



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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COMPLAINT

LOUIS GAMACHE ET AL VS. AIRBNB INC. ET AL

001C04608987

Instructions:

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9 individually and on behalf of proposed Class Members

SUMMONS ISSUED
FILED
Superior Court of California
County of San Francisco

SEP -3 2014

CLERK OF THE COURT
BY: Olivia RA
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 LOUIS GAMACHE and DANIELLE
11 MCGEE individually and on behalf of
12 proposed Class Members

13 Plaintiffs,

14 vs.

15 AIRBNB, INC, AND DOES 1 TO 100.

16 Defendant.

) CASE: **CGC - 14 - 541477**

) CLASS ACTION

) COMPLAINT OF PLAINTIFFS LOUIS
) GAMACHE and DANIELLE MCGEE
) individually and on behalf of proposed Class
) Members for:

-) 1) Violation of the San Francisco
) Residential Hotel Conversion and
) Demolition Ordinance
) 2) Violation of the San Francisco
) Residential Unit Conversion and
) Demolition Ordinance
) 3) Violation of the Unfair Competition
) Law

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22
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24 COMPLAINT OF LOUIS GAMACHE AND DANIELLE MCGEE INDIVIDUALLY AND ON
25 BEHALF OF PROPOSED CLASS MEMBERS
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1 Plaintiffs LOUIS GAMACHE and DANIELLE MCGEE individually and on behalf of the
2 proposed class members, bring this action against Defendant AIRBNB, INC, ("AirBnB") and
3 DOES 1-100. The Plaintiffs hereby allege as set forth below:

4 PARTIES TO THE ACTION

5 1. Plaintiff DANIELLE MCGEE is and has been a resident of San Francisco,
6 California at all relevant times. Ms. McGee has lived at the Sheldon Hotel for the past nine (9)
7 years.

8 2. Plaintiff LOUIS GAMACHE is and has been a resident of San Francisco,
9 California at all relevant times. Mr. Gamache currently lives at the Sheldon Hotel; he has lived
10 there for sixteen (16) years.

11 3. Defendant AIRBNB, INC., is a Delaware Corporation and at all relevant times was
12 a corporation doing business in California, with its corporate headquarters in San Francisco,
13 California.

14 4. Plaintiffs are unaware of the true names of Defendants listed as DOES 1 through
15 100, inclusive, and have therefore sued them by the foregoing names which are fictitious.
16 Plaintiffs will amend this Complaint by inserting the true names in lieu of said fictitious names,
17 together with apt and proper charging words, when said true names are ascertained. Plaintiffs are
18 informed and believe and thereon allege that each of the Defendants designated herein as a DOE is
19 responsible and liable to Plaintiffs in some manner for the events, happenings, and contentions
20 referred to in this Complaint. All references herein to "Defendant" or "Defendants" shall be
21 deemed to include all DOE Defendants.

22 5. Plaintiffs are informed and believe and thereon allege that each Defendant,
23 including DOES 1 through 100, inclusive, was and is the agent, employee, servant, subsidiary,
24 partner, member, associate, or representative of each other Defendant, and that all of the things
25 alleged to have been done by said Defendants were done in the course and scope of said agency,
26 employment, service, subsidiary, partnership, membership, association, or representative
27 relationship and with the knowledge and consent of their respective principals, employers,
28 masters, parent corporations, partners, members, associates, or representatives. Each and every

1 Defendant has authorized, ratified, acknowledged, consented, acquiesced, and/or approved of all
2 acts, conduct, and/or omissions by each and every other Defendant.

3 JURISDICTION AND VENUE

4 6. The Superior Court has jurisdiction over this action. Defendants have conducted
5 and continue to conduct unlawful business practices in California, and the City and County of San
6 Francisco.

