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UNITED STATES DISTRICT COURT

14

NORTHERN DISTRICT OF CALIFORNIA

15

SAN FRANCISCO DIVISION

16

17 AIRBNB, INC.,  
 18 Plaintiff,  
 19 vs.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

20 CITY AND COUNTY OF SAN  
 21 FRANCISCO,

22 Defendant.  
 23  
 24  
 25  
 26  
 27  
 28

1 For its complaint, Plaintiff Airbnb, Inc. (“Airbnb”) alleges as follows:

2 **INTRODUCTION**

3 1. This is an action under 42 U.S.C. § 1983, 18 U.S.C. § 2707, the Court’s  
4 equitable powers, and the Declaratory Judgment Act, 28 U.S.C. § 2201, to enjoin and declare  
5 unlawful the enforcement against Airbnb of newly amended Sections 41A.5(e), 41A.5(g)(4)(C),  
6 and 41A.7(b)(1)-(3) of the San Francisco Administrative Code, enacted by the City on June 24,  
7 2016 and effective on July 24, 2016 (the “Ordinance”).<sup>1</sup>

8 2. The Ordinance directly conflicts with, and is preempted by, the  
9 Communications Decency Act of 1996, 47 U.S.C. § 230 (the “CDA”). As the Ordinance’s own  
10 sponsors have described it, the Ordinance holds “*hosting platforms accountable* for the hundreds  
11 of units (rented by) *unscrupulous individuals*”<sup>2</sup> posting listings on their websites, and “*Airbnb*  
12 *Accountable for Listing Illegal Short Term Rentals*.”<sup>3</sup> As such, the Ordinance unquestionably  
13 treats online platforms such as Airbnb as the publisher or speaker of third-party content and is  
14 completely preempted by the CDA. In addition, the law violates the Stored Communications Act,  
15 18 U.S.C. §§ 2701 et seq. (the “SCA”), by requiring disclosure to the City of customer  
16 information without any legal process, and the First Amendment as an impermissible content-  
17 based regulation. The enforcement of the Ordinance against Airbnb should be immediately and  
18 permanently enjoined.<sup>4</sup>

19 \_\_\_\_\_  
20 <sup>1</sup> The Ordinance was passed by the Board of Supervisors on June 14, 2016. The Mayor did not  
21 sign the Ordinance, rendering it enacted on Friday, June 24, 10 days after it was delivered to the  
22 Mayor’s office. See Ordinance, § 4. Pursuant to its terms, the Ordinance becomes effective 30  
23 days after it is enacted, on July 24. *Id.*

24 <sup>2</sup> Caleb Pershan, *Campos Proposes Law To Fine Airbnb Directly For Unregistered SF Listings*,  
25 SFist Blog, Apr. 25, 2016, [http://sfist.com/2016/04/25/campos\\_proposes\\_legislation\\_to\\_hold.php](http://sfist.com/2016/04/25/campos_proposes_legislation_to_hold.php)  
26 (quote of Supervisor Aaron Peskin) (emphasis added) (last visited June 20, 2016); see also Aaron  
27 Peskin, Facebook Post, Apr. 25, 2016,  
28 <https://www.facebook.com/aaron.peskin/posts/1607597332893162> (last visited June 21, 2016).

<sup>3</sup> SF Bay Times, Facebook Post Sharing Press Release from Supervisor David Campos, Apr. 25,  
2016, <https://www.facebook.com/SanFranciscoBayTimes/posts/1188030017882628> (emphasis  
added) (last visited June 20, 2016).

<sup>4</sup> This action is both an as-applied and a facial challenge against the Ordinance. It is an as-applied  
challenge in that it seeks only to prohibit the City from enforcing certain provisions of the  
Ordinance against Airbnb; and it is a facial challenge in that certain provisions, on their face,

1           3.       Since February 2015, San Francisco law has permitted residents to rent out  
2 their residential units on a short-term basis if they register their units with the City, which assigns  
3 the unit a registration number and lists it on a City-run registry. S.F. Admin. Code  
4 § 41A.5(g)(1)(E), (g)(3)(A). Residents also are required to include their registration numbers on  
5 any “listing” on a “Hosting Platform”—defined as an entity that provides “a means through  
6 which” residents “may offer” and “advertise” their units for rent “through a website,” *id.*  
7 § 41A.4—and residents face liability for failing to do so. *Id.* §§ 41A.5(g)(1)(F), (g)(2)(A).

