

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

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Feb-07-2017 9:55 am

Case Number: CSM-17-854463

Filing Date: Feb-07-2017 9:34

Filed by: WILLIAM TRUPEK

Image: 05735503

CLAIM OF PLAINTIFF

BYRON HING VS. AIRBNB, INC.

001C05735503

Instructions:

Please place this sheet on top of the document to be scanned.

SC-100

Plaintiff's Claim and ORDER to Go to Small Claims Court

Clerk stamps date here when form is filed.

FILED
 San Francisco County Superior Court
 FEB 07 2017
 CLERK OF THE COURT
 BY: William Trupek
 Deputy Clerk

Notice to the person being sued:

- You are the defendant if your name is listed in ② on page 2 of this form. The person suing you is the plaintiff, listed in ① on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Fill in court name and street address:

Superior Court of California, County of San Francisco
 400 McAllister St, Room 103
 San Francisco, CA 94102

Court fills in case number when form is filed.

Case Number:
 CSM 17-854463
 Case Name:
 Byron Hines vs Arbub, Inc et al

Order to Go to Court

The people in ① and ② must go to court: (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court, if different from above
1.	MAR 29 2017	3:30 pm	506	5th floor
2.				
3.				

Date: **FEB 06 2017** Clerk, by William Trupek, Deputy

Instructions for the person suing:

- You are the plaintiff. The person you are suing is the defendant.
- Before you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C
- **Go to court on your trial date listed above.** Bring witnesses, receipts, and any evidence you need to prove your case.



Plaintiff's Claim and ORDER to Go to Small Claims Court (Small Claims)

1 The plaintiff (the person, business, or public entity that is suing) is: Name: Byron Hing Street address: 601 Townsend St San Francisco CA 94103 Mailing address (if different): Street City State Zip

If more than one plaintiff, list next plaintiff here: Name: Phone: Street address: Mailing address (if different): Street City State Zip

2 The defendant (the person, business, or public entity being sued) is: Name: Airbnb, Inc. Phone: 855-424-7262 Street address: 888 Brannan St, 4th floor San Francisco CA 94103 Mailing address (if different): Street City State Zip

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here: Name: Corporation Service Company dba CSC Lawyers Job title, if known: Address: 2710 GATEWAY OAKS DR STE 150N Sacramento CA 95833

3 The plaintiff claims the defendant owes \$ 2,133. (Explain below):

a. Why does the defendant owe the plaintiff money? Byron booked Airbnb in New Orleans (NO) for 12-18 guys, which is illegal under NO law. Byron also learned after that house is for sale, which is mistake of fact. Byron tried to cancel, but Airbnb refused. See attachment.

b. If no specific date, give the time period: Date started: 12/21/16 Through: Present

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) This is what I paid to Airbnb for the reservation (\$2053) plus expenses related to the court (filing fee (\$50) and service of process fee), \$15 each or \$30 total

Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.

Check here if your case is against more than one defendant, and attach form SC-100A. Check here if any defendant is on active military duty, and write his or her name here:

Case Number: Plaintiff (list names): Byron Hing

SC-100, Page 2 of 5

Plaintiff (list names):
Byron Hing

Case Number:

4 You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property. Have you done this?

Yes No If no, explain why not:

5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. (1) Where the defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the defendant *or* where the defendant lived or did business when the defendant made the contract.
- (2) Where the plaintiff's property was damaged.
- (3) Where the plaintiff was injured.
- b. Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
- c. Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civ Code, § 1812.10.)
- d. Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civ Code, § 2984.4.)
- e. Other (specify): _____

6 List the zip code of the place checked in 5 above (if you know): 94103

7 Is your claim about an attorney-client fee dispute? Yes No
If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here:

8 Are you suing a public entity? Yes No
If yes, you must file a written claim with the entity first. A claim was filed on (date): _____
If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 Have you filed more than 12 other small claims within the last 12 months in California?
 Yes No If yes, the filing fee for this case will be higher.

10 Is your claim for more than \$2,500? Yes No
If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

11 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 2/7/17 Byron Hing
Plaintiff types or prints name here

[Signature]
Plaintiff signs here

Date: _____
Second plaintiff types or prints name here

Second plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)



"Small claims court" is a special court where claims for

\$10,000 or less are decided. Individuals, including "natural persons" and sole proprietors, may claim up to \$10,000.

Corporations, partnerships, public entities, and other businesses are limited to claims of \$5,000. (See below for exceptions.) The process is quick and cheap. The rules are simple and informal.

You are the *defendant*—the person being sued. The person who is suing you is the *plaintiff*.

Do I need a lawyer? You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court? You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well? Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at www.courts.ca.gov/smallclaims/forms.

What happens at the trial? The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case? If you lose, you may appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge's decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.

If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see www.courts.ca.gov/smallclaims/appeals.

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the plaintiff agree on how to settle the case, the plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.

* Exceptions. Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

Revised January 1, 2017

Plaintiff's Claim and ORDER to Go to Small Claims Court

(Small Claims)



Need help?

Your county's Small Claims Advisor can help for free.

Or go to www.courts.ca.gov/smallclaims/advisor.