7 7. Venue is proper in this Court because Defendants transact business by owning,
8 managing, operating and maintaining a website through which the Defendants participate in the
9 rental of residential property within the rent controlled jurisdiction of the City and County of San
10 Francisco ("San Francisco"). The real property, the acts complained of and the underlying
11 transactions occurred in whole or in part in San Francisco and caused injury to citizens of San
12 Francisco in San Francisco County, and all of the key witnesses and evidence are in San Francisco
13 County.

14 INTRODUCTION

15 8. The conversion of residential units into tourist or transient hotels has significantly
16 contributed to the housing shortage in San Francisco.

17 9. It is estimated that currently there are more than 5,000 residential properties
18 currently rented in San Francisco for illegal short-term rental.

19 10. The conversion of residential units in apartment buildings and neighborhoods has
20 had an adverse impact on the other people who live in those apartment buildings and
21 neighborhoods.

22 11. Guests staying in the short-term rentals create significant additional amounts of
23 foot traffic and security problems due to increased foot traffic, and the extent of additional
24 customers who are only staying for short stays can be noisy, inconsiderate, destructive, violent,
25 and even dangerous to the people in the surrounding apartments and neighborhoods.

26 12. The conversion of residential units into short-term rentals, used primarily by
27 tourists, has removed rent controlled apartments from use and caused residential rents in San
28 Francisco to rise because so many residential units are no longer available to long-term tenants.

1 13. On its website, Defendant AirBnB participates in, facilitates and enables the illegal
2 rental of short-term rentals for rooms and apartments in the City and County of San Francisco.

3 14. AirBnB partners with hosts (“Hosts”) by providing the Host with an individual,
4 publicly accessible online listing for the rental, free professional photography services,
5 calendaring software, pricing guidelines, payment processing, cleaning services, key pick-ups for
6 cleaning services, correspondence services, alerts for messages and scheduling, automated guest
7 rental features, standard language for rental rules, detailed hosting advice, review forums, a
8 downloadable application, insurance, 24 hour support, tax advice, tax forms, completed tax
9 reports, legal information, advice on how to promote a rental, and phone support.

10 15. Defendant AirBnB claims to insure Hosts up to \$1,000,000 which facilitates a false
11 sense of security.

12 16. Defendant AirBnB makes its money by partnering with its users, and by taking a
13 percentage of a guest's booking fees and charging the Host a fee. The amounts vary depending on
14 the amount of the rental.

15 17. AirBnB actively attempts to make more money by increasing the number of Hosts
16 and travelers and matching them with each other.

17 18. Given the number of articles surrounding the illegality of AirBnB, postings on its
18 own website from users, and involvement in lawsuits on behalf of users, AirBnB is on notice that
19 its business is illegal in San Francisco. On its website, AirBnB even summarizes the San
20 Francisco Administrative Code, Section 41.A.5 by stating:

21 San Francisco law prohibits the offering of an “residential unit” for rent for “tourist
22 or transient” use. The definitions of “residential unit” and “tourist or transient” are
23 found at Section 41.A.4. While the definitions are not entirely clear, the law
24 appears to regulate the rental of a residential unit for less than a 30-day term in any
apartment building with at least four units, and it may regulate more types of
housing.

25 19. AirBnB is also on notice that its business is illegal in San Francisco because
26 Plaintiffs' counsel notified AirBnB of its intent to file a lawsuit based on AirBnB's violations of
27 the laws discussed below.

28 ///

CLASS ACTION ALLEGATIONS

20. The proposed class consists of:

1) Tenants who lived in a residential unit while other units within the building were rented through AirBnB's platform.

21. There is a well-defined community of interest as common questions of law and fact predominate and proof of a common or single state of facts will establish the right of each member of the Class to recover.

22. Plaintiffs' claims are typical of the claims of the other Class members. Plaintiffs and all Class members are entitled to statutory damages. In addition, Plaintiffs and all Class Members have been similarly affected and harmed by Defendants' common course of wrongful conduct as described herein.

23. The Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Counsel who represents Plaintiffs are competent and capable of litigating complex, multiparty litigation pertaining to Landlord and Tenant practices. The Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources necessary to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the Class.