8           4.       The Ordinance fundamentally and impermissibly alters San Francisco’s  
9 regulatory scheme for short-term rentals by holding Hosting Platforms criminally and civilly liable  
10 for their users’ posting of listings without valid registration numbers. Specifically, the Ordinance  
11 (a) requires Hosting Platforms to verify that each active and future listing on their websites has a  
12 valid registration number prior to publishing the listing, and (b) subjects them to criminal and civil  
13 penalties for their publishing of listings without verifying the registration number, including up to  
14 six months in jail and fines of up to \$1,000 per day for each unverified listing. *See id.*  
15 §§ 41A.5(e), (g)(4)(C)-(D); 41A.7(b)(1)-(3).

16           5.       The enforcement of the Ordinance against Airbnb is preempted by the  
17 CDA, which aims “to promote the continued development of the Internet” and “to preserve” its  
18 “vibrant and competitive free market.” 47 U.S.C. § 230 (b)(1)-(2). In furtherance of these goals,  
19 the CDA expressly preempts state and local laws that treat a website “as the publisher or speaker  
20 of any information provided by another information content provider.” *Id.* (c)(1), (e)(3). By  
21 requiring Airbnb to verify that each third-party rental listing has a valid registration number prior  
22 to posting the listing on their websites, and by imposing criminal and civil penalties for websites’  
23 publishing of unverified third-party listings, the Ordinance violates the CDA, which preempts the  
24 enforcement of these provisions against Airbnb.

25           6.       The disclosure provisions of the Ordinance separately are barred by the  
26 SCA. In an attempt to sidestep the CDA, the Ordinance requires Hosting Platforms to disclose to  
27 \_\_\_\_\_  
28 violate the law and cannot be enforced against any Hosting Platform in any set of factual  
circumstances.





1           16.     Hosts, and not Airbnb, decide whether to list their properties, and only hosts  
2 set their prices and terms of booking and decide with whom and when to transact. As Airbnb’s  
3 Terms of Service state, hosts “alone are responsible for any and all Listings and Member Content  
4 [they] post.”<sup>6</sup> Hosts provide the descriptions of their rentals, set their lengths of stay, determine  
5 the prices and whether the entire property or a portion thereof is available for rent, and decide  
6 when and with whom they want to enter into agreements.

7           17.     Under the Ordinance, hosts are also responsible for registering their short-  
8 term rentals, obtaining a registration number from the City, and including their City-issued  
9 registration numbers “on any Hosting Platform listing.” S.F. Admin. Code §§ 41A.5(g)(1)(F),  
10 (g)(2)(A).

11           18.     Airbnb advises its hosts and guests to be aware of and comply with local  
12 law in listing and renting units listed on Airbnb. At the outset, the Terms of Service clearly advise  
13 users that they must comply with law. After referencing parties’ “OBLIGATIONS TO COMPLY  
14 WITH APPLICABLE LAWS AND REGULATIONS,” the Terms state:

15                   IN PARTICULAR, HOSTS SHOULD UNDERSTAND HOW THE  
16                   LAWS WORK IN THEIR RESPECTIVE CITIES. SOME CITIES  
17                   HAVE LAWS THAT RESTRICT THEIR ABILITY TO HOST  
18                   PAYING GUESTS FOR SHORT PERIODS. THESE LAWS ARE  
19                   OFTEN A PART OF A CITY’S ZONING OR ADMINISTRATIVE  
20                   CODES. IN MANY CITIES, HOSTS MUST REGISTER, GET A  
21                   PERMIT, OR OBTAIN A LICENSE BEFORE LISTING A  
22                   PROPERTY OR ACCEPTING GUESTS. CERTAIN TYPES OF  
23                   SHORT-TERM BOOKINGS MAY BE PROHIBITED  
24                   ALTOGETHER.<sup>7</sup>

