  
FRANCISCO,

21 Defendant.  
22

Case No. 16-cv-03615

**DECLARATION OF DAVID OWEN**

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1 **DECLARATION OF DAVID OWEN**

2 I, David Owen, declare as follows:

3 1. I am Head of Policy Strategy for Airbnb, Inc. (“Airbnb”). I am over the age of 18  
4 years and maintain an office at 888 Brannan Street, Suite 400, San Francisco, CA 94103. I have  
5 personal knowledge of the matters set forth in this declaration, and if called as a witness, I could  
6 and would testify under oath as follows.

7 2. Airbnb, Inc. was founded in 2008. Airbnb provides an Internet platform and online  
8 marketplace through which third parties listing their accommodations (“hosts”) and third parties  
9 desiring to book accommodations (“guests”) can locate each other, communicate with each other,  
10 and enter into direct agreements to reserve and book travel accommodations on a short and long-  
11 term basis.

12 3. Airbnb’s Internet website, located at [www.airbnb.com](http://www.airbnb.com), provides a means by which  
13 interested parties can choose to list their accommodations, a means by which hosts and guests can  
14 locate and connect with each other, a means for them to communicate and message one another  
15 directly on the platform and determine the material terms for their bookings, and also provides,  
16 through third-party payment processors, a secure payment processing service to permit hosts to  
17 receive payments electronically. In consideration for use of the platform services, Airbnb receives  
18 a service fee from the both the guest and from the host, which are determined as a percentage of  
19 the accommodation fee set solely by the host.

20 4. Airbnb has no possessory interest in any of the property or accommodations that  
21 third-party hosts may list on the Internet platform. Airbnb therefore is not a proprietor, owner or  
22 operator of any accommodation offered by hosts on the Internet platform. Airbnb does not own,  
23 manage, operate, or lease hosts’ accommodations, and it cannot and does not grant possessory  
24 interests or licenses in accommodations offered by hosts.

25 5. A true and correct copy of Airbnb’s Terms of Service, available at  
26 <https://www.airbnb.com/terms>, is attached hereto as Exhibit 1. All users of Airbnb must accept  
27 and consent to the Terms of Service in order to post listings on the site or to book reservations. As  
28

1 the Terms of Service state, Airbnb “is not an owner or operator of properties” and “does not own,  
2 sell, resell, furnish, provide, rent, re-rent, manage, and/or control properties.”

3         6.         Hosts, and not Airbnb, decide whether to list their properties, when to make them  
4 available on their calendars, and only hosts set their prices and material terms and decide with  
5 whom and when to transact. Airbnb has no control over the physical properties, does not have the  
6 right to book or resell or remarket any accommodations for any host, and does not set or otherwise  
7 determine the rental price of the accommodations or other terms like security deposits or cleaning  
8 fees.

9         7.         Hosts create, and are responsible for, the content that is contained in each  
10 individual rental advertisement. Hosts provide the descriptions of their accommodations, set the  
11 length of stay of any particular rental, determine the prices and whether the entire property or a  
12 portion thereof is available for booking, and decide when and with whom they want to enter into  
13 agreements. Airbnb does not control the content that is created by hosts and is not responsible for  
14 it. Airbnb makes available to hosts and guests a variety of ancillary services, such as a payment  
15 processing platform and liability protection programs, but it is hosts themselves, not Airbnb, who  
16 exercise control over the content and settings of each rental listing. As the Terms of Service  
17 (Exhibit 1) state, hosts “alone are responsible for any and all Listings and Member Content [they]  
18 post.”

19         8.         Airbnb advises hosts and guests to be aware of applicable local laws in listing  
20 properties and making reservations on the site. For example, the Terms of Service (Exhibit 1)  
21 reference parties’ “OBLIGATIONS TO COMPLY WITH APPLICABLE LAWS AND  
22 REGULATIONS,” and state that:

23                   IN PARTICULAR, HOSTS SHOULD UNDERSTAND HOW THE LAWS  
24                   WORK IN THEIR RESPECTIVE CITIES. SOME CITIES HAVE LAWS  
25                   THAT RESTRICT THEIR ABILITY TO HOST PAYING GUESTS FOR  
26                   SHORT PERIODS.... IN MANY CITIES, HOSTS MUST REGISTER, GET  
                    A PERMIT, OR OBTAIN A LICENSE BEFORE LISTING A PROPERTY  
                    OR ACCEPTING GUESTS. CERTAIN TYPES OF SHORT-TERM  
                    BOOKINGS MAY BE PROHIBITED ALTOGETHER.

27         9.         As a customer-education measure and in order to facilitate better informed  
28 decision-making by hosts and guests, Airbnb also provides information about the rules and

1 regulations of particular cities in an effort to help ensure that hosts are fully aware of the relevant  
2 laws where they list rentals.

3 10. Airbnb maintains a “Responsible Hosting” section on the Airbnb website. Airbnb  
4 provides a variety of general information for hosts about applicable laws and regulations that they  
5 should follow, including safety guidelines and business regulations. A true and correct copy of the  
6 “Responsible Hosting” website, available at <https://www.airbnb.com/help/responsible-hosting>, is  
7 attached hereto as Exhibit 2.

8 11. Airbnb has a specific page from its “Responsible Hosting” website for San  
9 Francisco that provides information about the City’s laws and regulations. The page states that  
10 with respect to “Short-Term Rental Registration,” that “San Francisco requires hosts to register by  
11 scheduling an appointment with the Planning Department and paying a fee of \$50.” The page  
12 further informs hosts that “You may include your short-term rental permit number on your  
13 listing” in the “‘Other Things to Note’ field” by “typ[ing] in your permit number following the  
14 acceptable permit format for San Francisco. The format is: STR-xxxxxxx. An example would  
15 be: STR-1234567.” A true and correct copy of the Airbnb webpage entitled “San Francisco,  
16 CA,” available at <https://www.airbnb.com/help/article/871/san-francisco--ca>, is attached hereto as  
17 Exhibit 3.