24. Plaintiffs bring this action in their individual capacities, on behalf of all persons similarly situated, and on behalf of the general public as defined in Business and Professions Code section 17204, and that portion of the general public affected by Defendants' alleged wrongful conduct. Such a representative action is necessary to prevent and remedy the deceptive, unlawful and unfair practices alleged herein.

25. The persons in the Class are so numerous that the joinder of all such persons is impracticable because there are approximately sixty-two (62) units in the Sheldon Hotel and many units have multiple residents. A conservative estimate of the size of the Class, would be roughly 300 members. This estimate only accounts for members who live at the Sheldon, and does not include potential Plaintiffs who live in other buildings. Since it is believed that the Class extends beyond the Sheldon, the Class of Plaintiffs is in the thousands of individuals. The Classes,

1 therefore, are sufficiently numerous. The members of these Classes are ascertainable and capable
2 of being identified. The disposition of their claims in a class action is therefore a benefit to the
3 parties and to the Court.

4 26. A class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy since individual joinder of all members of the Classes is
6 impracticable. Furthermore, the damages suffered by each individual member of the Classes may
7 be relatively small, and the expense and burden of individual litigation would make it difficult or
8 impossible for individual members of the Classes to redress the wrongs done to them. The cost to
9 the court system of such individual adjudication would be substantial. Individualized litigation
10 would also present the potential for inconsistent or contradictory judgments and would magnify
11 the delay and expense to all parties and the court system in multiple trials of identical factual
12 issues. The conduct of this action as a class action presents fewer management difficulties,
13 conserves the resources of the parties and the court system, and protects the rights of each Class
14 member.

15 27. Should the Plaintiffs prevail in this action they and the Class members shall be
16 entitled to an award of reasonable attorney's fees, prejudgment interest and costs.

17 GENERAL ALLEGATIONS

18 28. A residential dwelling unit is a room or suite of rooms designed for single family
19 use, having only one kitchen, and may be rented only for periods of one month or longer. A unit
20 rented for less than one month is considered a hotel. (Planning Code § 102.7; Planning Code
21 Zoning Administrator Interpretation of § 102.)

22 29. Hotels, which are offered for compensation and are primarily for accommodation
23 of transient overnight guests, are prohibited in certain districts absent Conditional Use
24 authorization from the San Francisco Planning Commission. (Planning Code § 209.2(d).)

25 30. The conversion of residential dwelling units to non-residential use is prohibited
26 without first obtaining permission from the Planning Commission. (San Francisco Planning Code
27 § 317.)

28 31. Residential Hotels are another type of recognized residential dwelling. The San

1 Francisco Residential Hotel Conversion and Demolition defines a Residential Hotel” as “[a]ny
2 building or structure which contains a residential unit as defined in (q) below” . . . (q) defines a
3 “Residential Unit” as “[a]ny guest room as defined in Section 203.7 of Chapter XII, Part II of the
4 San Francisco Municipal Code (Housing Code) which had been occupied by a permanent resident
5 on September 23, 1979.” (S.F. Admin. Code § 41.4.)

6 32. It is prohibited to convert a residential hotel unit into a tourist unit or for tourist use
7 without first obtaining permission. (S.F. Admin. Code § 41)

8 33. It is also prohibited for any business entity to allow the use of a residential unit for
9 tourist or transient use. (S.F. Admin. Code § 41.A.5(a).)

10 34. It is an unfair business practice enable the rental of residential units as tourist units.

11 35. It is illegal to offer residential units for tourist use in violation of San Francisco law
12 and it is false to advertise short-term rentals in San Francisco without stating that they are illegal.

13 36. Defendant AirBnB partners with Hosts in order to rent residential units for tourist
14 use.

15 37. Defendant AirBnB is aware of state and local laws, including San Francisco's local
16 laws regarding the renting of residential units for tourist use.

17 38. Defendant partners with and knowingly enables Hosts to violate state and local
18 laws while operating its business.