25           19.     Airbnb maintains a “Responsible Hosting” section on the Airbnb website  
26 specific to San Francisco that provides a variety of general information for hosts about applicable  
27 laws and regulations that they should follow, including safety guidelines and business  
28 regulations.<sup>8</sup>

26 <sup>6</sup> Airbnb Terms of Service, <https://www.airbnb.com/terms> (last visited June 20, 2016).

27 <sup>7</sup> *Id.*

28 <sup>8</sup> Airbnb Responsible Hosting, San Francisco, CA, <https://www.airbnb.com/help/article/871/san-francisco--ca> (last visited June 20, 2016).



1 short-term rentals in San Francisco. As discussed further below, a main feature of the Ordinance  
2 is that, unlike prior San Francisco law, it requires Hosting Platforms to verify that rentals have a  
3 valid registration number issued by the City. The Ordinance seeks to hold Hosting Platforms  
4 liable, on threat of both criminal and civil penalties, for publishing listings without complying  
5 with the verification procedure.

6           24. In October 2014, the Board of Supervisors enacted a set of amendments to  
7 Chapter 41A that made short-term residential rentals generally lawful in San Francisco, subject to  
8 certain limitations and requirements. “Permanent Residents” who have occupied their units for at  
9 least 60 days may offer their homes for “Short-Term Rental.” S.F. Admin. Code §§ 41A.4;  
10 41A.5(g). Before offering such a rental, Permanent Residents must apply for and register the  
11 rental unit with the San Francisco Planning Department, which assigns the unit a registration  
12 number and lists it on a City-run registry. *Id.* §§ 41A.5(g)(1)(E); 41A.5(g)(3)(A). Residents are  
13 also required to “include[] the Department-issued registration number on any Hosting Platform  
14 listing or other listing offering the Residential Unit for use as a Short-Term Residential Rental.”  
15 *Id.* § 41A.5(g)(1)(F). Hosting Platforms like Airbnb have no property interests in the units listed  
16 on their websites and no ability to obtain or create registration numbers.

17           25. Residents are prohibited from renting residential units on a short-term basis  
18 for more than 90 days per year if the rental is “unhosted,” i.e., if the host is not on site during the  
19 rental. There is no limit on the number of days per year the unit may be rented for Short-Term  
20 Rentals if the unit is “hosted,” i.e., if the host remains in the unit during the rental (for instance, if  
21 the rental is for a room in a unit also occupied by the host). *Id.* § 41A.5(g)(1)(A).

22           26. As part of the October 2014 amendments, the Board of Supervisors also  
23 imposed certain duties and obligations on Hosting Platforms, which must notify users of the City’s  
24 regulations regarding short-term rentals and must collect and remit Transient Occupancy Taxes  
25 required under the Business and Tax Regulations Code. *Id.* § 41A.5(g)(4)(A)-(B). The October  
26 2014 amendments did not seek to impose liability on Hosting Platforms based on the content of  
27 the listings they publish, nor did it require them to verify any content associated with third-party  
28 listings. The October 2014 amendments went into effect in February 2015.

1           27.     The City created the Office of Short-Term Rentals (“OSTR”) in July 2015  
2 to enforce the foregoing provisions. A report prepared by the City’s Budget and Legislative  
3 Analyst’s Office in April 2016 stated that the OSTR “continues to levy fines against hosts found  
4 to be non-compliant” with the law, and while “there still remains a sizeable gap between the  
5 number of registered hosts and the number of hosts advertising short-term rentals on online  
6 platforms,” the “OSTR may be able to further close that gap in coming months as OSTR became  
7 fully staffed in December 2015.”<sup>13</sup> The report further noted that OSTR saw “a wave of compliant  
8 behavior towards the end of 2015” and has developed “new strategies to pro-actively identify non-  
9 compliant hosts.”<sup>14</sup>

