

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CHRISTIAN A. PUGACZEWSKI,

Index No.:

Plaintiff,

SUMMONS

-against-

AIRBNB, INC. and LYNDSEY SCOTT.

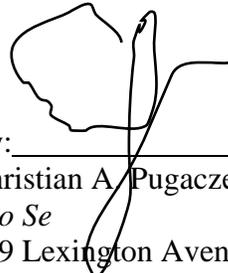
Defendants

YOU ARE HEREBY SUMMONED to appear in the SUPREME COURT OF THE CITY OF NEW YORK, COUNTY OF NEW YORK at the office of the Clerk of said COURT, within the time provided by law as noted below and to file your answer to the annexed complaint with the Clerk; upon your failure to answer, judgment will be taken against you for damages, attorney's fees and the costs associated with prosecution of this action.

Dated: August [27], 2016
New York, New York

Defendant's Address:
Airbnb, Inc.
Corporation Service Company
80 State Street
Albany, New York 12207-2543

Lyndsey Scott
540 Main Street, Apt. 1900
New York, NY 10044

By: 

Christian A. Pugaczewski
Pro Se
599 Lexington Avenue
New York, NY 10022
(212) 848-8489

The law provides that if this summons is served by its delivery to you personally within the city of New York, you must appear and answer within TWENTY days after such service, or if this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after the proof of service thereof is filed with the Clerk of the Court within which to appear and answer.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CHRISTIAN A. PUGACZEWSKI,

Plaintiff,

-against-

AIRBNB, INC. and LYNDSEY SCOTT.

Defendants

Index No.:

VERIFIED COMPLAINT

Plaintiff, Christian Pugaczewski (hereinafter “**Plaintiff**”), *pro se*, as and for his Verified Complaint against Airbnb, Inc. (hereinafter “**Airbnb**”), and Lyndsey Scott (hereinafter “**Ms. Scott**” and, together with Airbnb, the “**Defendants**”), states as follows upon information and belief.

THE PARTIES

1. Plaintiff resides in West Hollywood, California 90069.
2. Ms. Scott resides at 540 Main Street, Apt. 1900, New York, NY 10044.
3. Airbnb is foreign business corporation organized in the State of Delaware dealing in the rental of real estate in New York City, among other places, doing business under the laws of the State of New York.
4. Each of the above named Defendants has committed separate and identifiable torts against the plaintiff.

THE FACTS

5. In or about March of 2016, Plaintiff accessed Airbnb’s website and, in particular, viewed a listing titled “Comfortable Spacious Island Retreat” (the “**Listing**”).
6. In the ‘About this listing’ section of the Listing, the apartment was described as having “fashionable décor” with a “comfy yet modern vibe” and “plenty [of] necessary amenities”.

7. Reviews of the property described in the Listing on Airbnb's website purporting to be from people who stayed at the property include, among others, the following descriptions of the property:

- a. "The apartment itself is fitted out with all the mod cons" posted by 'Fabbiha,' dated January 2016;
- b. "Apartment was . . . comfortable, clean and artfully decorated" posted by 'Rohan,' dated April 2015;
- c. Apartment is in a "safe environment" posted by 'Shruti,' dated January 2015;
- d. The "Apartment is as nice and comfortable as described at airbnb" posted by 'June Marie,' dated December 2014;
- e. The "apartment was neat and well organized" and the "building was safe" posted by 'Rouzan,' dated no date; and
- f. The property is "just as everything shown in pictures and described in introduction/reviews" posted by 'Freya' dated no date.

8. The only information regarding the Listing disclosed to Plaintiff by the Defendants was a description of the property provided by Airbnb on Airbnb's website.

9. The Listing did not disclose the address, only a generalized location of the Listing.

10. The photos posted to the Listing were identified as "verified photos" by Airbnb.

11. The general location of the property identified by Airbnb, the photos verified by Airbnb, and reviews posted to Airbnb's website purporting to be from individuals who stayed at the property all misled Plaintiff into believing that he was renting a property materially different from the property portrayed.