19 39. Defendant is aware that its business is directly violating the law.

20 40. Defendant encourages the conversion and rental of residential units for tourist use,
21 which is a violation of San Francisco laws.

22 41. Defendant fails to provide the proper notices that renting residential units for tourist
23 use in San Francisco is illegal.

24 42. Defendant is aware that permanent residents are being displaced and harmed as a
25 result of AirBnB's activities in San Francisco.

26 43. Defendant was aware of the state and local laws while operating its business.

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28

1 FIRST CAUSE OF ACTION – VIOLATION OF THE SAN FRANCISCO RESIDENTIAL
2 HOTEL CONVERSION AND DEMOLITION ORDINANCE (S.F. ADMIN, CODE CHAP. 41)
3 AS AGAINST DEFENDANT AIRBNB AND DOES 1 THROUGH 100

4 44. Plaintiffs incorporate into this cause of action the allegations of the foregoing
5 paragraphs.

6 45. At all relevant times the Sheldon Hotel (“Sheldon Hotel” or “Hotel”, located at 629
7 Post St., San Francisco, California) was permitted for approximately sixty-two (62) Residential
8 Units and zero (0) Tourist Units.

9 46. The Hotel Conversion Ordinance provides that “[i]t shall be unlawful to: ... (2)
10 Rent any residential unit for a term of tenancy less than seven days except as permitted by Section
11 41.19 of this Chapter; or (3) Offer for rent for nonresidential use or tourist use a residential unit
12 except as permitted by this Chapter.” (S.F. Admin. Code § 41.20(a).)

13 47. Defendant AirBnB violated S.F. Admin. Code § 41.20(a) (the “Hotel Conversion
14 Ordinance”) by unlawfully offering to rent residential units for less than seven days and by renting
15 residential units for less than seven days.

16 48. Defendant AirBnB provided services, scheduling, an individual website, payment
17 services, insurance, and other related acts in order to rent rooms at the Sheldon Hotel for less than
18 seven days.

19 49. Defendant AirBnB collected fees from the short-term rentals of rooms at the
20 Sheldon Hotel.

21 50. Plaintiffs suffered an injury-in-fact, without limitation, by paying higher prices than
22 they would otherwise of paid had Defendant not violated the Hotel Conversion ordinance.

23 51. Plaintiffs are entitled to damages and costs and fees from Defendant. Plaintiffs also
24 request that Defendant be required to provide proper notices and warnings to users and Hosts that
25 Defendant’s services are violating the law in San Francisco and short-term rentals are illegal in
26 San Francisco.

27 SECOND CAUSE OF ACTION – VIOLATION OF THE SAN FRANCISCO RESIDENTIAL
28 UNIT CONVERSION AND DEMOLITION ORDINANCE (S.F. ADMIN, CODE CHAP. 41.A)
 AS AGAINST DEFENDANT AIRBNB AND DOES 1 THROUGH 100

 52. Plaintiffs incorporate into this cause of action the allegations of the foregoing

1 paragraphs.

2 53. At all relevant times the Sheldon Hotel was permitted for approximately sixty-two
3 (62) Residential Units and zero (0) Tourist Units.

4 54. The Residential Unit Conversion and Demolition Ordinance (“Unit Conversion
5 Ordinance”) states that it is unlawful to offer a residential unit for rent to a business entity that will
6 allow the use of a residential unit for tourist or transient use, or for any business entity to allow the
7 use of a residential unit for tourist or transient use. (S.F. Admin. Code § 41.A.5.)

8 55. Tourist or transient use is the use of a residential unit for occupancy for less than a
9 30-day term of tenancy, or occupancy for less than 30 days of a residential unit leased or owned
10 by a business entity, whether on a short-term or long term basis, including any occupancy by
11 employees or guests for less than 30 days where payment for the residential unit is contracted for
12 or paid by the business entity. (S.F. Admin. Code § 41.A.4.(C).)

13 56. Defendant offers residential units for rent for tourist or transient use.