10           28.     Unlike the October 2014 amendments, the Ordinance imposes criminal and  
11 civil liability on Hosting Platforms that publish listings without complying with the verification  
12 procedures set forth by the Ordinance. The Ordinance provides that “[p]rior to providing  
13 reservation and payment services for a listing of a Residential Unit within the City to be rented for  
14 Tourist or Transient Use, a Hosting Platform shall verify with the Office of Short-Term  
15 Residential Rental Administration and Enforcement that the Residential Unit is listed on the  
16 Registry and has a valid registration number.” *Id.* § 41A.5(g)(4)(C).

17           29.     The Ordinance sets forth two exclusive ways in which a Hosting Platform  
18 must comply with this requirement. Hosting Platforms must: “(i) Provid[e] the verified  
19 registration number on each listing in the area of the listing dedicated to information verified or  
20 compiled by the Hosting Platform about the host[;]or (ii) Send[] the verified registration number,  
21 Residential Unit street address, ... and host name to the Office of Short-Term Residential Rental  
22 Administration and Enforcement by electronic mail prior to posting the listing on the platform.”  
23 *Id.*

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25 \_\_\_\_\_  
26 <sup>13</sup> City and County of San Francisco Board of Supervisors, Budget and Legislative Analyst’s  
27 Office, “Short Term Rentals 2016 Update,” (Apr. 7, 2016),  
<http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=55575> at 21 (last visited June  
20, 2016).

28 <sup>14</sup> *Id.* at 3, 18.

1           30.     The Ordinance imposes criminal and civil liability on Hosting Platforms  
2 that do not comply with its terms. It provides that “any Hosting Platform that provides a listing  
3 for a Residential Unit for Tourist or Transient Use in violation of” Chapter 41A is subject to  
4 misdemeanor criminal liability “punishable by a fine of not more than \$1,000 or by imprisonment  
5 in the County Jail for a period of not more than six months,” or both. *Id.* § 41A.5(e). Hosting  
6 Platforms that fail to comply are also subject to civil penalties of up to “\$1,000 per day for the  
7 period of the unlawful activity.” *Id.* § 41A.5(d)(3). Each individual listing not in compliance with  
8 the Ordinance is considered a separate offense. *See id.; id.* § 41A.7(b)(3).

9           31.     The Ordinance provides that Hosting Platforms that fail to comply with  
10 their responsibilities under Chapter 41A shall also be subject to “administrative penalties,”  
11 including but not limited to payment of civil penalties of up to \$1,000 per day for the period of the  
12 failure to comply. *Id.* § 41A.6(d)(1)-(2).

13           32.     All of these penalties apply to any Hosting Platform that publishes a listing  
14 without adhering to the verification procedure described in the statute, *even if* the listing at issue  
15 advertises a rental that is fully in compliance with San Francisco law.

16           33.     In addition, the Ordinance sets forth a monitoring regime. It requires the  
17 OSTR to “actively monitor Hosting Platform listings to ensure that Hosting Platforms are only  
18 listing Residential Units that are listed on the Registry.” *Id.* § 41A.7(b). The agency must  
19 undertake this monitoring effort “on at least a monthly basis,” *id.*, and each time it does so, the  
20 agency must “immediately provide notice to Hosting Platforms by electronic mail of all listings  
21 that do not have valid registration numbers or are otherwise not in compliance with this Chapter  
22 41A.” *Id.* § 41A.7(b)(1). Upon receiving such notice, Hosting Platforms must, “within one City  
23 business day,” “respond” to the notice “by confirming, for each listing identified in the notice, that  
24 the listing has a valid registration number and providing that number and any other requested  
25 information,” including “unit address and host information” to the agency. *Id.* § 41A.7(b)(2)-(3).  
26 “For each listing that a Hosting Platform fails to provide the requested information” to the agency  
27 within one day, “the Hosting Platform shall be subject to the administrative penalties and  
28 enforcement provisions” of Chapter 41A. *Id.* § 41A.7(b)(3).