12. Based on the Listing, including, without limitation, the pictures, generalized location and positive reviews, Plaintiff believed that he was renting an apartment in the "Riverwalk" buildings, which is a new building development located in very close proximity to the property actually being rented by the Defendants.

13. Plaintiff then reserved the property for the months of June, July and August in 2016, for which his credit card was charged \$3,075 with a balance owed of \$6,052.

14. Only after the Plaintiff rented the property did Airbnb then disclose the address of the property as 540 Main Street, Apt. 1900, New York, NY 10044, and the name of the landlord as Ms. Scott and her phone number.

15. After reserving the property, Plaintiff ceased efforts in locating a property to rent for the summer months in reliance on the suitability of the property rented from the Defendants.

16. On or near the move in date of June 1st, 2016, Plaintiff searched for directions to the property using the property's address. At this point, a very different description of the property began to emerge.

17. Now able to research the property on the internet after having been provided the address of the property, Plaintiff discovered that photos of the property on the internet showed neglect and disrepair in the form of unrepaired broken windows in the front entrance gazebo, poor lighting, staining of the concrete, overgrown vegetation in addition to the general poor character of the property.

18. Plaintiff continued searching for information about the property and discovered that the property had recently been renamed "Roosevelt Landings" from its original name of "Eastwood" and discovered that the property was built on or about 1969 as subsidized housing for low income residents and is comprised of several buildings interconnected as a housing complex managed by the same management company, Urban American Management.

19. Plaintiff continued his search using the newly discovered name "Roosevelt Landings" and discovered reviews of the property made by people not associated with the Defendants that were not included in the Listing on the Airbnb website. Those reviews include reviews from Apartments.com:

- a. "The most disgusting place I ever lived. This building (546 Main St.) [Roosevelt Landings] has many issues: drugs, smoking, roaches, noise, dirty carpets in hallway, dirty hallways, rude staff, dirty laundry room, very cold in winter (it is set to a fixed temperature, the thermostat stops working two times a day and when I got home in the afternoon, the apartment is too cold), very expensive for what you get (actually you do not get anything!!!). Trust me and do not ever think about moving to this terrible building even if they offer it free! I got sick in this building. If I could have canceled my lease, I would

have done it on second day of my stay in this building!!! :-(" posted by 'Resident' on www.apartmentratings.com, dated 02/19/16 and accessed by Plaintiff on or about May 31, 2016 and June 3, 2016 at http://www.apartmentratings.com/ny/new-york/roosevelt-landings-formerly-eastwood_212838474710044/review-111742405/;

- b. "The most disgusting place that I have ever lived in. Management should be ashamed of themselves. They want to charge Manhattan rent rates for sub par building grounds. Maintenance sucks...good luck getting stuff fixed in the apartments. They promise to come fix but never do. I have missed multiple work days because of this and have complained to management about it. Bathroom tub is always clogging and the pipes leak even though this is a "gut renovated" unit. The laundry rooms are the worst. Machines are always breaking and nobody even seems to clean the laundry rooms. Dryer machines are filled with lint it's disgusting. You find balls of lint all over the floors. Also, be careful which machines you wash clothes in as it seems some maintenance people wash old greasy rags in them. I have had multiple clothing items ruined with tar because of this. I seriously can't wait to finally move out when my lease is up." posted by 'Resident' on www.apartmentratings.com, dated 04/12/15 and accessed by Plaintiff on or about May 31, 2016 and June 3, 2016 at http://www.apartmentratings.com/ny/new-york/roosevelt-landings-formerly-eastwood_212838474710044/review-111545005/;
- c. "This evening I come home find two hoodlums hanging outside my apartment in Roosevelt Landings. 15 minutes later bell rings and I find beat up chinese delivery guy outside. The thugs lured him to my apartment with a false order, stole his money and of course the food. This place has no security. The owners of the building want to turn into a market rent cash-machine with Manhattan level rents, but the place is like a housing project. VERY SCARY PLACE TO LIVE." posted by 'Resident' on www.apartmentratings.com, dated 05/17/13 and accessed by Plaintiff on or about May 31, 2016 and June