14 57. Defendant allows residential units to be used for tourist or transient use.

15 58. Defendant AirBnB provided services, scheduling, an individual website, payment
16 services, insurance, and other support in order to rent rooms at the Sheldon Hotel for less than 30
17 days.

18 59. Defendant AirBnB collected fees from the short-term rentals of rooms at the
19 Sheldon Hotel.

20 60. Plaintiffs were harmed by Defendants' conduct and are entitled to recover damages
21 and costs and fees from Defendants pursuant to S.F. Admin. Code § 41.A.5.

22 61. Plaintiffs also request that Defendant be required to provide proper notices and
23 warnings to users and Hosts that Defendant’s services are violating the law in San Francisco are
24 illegal in San Francisco.

25 THIRD CAUSE OF ACTION - VIOLATION OF THE UNFAIR COMPETITION LAW
26 (BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET SEQ) AS AGAINST
27 DEFENDANT AIRBNB AND DOES 1 THROUGH 100

28 62. Plaintiffs incorporate into this cause of action the allegations of the foregoing
paragraphs.

1 63. Plaintiffs are informed and believe that as a direct and proximate result of the
2 foregoing acts and practices, Defendant has received, and will receive, income and other benefits,
3 which they would not have received if they had not engaged in the unlawful and unfair business
4 practices in violation of Cal. Bus. & Prof. Code § 17200 (the "Unfair Competition Law")
5 described in this Complaint.

6 64. Defendant is able to unfairly compete with other property owners and hotel
7 operators in the State of California by engaging in a pattern and practice of illegally converting
8 residential dwelling units to tourist use in violation of Planning Code Sections 209.2(d), 303, 306
9 and 317, and the Unfair Competition Law.

10 65. Plaintiffs have no adequate remedy at law in that damages are insufficient to
11 protect the public from the present harm caused by the conditions described in this Complaint.

12 66. Defendant will continue to engage in unfair and unlawful business practices. Unless
13 injunctive relief is granted to enjoin Defendants' unfair and unlawful business practices, Plaintiffs
14 will suffer irreparable injury and damage.

15 67. At all relevant times the Sheldon Hotel was permitted for sixty-two (62)
16 Residential Units and zero (0) Tourist Units.

17 68. Defendant unlawfully converted residential units in the Sheldon Hotel by
18 advertising rooms in the Sheldon Hotel for nonresidential and tourist use, and allowing residential
19 units to be used for tourist use.

20 69. Defendant's conduct violated San Francisco's Hotel Conversion Ordinance and the
21 Unit Conversion Ordinance.

22 70. Defendant violated the Business and Professions Code § 17200 by unfair,
23 fraudulent, deceptive, and untrue and misleading advertising that the Sheldon Hotel is a tourist
24 hotel and by unfairly renting residential rooms for tourist and short-term use.

25 71. Plaintiffs suffered an injury-in-fact by paying monies for apartments without being
26 able to enjoy these apartments due to noise, increased foot traffic, and their full rental payments.

27 72. Defendants collected monies directly related to their violations of the San Francisco
28 Ordinances.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AIRBNB, INC, AND DOES 1 TO 100.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

LOUIS GAMACHE and DANIELLE MCGEE individually and on behalf of proposed Class Members

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court - County of San Francisco
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número de Caso): CGC - 14 - 54147

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark Hooshmand, (SBN 194878), Hooshmand Law Group, 22 Battery St, #610, SF, CA 94111, 415-318-5709

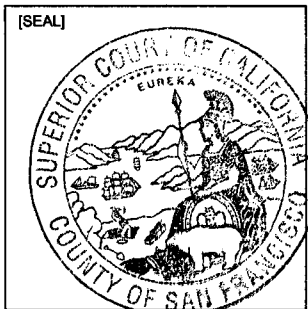
DATE: SEP - 3 2014
(Fecha)

CLERK OF THE COURT

Clerk, by
(Secretario)

 Deputy
ELIAS BUTERA (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