1           34.     The members of the Board of Supervisors who sponsored the Ordinance  
2 have explained that the Ordinance seeks to hold the “hosting platforms accountable for the  
3 hundreds of units (rented by) unscrupulous individuals.”<sup>15</sup> A press release from the office of  
4 Supervisor David Campos similarly described the law as “Holding Airbnb Accountable for Listing  
5 Illegal Short Term Rentals.”<sup>16</sup> The sponsors contend that the bill targets “unscrupulous  
6 speculators” but not “mom and pop” hosts.<sup>17</sup>

7           35.     During committee meetings regarding the Ordinance, City officials  
8 acknowledged potential “issues under the Communications Decency Act” that the Ordinance  
9 might create, but claimed that the Ordinance was drafted “in a way that minimizes” those  
10 concerns.<sup>18</sup>

11           36.     Following passage of the Ordinance by the Board of Supervisors, the  
12 Mayor’s spokesperson said that the “mayor remains concerned that this law will not withstand a  
13 near-certain legal challenge and will in practice do nothing to aid the city’s registration and  
14 enforcement of our short-term rental laws.”<sup>19</sup>

15           37.     The sponsors of the Ordinance have suggested that imposing liability on  
16 Hosting Platforms for publishing listings will make the City’s regulatory scheme more effective  
17 and efficient in preventing unlawful conduct.

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19 <sup>15</sup> Caleb Pershan, *Campos Proposes Law To Fine Airbnb Directly For Unregistered SF Listings*,  
20 SFist Blog, Apr. 25, 2016, [http://sfist.com/2016/04/25/campos\\_proposes\\_legislation\\_to\\_hold.php](http://sfist.com/2016/04/25/campos_proposes_legislation_to_hold.php)  
(last visited June 20, 2016); *see also* Aaron Peskin, Facebook Post, Apr. 25, 2016,  
21 <https://www.facebook.com/aaron.peskin/posts/1607597332893162> (last visited June 21, 2016).

22 <sup>16</sup> SF Bay Times, Facebook Post Sharing Press Release from Supervisor David Campos, Apr. 25,  
2016, <https://www.facebook.com/SanFranciscoBayTimes/posts/1188030017882628> (last visited  
23 June 20, 2016).

24 <sup>17</sup> Bay City News Service, *New Legislation Would Fine Airbnb For Listing Unregistered*  
25 *Properties*, SFGate, Apr. 25, 2016, [http://www.sfgate.com/news/bayarea/article/New-Legislation-  
Would-Fine-Airbnb-For-Listing-7352453.php](http://www.sfgate.com/news/bayarea/article/New-Legislation-Would-Fine-Airbnb-For-Listing-7352453.php) (last visited June 20, 2016).

26 <sup>18</sup> Video, *Hearing of the San Francisco Board of Supervisors Government Audit and Oversight*  
27 *Committee* (June 2, 2016), <http://goo.gl/PhCCsI>, at 19:22-20:22 (last visited June 20, 2016).

28 <sup>19</sup> Emily Green, *SF Supes Crack Down on Unregistered Short-Term Rentals*, SFGate, June 7,  
2016, [http://www.sfgate.com/politics/article/Supervisors-No-unregistered-hosts-on-short-term-  
7969444.php](http://www.sfgate.com/politics/article/Supervisors-No-unregistered-hosts-on-short-term-7969444.php) (last visited June 20, 2016).