3, 2016 at http://www.apartmentratings.com/ny/new-york/roosevelt-landings-formerly-eastwood_212838474710044/review-1659639/;

- d. “Apathy at it's best, nobody seems to care about the original theme of these buildings and the family-oriented designs...the buildings are turning into dorms” posted by ‘Resident’ on www.apartmentratings.com, dated 12/31/12 and accessed by Plaintiff on or about May 31, 2016 and June 3, 2016 at http://www.apartmentratings.com/ny/new-york/roosevelt-landings-formerly-eastwood_212838474710044/review-111545005/;
- e. “We moved in over the summer of 2012. We could not pass up the great space, value for the money and the view. Boy were we wrong. We moved in with only 1 working elevator for 20 floors - that lasted almost 2 months on top of the months it was broken before we moved in. We can't have deliveries unless we stand downstairs because our intercom is broken and the office wont fix it. Forget about hot showers before work - we've been told by maintenance that we are crazy to expect hot water in the morning and evenings because too many people are using it. We have a window leak that wont get fixed either. All this AND we are paying market rent. The staff is nice however I get the impression that management does not approve repairs. Most of our work orders are simply ignored for awhile and then closed. Then there are the people...if you must live here try and get a higher floor. My opinion is this is essentially glorified public housing. This place is a ghost town at night. You can't find a taxi and at rush hour the trams are completely full. F train is horrible - it seems its shut down at least 1 weekend a month. Food stores on the island are horrible, dirty and immensely overpriced. Drugs are pretty easy to come by...just hang out in the walkways.” posted by ‘Resident’ on www.apartmentratings.com, dated 11/07/12 and accessed by Plaintiff on or about May 31, 2016 and June 3, 2016 at http://www.apartmentratings.com/ny/new-york/roosevelt-landings-formerly-eastwood_212838474710044/review-1545144/;

- f. “Trust me.... You don't want to live here!!!! Too many problems to list and I have one of the newly remodeled apartments.” posted by ‘Resident’ on www.apartmentratings.com, dated 02/17/09 and accessed by Plaintiff on or about May 31, 2016 and June 3, 2016 at http://www.apartmentratings.com/ny/new-york/roosevelt-landings-formerly-eastwood_212838474710044/review-884841/; and
- g. “The decline of this complex is real & gaining speed. Units that never had roaches have seen an emergence of roaches, common areas like elevators, hallways & stairways aren't maintained, if you need anything fixed within yr unit, be prepared to take off work/school a min. of four times before they even come & that'll only be "to take a look" @ the issue no matter how clearly you described it when you made the "appointment". It'll take another three "appointments" for them to come back & "fix" it (it'll be broken again veeery soon). Courtyards that were quite lovely have been massacred by 2 yrs (& counting) of construction with no communication of what's happening or how long it'll last. They're renting mostly to int'l students who only stay 2 yrs max so they don't often get called out on anything, the students just deal with it until they move out.” posted on 04/22/2016 at [yelp.com](http://www.yelp.com/biz/roosevelt-landings-new-york-2) and accessed by Plaintiff on or about May 31, 2016 and June 3, 2016 at <http://www.yelp.com/biz/roosevelt-landings-new-york-2>.

20. At this point, Plaintiff had grown extremely concerned that the property he had rented was materially different from the property described in the Listing. However, because of the proximity to Plaintiff’s move-in date, Plaintiff was faced with little choice other than to travel to the property on June 1, 2016.

21. Plaintiff arrived at the property at 11:30 p.m. and was extremely concerned by several menacing figures loitering by the poorly lit entrance. So concerned, Plaintiff paid the car driver \$40 to accompany him upstairs to the apartment.

22. In the common areas, the lobby entrance, the elevator, and the residential floors, the property is bleak, unfurnished and sparsely decorated, with painted over bare concrete cinderblock walls. Moreover, there was a strong odor of drugs throughout the building’s

common areas. Trash littered both the common areas and the public areas directly outside the building.