18 12. As part of its Community Compact, Airbnb is committed to helping provide  
19 solutions tailored to the needs of cities like San Francisco with historic housing challenges. For  
20 example, Airbnb discretionarily removes listings from its website that Airbnb believes may be  
21 offered by hosts with multiple entire home listings or are offered by unwelcome commercial  
22 operators. If Airbnb is alerted to shared spaces or private rooms that appear to be operated by  
23 unwelcome commercial operators or that do not reflect the community vision, it generally will  
24 remove such listings. Within the last year, Airbnb has removed numerous listings from its  
25 platform in San Francisco.

26 13. A true and correct copy of the Airbnb webpage describing its Community Compact  
27 is attached hereto as Exhibit 4, available at [https://www.airbnbaction.com/wp-](https://www.airbnbaction.com/wp-content/uploads/2015/11/Airbnb-Community-Compact.pdf)  
28 [content/uploads/2015/11/Airbnb-Community-Compact.pdf](https://www.airbnbaction.com/wp-content/uploads/2015/11/Airbnb-Community-Compact.pdf). A true and correct copy of the Airbnb

1 webpage describing its efforts to remove San Francisco listings from its website that Airbnb  
2 believes are offered by hosts with multiple entire home listings or are offered by unwelcome  
3 commercial operators, available at [https://www.airbnbaction.com/airbnb-in-san-francisco-by-the-](https://www.airbnbaction.com/airbnb-in-san-francisco-by-the-numbers/)  
4 numbers/, is attached hereto as Exhibit 5.

5       14. I understand that the amendments to Chapter 41A of the San Francisco  
6 Administrative Code passed by the Board of Supervisors on June 14, 2016 (“the Ordinance”)  
7 require, among other things, that websites such as Airbnb “verify” that each listing on the website  
8 has a valid registration number issued by the City and is listed on the City’s registry of short-term  
9 rentals, prior to publishing the listing. According to the Ordinance, platforms must comply with  
10 this requirement by providing the verified registration number on each listing themselves, or by  
11 sending the verified registration number, residential street unit address, and host name to the City  
12 by email prior to posting the listing on the platform. The publishing of a listing where the valid  
13 registration number has not been verified subjects the website to administrative and civil penalties  
14 of up to \$1,000 per day, and criminal penalties of up to six months in prison.

15       15. It is my understanding that the Ordinance applies to all active and new listings on  
16 websites like Airbnb. For each of these listings, Airbnb would need to verify the existence of a  
17 valid registration number. Presently, there are approximately 9,600 listings on Airbnb in San  
18 Francisco, and in the normal course of business, hosts add new listings, change the status of  
19 listings and deactivate listings continually. Accordingly, the burden to Airbnb of complying with  
20 the Ordinance’s new requirements is not solely measured by the static number of listings at a  
21 single point in time.

22       16. The City has not proposed any procedures or plan for how compliance with this  
23 verification process could be achieved. Presumably, it would require a manual process of  
24 obtaining registration number information from hosts on the Airbnb platform, or if they do not  
25 provide it, some other source, and then verifying that information with the City prior to publishing  
26 the listing. Upon verifying a registration number for each of these listings, under the provisions in  
27 the Ordinance Airbnb would then either need to itself publish the registration number to its  
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1 website or send to the City for each listing the registration number, residential street unit address,  
2 and host name, prior to publishing the listing.

3 17. Even if Airbnb established a dedicated team of employees devoted fulltime to  
4 complying with these requirements, the City's failure to establish a viable verification process  
5 leaves substantial uncertainty surrounding how such a team would operate, and whether  
6 verification for all listings could be accomplished. Airbnb would not only have to expend  
7 substantial resources on the verification process, it would have to fundamentally redesign how the  
8 Airbnb website operates for hosts creating and managing their listings. Privacy issues also would  
9 be implicated in the publishing and/or sharing of information with the City. Establishing, testing  
10 and implementing such processes to check thousands of listings would likely take a significant  
11 period of time and resources.

12 18. Complying with the Ordinance would be highly disruptive to the operation of the  
13 Airbnb website. Given the manual processes required, to avoid the significant criminal and civil  
14 penalties discussed above, Airbnb very likely would need to remove thousands of San Francisco  
15 listings from its website upon the effective date of the Ordinance (which I understand to be July  
16 24, 2016). This would include the removal of listings that may otherwise be in compliance with  
17 San Francisco law as Airbnb will not have the ability to confirm the validity of the listing's  
18 registration number prior to the effective date of the law. This process itself could not be swiftly  
19 accomplished.

20 19. Moreover, the City's current burdensome and outdated registration process means  
21 that listings could be removed for extensive periods of time due to delay in the registration  
22 process, or even removed unnecessarily or wrongly where the listing is registered but that is not  
23 yet reflected in the City's systems. Indeed, at a recent hearing on the Ordinance, Supervisor Scott  
24 Wiener described the current registration process as "cumbersome," particularly for hosts that are  
25 only engaging in short-term rentals for a few days or weeks a year. Late amendments were added  
26 to the Ordinance requiring the City to work on improvements to the registration process.  
27 Permitting the City to enforce the Ordinance against platforms now while the City is changing the  
28 registration process not only increases the level of confusion but also the burden of enforcement.