1           38.     Instead of punishing Airbnb for publishing unlawful listings, the City could  
2 enforce its short-term rental law directly against hosts who violate it, as provided under the  
3 Ordinance. Indeed, the City has begun already doing so: it has assessed nearly \$700,000 in fines  
4 against hosts.<sup>20</sup> As the April 2016 report prepared by the City’s Budget and Legislative Analyst’s  
5 Office also stated, the City can “simplify the short-term rental registration process as the existing  
6 system might deter otherwise compliant short-term rental hosts,”<sup>21</sup> and the Ordinance requires  
7 OSTR to promulgate rules accomplishing that goal, S.F. Admin. Code § 41A.7(a). Supervisor  
8 Scott Wiener recently stated that there has been an “acceleration in the number of hosts  
9 registering,” and the City is “moving in a positive direction” in enforcing the law.<sup>22</sup>

10           39.     The Ordinance imposes a significant burden on Airbnb to verify the  
11 registration numbers associated with each of the thousands of San Francisco rental listings on its  
12 platform. Airbnb employees are required to verify each listing’s registration number by obtaining  
13 the registration number from the host or through some other source. Upon verifying the  
14 registration number for each of these listings, Airbnb must either publish the registration number  
15 or send to the City the registration number, residential street unit address, and host name for each  
16 listing.

17           40.     If the Ordinance goes into effect, it will require Airbnb to screen and  
18 remove from its site any listing in which Airbnb is unable to verify a registration number  
19 associated with the listing. To comply with the Ordinance, Airbnb would need to remove a  
20 substantial number of listings from its site, including listings that otherwise comply with San  
21 Francisco law. Removing these listings would cause a substantial disruption to Airbnb’s business  
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24 <sup>20</sup> City and County of San Francisco Board of Supervisors, Budget and Legislative Analyst’s  
25 Office, “Short Term Rentals 2016 Update,” (Apr. 7, 2016),  
26 <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=55575> at 2 (last visited June 20,  
2016).

27 <sup>21</sup> *Id.* at 4.

28 <sup>22</sup> Video, *Hearing of the San Francisco Board of Supervisors* (June 7, 2016),  
<http://goo.gl/FWvIZw> (starting at 43:00) (last visited June 20, 2016).

1 and have a significant detrimental effect on Airbnb's goodwill and reputation among both hosts  
2 and guests, thus threatening irreparable injury to Airbnb's business.

3 41. The Ordinance also creates the perception that Airbnb's activities are  
4 unlawful. This perception will lead to the sort of reputational injury and loss of goodwill that  
5 irreparably harms a business.

6 **CLAIM 1: VIOLATION OF THE COMMUNICATIONS DECENCY ACT, 47 U.S.C. § 230,**  
7 **AND CLAIM FOR INJUNCTIVE RELIEF,**  
8 **PURSUANT TO 42 U.S.C. § 1983 AND THE COURT'S EQUITABLE POWERS**

9 42. Airbnb incorporates all of the preceding paragraphs as if fully set forth  
10 herein.

11 43. Airbnb is a provider of an interactive computer service within the meaning  
12 of 47 U.S.C. § 230, because it operates the interactive online platform Airbnb.com. Airbnb  
13 provides information to multiple users by giving them computer access to a computer server  
14 within the meaning of 47 U.S.C. § 230(f)(2).

15 44. The third-party hosts that create listings on Airbnb.com are persons  
16 responsible for the creation or development of information provided through Airbnb, within the  
17 meaning of 47 U.S.C. § 230(f)(3). Additionally, the registration numbers hosts obtain and are  
18 required to include in their listings are also information developed or created by another  
19 information content provider.

20 45. The Ordinance violates and conflicts with 47 U.S.C. § 230, and Airbnb's  
21 rights thereunder, because it imposes duties and obligations on Airbnb that derive from Airbnb's  
22 status as a publisher or speaker of third-party content and treats Airbnb as the publisher or speaker  
23 of information provided by another information content provider, all in a manner prohibited by  
24 section 230.

25 46. First, the Ordinance imposes criminal and civil liability for Airbnb's  
26 publication of third-party rental advertisements where the registration number associated with a  
27 listing has not been verified by Airbnb. The liability in these provisions derives from Airbnb's  
28 publication of third-party rental advertisements on its website.