23. Once inside the apartment, Plaintiff's worst fears had been realized as the apartment was suffering from neglect, dilapidation, probable infestation, and disrepair, which included:

- a. unrepaired damage to the floors, walls and furniture, which included a hole in the platform on which several stools had been placed to conceal the hole;
- b. accumulation of dirt and grime on the windows, window sills, in the bathroom, and the air conditioning units;
- c. an exposed roach trap in the kitchen; and
- d. dilapidated rugs and paint.

24. Plaintiff texted the 'host,' Ms. Scott, and asked her to call him immediately. Ms. Scott called Plaintiff immediately and Plaintiff expressed his concerns and his intent to vacate immediately because of the property's and apartment's condition. Ms. Scott was professional in her conversation with Plaintiff.

25. Because of fear for his safety, Plaintiff stayed the evening and left the apartment at 5:00 a.m., rented a car (at a cost of approximately \$73) and returned to the building after work at 5:00 p.m. to collect his belongings and vacate the property. Once he had vacated the property, Plaintiff texted Ms. Scott and let her know that he had vacated the property.

26. For the next 2 weeks, while searching for replacement housing, Plaintiff stayed at a relative's residence, on a pull-out sofa in the living room, an hour outside of New York City.

27. Because of the last minute nature of his housing search, Plaintiff rented an apartment near Roosevelt Island at a cost of approximately \$19,000, more than double the expected cost of renting the property listed by Airbnb and Ms. Scott.

28. Plaintiff seeks hereby to recover actual, statutory, and punitive damages, plus reasonable attorney's fees, to compensate him for his losses and to deter Defendants from so acting in the future.

29. This action is also brought to secure redress for an unfair, deceptive and unlawful trade practice perpetrated by Defendants on Plaintiff.

30. At all times material herein, the Defendants were acting as agents, one for the other. In the alternative, they conspired to defraud the Plaintiff and other consumers. In the alternative, each Defendant is the alter ego of the other and their corporate veil should be pierced and liability attached to Defendants individually and severally.

31. This Complaint is essentially about fraudulent inducement, negligent misrepresentation, consumer fraud, breach of the duty of fair dealing, breach of contract, and violations of the New York Unfair and Deceptive Acts and Practices Act. Plaintiff seeks relief from the Defendants jointly and severally who, in their scheme to defraud, illegally inflate the price of the property rented to customers by misrepresenting the quality and condition of a property to in-state and out-of-state consumers for amounts that make it difficult to seek redress after being wronged.

FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT

32. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

33. By failing, refusing and/or neglecting to in any way provide an apartment as represented in the Listing, Defendants, jointly and severally breached the contracts at issue. As a result of such breach, Plaintiff has sustained damages.

34. Defendants are therefore jointly and severally liable to pay Plaintiff compensatory damages in such amount as may be proven at trial, together with attorney's fees and expenses and such other amounts as may be appropriate. In addition, Plaintiff is entitled to the equitable remedies of rescission of the contracts.

**SECOND CLAIM FOR RELIEF:
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

35. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

36. By its conduct aforesaid, Defendants, joint and severally, breached the implied covenant of good faith and fair dealing underlying the contracts at issue. As a result of such breach, Plaintiff has sustained damages.

37. Defendants are therefore jointly and severally liable to pay Plaintiff compensatory damages in such amount as may be proven at trial, together with attorney's fees and expenses

and such other amounts as may be appropriate. In addition, Plaintiff is entitled to the equitable remedies of rescission.

THIRD CLAIM FOR RELIEF:
UNFAIR AND DECEPTIVE ACTS AND PRACTICES

38. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

39. As a result of the foregoing acts and practices of Defendants Unfair and Deceptive Practices, damages have been sustained by the plaintiff, as Defendants have violated the provisions of GBL 349, which prohibit unfair and deceptive practices in the conduct of any business, defined as a course of conduct having the capacity, tendency or effect of deceiving or misleading consumers.

