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12  
 13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN FRANCISCO DIVISION

16 AIRBNB, INC. and HOMEAWAY.COM,  
 INC.,

17 Plaintiffs,

18 vs.

19 CITY AND COUNTY OF SAN  
 20 FRANCISCO,

21 Defendant.

Case No. 3:16-cv-03615-JD

**NOTICE OF MOTION AND MOTION  
 FOR LEAVE TO FILE BRIEF OF THE  
 INTERNET ASSOCIATION AND  
 CALINNOVATES AS AMICI CURIAE IN  
 SUPPORT OF PLAINTIFFS' JOINT  
 MOTION FOR PRELIMINARY  
 INJUNCTION; MEMORANDUM OF  
 POINTS AND AUTHORITIES**

Judge: Hon. James Donato  
 Crtm: 11, 19th Floor  
 Time: Oct. 6, 2016 at 10:00 a.m.

FENWICK & WEST LLP  
 ATTORNEYS AT LAW  
 SAN FRANCISCO

**NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF****TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that the Internet Association and CALinnovates respectfully move this Court for leave to file a brief as *amici curiae* in support of Airbnb, Inc. and HomeAway.com, Inc.'s joint motion for preliminary injunction.

The Internet Association and CALinnovates base this request on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, and the proposed *Amici Curiae* Brief, which appears as Exhibit A to this submission.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to the Court's inherent power and Civil Local Rule 7-11, the Internet Association and CALinnovates (collectively, the "Proposed Amici") respectfully ask this Court for leave to file the accompanying brief as *amici curiae* in support of the Plaintiffs' joint motion for preliminary injunction. *See* Dkt. No. 50. The proposed brief satisfies the substantive and formal guidelines of the Court's July 11, 2016 Minute Order (Dkt. No. 22), and the Proposed Amici offer up a new and different perspective on the issues raised in the Plaintiffs' injunction motion.

In their original stipulation for the briefing schedule on the motion for preliminary injunction, the parties stated that: "the Parties do not oppose the filing of *amicus curiae* briefs in support of any party." Dkt. No. 20.

**I. STANDARD FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

Courts have inherent authority to permit a non-party to participate as *amicus curiae* in a case and "broad discretion" in deciding whether to permit participation. *See, e.g., Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996). There are "no strict prerequisites" for *amicus* participation. *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)). "Generally, a court may grant leave to appear as an *amicus* if the information offered is timely and useful." *Ellsworth Assocs.*, 917 F. Supp. at 846 (internal citations and quotations omitted); *accord In re Roxford Foods Litig.*, 790 F. Supp. at 997. And "courts frequently

1 welcome amicus briefs from non-parties concerning legal issues that have potential  
 2 ramifications beyond the parties directly involved or if the amicus has unique information or  
 3 perspective . . . .” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061,  
 4 1067 (N.D. Cal. 2005) (internal citation and quotation omitted).

5 Given the potentially wide-reaching implications of the Court’s decision in this case,  
 6 allowing the Internet Association and CALinnovates to participate as *amici curiae* is  
 7 appropriate. The brief that the Proposed Amici submit is timely. The Proposed Amici submit  
 8 the proposed brief in accordance with the stipulated briefing schedule between the parties,  
 9 which sets September 9, 2016 as the deadline for “*Amicus Curiae* Briefs in Support of  
 10 Plaintiffs’ Motion.” Dkt No. 45 [stipulated briefing schedule]; *see also* Dkt No. 46 [order  
 11 granting stipulated briefing schedule]. Furthermore, the proposed brief satisfies the  
 12 requirements for *amicus* briefs that the Court set forth in its July 11, 2016 minute order. *See*  
 13 Dkt No. 22. The proposed brief does not exceed twelve pages and, as explained below, it  
 14 offers a new and different perspective on the issues raised in the Plaintiffs’ injunction motion.  
 15 Moreover, the Court will hear the Plaintiffs’ motion on October 6, 2016, and submission of  
 16 this brief does not affect the hearing date or any other aspect of the briefing schedule set by  
 17 the Court.

18 **II. INTERESTS OF *AMICI CURIAE* AND HOW THEIR EXPERTISE WILL**  
 19 **BENEFIT THE COURT**

20 The Internet Association and CALinnovates are membership organizations  
 21 representing technology and entrepreneur communities that share an interest in advocating the  
 22 proper application of the Communications Decency Act (“CDA”), 47 U.S.C. § 230, to  
 23 Internet intermediaries, hosting platforms and other online service providers.

24 *The Internet Association* represents roughly forty leading technology companies,  
 25 including Amazon, eBay, Facebook, and Google, as well as Airbnb and Expedia. Its  
 26 membership includes a broad range of Internet intermediaries, from travel sites and ride-  
 27 hailing platforms to social networking services and search engines. The Internet Association  
 28

1 advances public policy solutions that strengthen and protect Internet freedoms, foster  
2 innovation and economic growth, and empower small businesses and the public.

3 **CALinnovates** is a coalition of technology leaders, start-ups, and entrepreneurs that  
4 champions the rise of innovation in the United States and its unmistakably beneficial impact  
5 for consumers of all socio-economic strata, states and localities' tax bases, and the economy.  
6 CALinnovates advocates the development of a modern, Internet-enabled economy, and  
7 supports policies that increase investment, technology infrastructure, competition and  
8 consumer choice in the marketplace.

9 No party has provided any compensation for this brief in or authored any part of the  
10 brief. The sole interest of the Amici is advocating a principled interpretation of Section 230.  
11 Congress enacted Section 230 of the CDA to promote the growth and development of the  
12 Internet, and both the Internet Association and CALinnovates have a substantial interest in  
13 this proceeding and its potential impact on the application of the Section 230 immunities to  
14 platform-based marketplaces more broadly.

15 The proposed brief provides information that is important to the Court's consideration  
16 of how Section 230, and its underlying policies and purposes, applies to Plaintiffs' motion,  
17 and the effects that this Court's decision could have for technology companies, especially  
18 emerging enterprises.

### 19 **III. CONCLUSION**

20 The questions at issue in this action are vitally important to both the public and the  
21 Proposed Amici. Proposed Amici therefore respectfully request that the Court grant them  
22 leave to appear and file the accompanying brief.

23 Dated: September 8, 2016

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