47. Second, the Ordinance requires Airbnb to verify content associated with a

1 third-party rental advertisement prior to publishing that advertisement. Specifically, Airbnb must  
2 verify the existence of a registration number, which hosts are required under the Ordinance to  
3 include on their listings. The act of verifying content associated with a third-party listing is a  
4 protected editorial act, and this verification requirement derives from Airbnb’s status as a  
5 publisher or speaker of third-party content, in violation of the CDA.

6 48. The Ordinance is a “State or local law that is inconsistent with” section 230,  
7 in violation of 47 U.S.C. § 230(e)(3).

8 49. The enforcement of the Ordinance against Airbnb violates and is preempted  
9 by 47 U.S.C. § 230.

10 50. The Ordinance also interferes with or impedes the accomplishment of the  
11 full purposes and objectives of federal law, violates the Supremacy Clause, U.S. Const. art. VI, cl.  
12 2, and is invalid and preempted.

13 51. Pursuant to 42 U.S.C. § 1983 and the Court’s equitable powers, Airbnb  
14 seeks injunctive relief against the City to prevent its enforcement of the Ordinance, which would  
15 conflict with and violate the CDA.

16 **CLAIM 2: VIOLATION OF THE STORED COMMUNICATIONS ACT, 18 U.S.C. §§ 2701**  
17 **ET SEQ., AND CLAIM FOR INJUNCTIVE RELIEF, PURSUANT TO 18 U.S.C. § 2707, 42**  
18 **U.S.C. § 1983, AND THE COURT’S EQUITABLE POWERS**

19 52. Airbnb incorporates all of the preceding paragraphs as if fully set forth  
20 herein.

21 53. Under the SCA, “a provider of remote computing service or electronic  
22 communication service to the public shall not knowingly divulge a record or other information  
23 pertaining to a subscriber to or customer of such service . . . to any governmental entity,” without  
24 a subpoena or other legal process, absent one of the other applicable exceptions, none of which  
25 apply here.<sup>23</sup> 18 U.S.C. §§ 2702(a)(3), (c)(1); 2703(c).

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26 <sup>23</sup> Those exceptions are: (1) when the customer or subscriber consents to the disclosure, *see* 18  
27 U.S.C. §§ 2702(c)(2), 2703(c)(1)(C); (2) “as may be necessarily incident to the rendition of the  
28 service or to the protection of the rights or property of the provider of that service,” *id.* §  
2702(c)(3); (3) “if the provider, in good faith, believes that an emergency involving danger of

1           54.     Airbnb is a provider of an electronic communication service within the  
2 meaning of the SCA, as it provides to its users “the ability to send or receive wire or electronic  
3 communications.” 18 U.S.C. § 2510(15). Airbnb also is a provider of a remote computing service  
4 within the meaning of the SCA, as it provides to users “computer storage or processing services by  
5 means of an electronic communications system.” *Id.* § 2711(2).

6           55.     The City is a “governmental entity” under the SCA. *See id.* § 2711(4)  
7 (defining “governmental entity” as “a department or agency of the United States or any State or  
8 political subdivision thereof”).

9           56.     The Ordinance requires, as one method of verification, that Hosting  
10 Platforms “[s]end[] the verified registration number, Residential Unit street address, ... and host  
11 name” to the City “prior to posting the listing.” S.F. Admin. Code § 41A.5(g)(4)(C)(ii). The  
12 Ordinance also requires, in response to a notice from the City that a listing does not have a valid  
13 registration number, that Hosting Platforms provide the registration number and “any other  
14 requested information,” including “unit address and host information,” to the City. *Id.*  
15 § 41A.7(b)(2)-(3).

16           57.     These provisions violate and conflict with the SCA, and Airbnb’s rights  
17 thereunder, because they require Airbnb to “divulge a record or other information pertaining to a  
18 subscriber to or customer of such service” to a “governmental entity,” without a subpoena or other  
19 form of legal process. 18 U.S.C. §§ 2702(a)(3), (c)(1); 2703(c).