40. In the course of the transaction Defendants have committed/engaged in the following unfair and/or deceptive acts/practices in violation of New York *UDAP statute*:

- a. misrepresenting the condition of the property to Plaintiff;
- d. concealing and omitting the material fact that the property was damaged and neglected;
- e. concealing and omitting the material fact that the property was converting from subsidized housing;
- f. concealing and omitting the material fact of the location of the property;
- g. concealing and omitting the material fact that the property was susceptible to pest infestation; and
- h. concealing and omitting negative reviews about the property.

41. On information and belief, Defendants intended that plaintiff rely upon the above-described misrepresentations, concealments, and omissions.

42. The above-described actions were committed by Defendants willfully, wantonly and with reckless disregard of the rights of Plaintiff as a result of such actions, Plaintiff has sustained damages.

43. Defendants are therefore jointly and severally liable to pay Plaintiff compensatory, statutory and punitive damages in such amount as may be proven at trial, together with attorney's fees and expenses and such other amounts as may be appropriate. In addition,

Plaintiff is entitled to the equitable remedies of rescission and grant such other relief as may be just and proper.

FOURTH CLAIM FOR RELIEF: NEGLIGENT MISREPRESENTATION AND FRAUD

44. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

45. The above-described acts constitute misrepresentations by Defendants of the following material facts:

- a. that the property was in the condition as represented;
- b. that the property was in the location as represented; and
- c. that there were no serious defects at the property.

46. The above-described acts constitute concealment or omission by Defendants of the following material facts:

- a. that the property was in the condition as represented;
- b. that the property was in the location as represented; and
- c. that there were no serious defects at the property.

47. On information and belief Defendants made the above-described misrepresentations, concealments and omissions of material facts with full knowledge of their falsity or with reckless disregard of the truth.

48. The above-described actions were committed by Defendants willfully, wantonly, and with reckless disregard of the rights of plaintiff.

49. On information and belief Defendants intended that plaintiff rely upon the above-described misrepresentations, concealments and omissions.

50. Plaintiff did rely on the above-described representations, concealments and omissions of Defendants, and suffered the damage described in this complaint as a proximate result thereof.

51. Defendants are therefore jointly and severally liable to pay Plaintiff compensatory, statutory and punitive damages in such amount as may be proven at trial, together with attorney's fees and expenses and such other amounts as may be appropriate. In addition, Plaintiff is entitled to the equitable remedies of rescission of the Extended Warranty and the full purchase price of the vehicle and grant such other relief as may be just and proper.

FIFTH CLAIM FOR RELIEF: UNJUST ENRICHMENT

52. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

53. By collecting the charges for the warranties, Defendants benefitted at the expense of the Plaintiff. Equity and good conscience require that Defendants be ordered to repay these sums to Plaintiff towards restitution.

54. Defendants must not be permitted to take advantage of its own wrong and retain, collect, or continue collecting fees for warranties it does not honor.

55. Defendants are jointly and severally liable to pay Plaintiff compensatory and punitive damages in such amount as may be proven at trial, together with attorneys' fees and expenses and such other amounts as may be appropriate.

PRAYER FOR RELIEF

56. On the other claims, for violation of the strict liability statute and statutory damages or three times such actual damages, whichever is greater, and other damages, remedies, and relief as deemed proper and lawful by the Court, for each and every violation that may be proven at trial. On all claims, rescission of the contract plus statutory remedies and relief as deemed proper, equitable and lawful by the Court, for each and every violation which may be proven at trial;

57. Plus on each and every claim, expenses of suit and litigation, interest from the date the contract was consummated, and an Order finding Plaintiff to have rescinded the transaction and/or to have revoked acceptance, reasonable attorney fees, plus all costs, and any and all other legal and equitable relief deemed necessary and just.

Dated: August 27, 2016

New York, New York

Regards,

Christian A. Pugaczewski
Pro se

By: _____



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