20           58.     These provisions also interfere with or impede the accomplishment of the  
21 full purposes and objectives of federal law, violate the Supremacy Clause, U.S. Const. art. VI, cl.  
22 2, and are invalid and preempted.

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26 death or serious physical injury to any person requires disclosure without delay of information  
27 relating to the emergency,” *id.* § 2702(c)(4); or (4) when the governmental entity “submits a  
28 formal written request relevant to a law enforcement investigation concerning telemarketing fraud  
for the name, address, and place of business of a subscriber or customer of such provider, which  
subscriber or customer is engaged in telemarketing,” *id.* § 2703(c)(1)(D).

1           59. Pursuant to 18 U.S.C. § 2707(a)-(b), 42 U.S.C. § 1983, and this Court’s  
2 equitable powers, Airbnb seeks injunctive relief against the City to prevent its enforcement of the  
3 Ordinance, which would conflict with and violate the SCA.

4           **CLAIM 3: VIOLATION OF THE FIRST AMENDMENT OF THE U.S. CONSTITUTION**  
5           **AND CLAIM FOR INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE**  
6           **COURT’S EQUITABLE POWERS**

7           60. Airbnb incorporates all of the preceding paragraphs as if fully set forth  
8 herein.

9           61. The Ordinance is a content-based restriction on Airbnb’s speech, including  
10 commercial speech, as an online platform for rental advertisements and listings. The Ordinance  
11 seeks to impose both civil and criminal penalties on Airbnb for publishing rental listings in a  
12 manner that does not comply with the Ordinance’s screening and verification requirements.

13           62. The restriction on speech imposed by the Ordinance is not narrowly or  
14 appropriately tailored to promote a compelling or substantial interest on the part of the City, and is  
15 not likely to achieve any such interest in a direct and material way. Instead of seeking to impose  
16 liability on Hosting Platforms like Airbnb for publishing listings, the City could instead enforce its  
17 short-term rental laws directly against hosts who rent their residences in a manner that does not  
18 comply with the law. The City has not shown, and cannot show, that this less-speech-restrictive  
19 alternative would not be an adequate means of achieving the City’s policy goals.

20           63. The Ordinance also is overbroad as it punishes Hosting Platforms like  
21 Airbnb for publishing *any* listing without complying with its “verification” procedures—including  
22 those listings that may be registered and lawful. Given the substantial criminal and civil penalties  
23 for non-compliance, and the burdensome verification process, Hosting Platforms like Airbnb  
24 likely would over-remove or not publish lawful and registered listings.

25           64. The enforcement of the Ordinance against Airbnb therefore violates the  
26 First Amendment of the U.S. Constitution, as applied to the City by the Fourteenth Amendment.

27           65. Pursuant to 42 U.S.C. § 1983 and the Court’s equitable powers, Airbnb  
28 seeks injunctive relief against the City, whose enforcement of the Ordinance would conflict with  
and violate the First Amendment.



1           72.     Preliminarily and permanently enjoin the City; its officers, agents, servants,  
2 employees, and attorneys; and those persons in concert or participation with them from taking any  
3 actions to enforce against Airbnb provisions 41A.5(e), 41A.5(g)(4)(C), 41A.7(b)(1)-(3) of the  
4 Ordinance, as well as the other portions of Chapter 41A of the San Francisco Administrative Code  
5 providing for enforcement and penalties that would penalize Airbnb—including any investigation,  
6 arrest, prosecution, or penalty—for: (a) the publication of rental advertisements or other  
7 information of third-party hosts on Airbnb.com; (b) the failure to verify whether a host or rental  
8 listing is associated with a valid registration number; (c) the failure to include a registration  
9 number in any advertisement of a third-party host on Airbnb.com; or (d) the failure to disclose to  
10 the City host information, including hosts’ names and addresses.

11           73.     Award Airbnb its reasonable costs and attorneys’ fees pursuant to 42 U.S.C.  
12 § 1988; and

13           74.     Award Airbnb such other and further relief as the Court deems just and  
14 proper.

15  
16 DATED: June 27, 2016

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