Unless a fee waiver was granted,

papers before the deadline. Enclose a check for your court fees,

mail it to the court and to all other people listed on your court

postponing a trial. Or fill out form SC-150 (or write a letter) and

ask the Small Claims Clerk about the rules and fees for

allowed, and you will not have to pay a fee to delay the trial.

• You need more time to get an interpreter. One postponement is

allowed, and you will not have to pay a fee to delay the trial.

• You did not get served (receive this order to go to court) at least

15 days before the trial (or 20 days if you live outside the

county), or

• You cannot go to court on the scheduled date (you will have to

pay a fee to postpone the trial), or

• You can change the trial date if:

What if I need more time?

legally take your money, wages, and property to pay the

judgment.

is asking for plus court costs. If this happens, the plaintiff can

the trial (default), the judge may give the plaintiff what he or she

and say you want to make payments.

• **Let the case "default."** If you don't settle and do not go to

and say you want to make payments.

money. Or, if you can't pay the money now, go to your trial

• **Agree with the plaintiff's claim and pay the**

allowed in the paragraph above titled "Small Claims Court."

both matters together. You can see a description of the amounts

motion to transfer the plaintiff's claim to that court to resolve

claim, you may file your claim in the appropriate court and file a

transaction, matter, or event that is the subject of the plaintiff's

allowed in small claims court and relates to the same contract,

the claim in the appropriate court. If your claim is for more than

claims value amount, or you may file a claim for the full value of

small claims court if you give up the amount over the small

for more than allowed in small claims court, you may still file it in

(form SC-120) and bring the claim in this action. If your claim is

court as described on this form, you may file *Defendant's Claim*

against the plaintiff, and the claim is appropriate for small claims

• **Sue the person who is suing you.** If you have a claim

the witness.

form SC-107 (*Small Claims Subpoena*) and have it served on

case. To have the court order a witness to go to the trial, fill out

witnesses, receipts, and any evidence you need to prove your

• **Go to the trial and try to win your case.** Bring

the court must say you have done so.)

of your letter (by mail or in person) to all parties. (Your letter to

Ask the court to dismiss the claim. You must serve (give) a copy

before your trial explaining why you think this is the wrong court.

• **Prove this is the wrong court.** Send a letter to the court

La “Corte de reclamos menores” es una corte especial donde se deciden casos por \$10,000 o menos. Los individuos, o sea las “personas físicas” y los propietarios por cuenta propia, pueden reclamar hasta \$10,000. Las corporaciones, asociaciones, entidades públicas y otras empresas solo pueden reclamar hasta \$5,000. (Vea abajo para las excepciones *) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado? Puede hablar con un abogado antes o después del caso. Pero no puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte? No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea “Esté preparado para su juicio” en www.courts.ca.gov/reclamosmenores/preparese.

¿Qué hago si necesito una adaptación? Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, Request for Accommodations. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés? Pregúntele al secretario de la corte lo más pronto posible si en el juzgado habrá un intérprete disponible y cómo solicitarlo. No siempre están disponibles los intérpretes de la corte. Otra opción es llevar a un adulto que pueda interpretar para usted siempre que esa persona no sea un testigo ni un abogado. O puede pedir a la corte una lista de intérpretes particulares disponibles para contratar.

¿Dónde puedo obtener los formularios de la corte que necesito? Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio? El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso? Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación* (Notice of Appeal). Tiene que presentarlo dentro de 30 días después de que el secretario le entregue o envíe la decisión (fallo) del juez en el formulario SC-200 o SC-130, *Aviso de publicación del fallo* (Notice of Entry of Judgment).
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea www.courts.ca.gov/reclamosmenores/apelaciones.

¿Tengo otras opciones? Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en cómo resolver el caso, el Demandante tiene que presentar el formulario CIV-110, *Solicitud de desestimación* (Request for Dismissal) ante el secretario de la corte. Pídale al Asesor de Reclamos Menores que lo ayude.

- **Probar que es la corte equivocada.** Envíe una carta a la corte antes del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Si desea que la corte emita una orden de comparecencia para que los testigos vayan al juicio, llene el formulario SC-107, *Citatorio de reclamos menores* (Small Claims Subpoena) y entrégueselo legalmente al testigo.
- **Demandar a la persona que lo demandó.** Si tiene un reclamo contra el Demandante, y el reclamo se puede presentar en la corte de reclamos menores, tal como se describe en este formulario, puede presentar el formulario SC-120, *Reclamo del demandado* (Defendant's Claim) y presentarlo en este mismo caso. Si su reclamo excede el límite permitido en la corte de reclamos menores, puede igualmente presentarlo en la corte de reclamos menores si está dispuesto a limitar su reclamo al máximo permitido, o puede presentar un reclamo por el monto total en la corte apropiada. Si su reclamo excede el límite permitido en la corte de reclamos menores y está relacionado con el mismo contrato, transacción, asunto o acontecimiento que el reclamo del Demandante, puede presentar su reclamo en la corte apropiada y presentar una moción para transferir el reclamo del Demandante a dicha corte, para poder resolver los dos reclamos juntos. Puede ver una descripción de los montos permitidos en el párrafo anterior titulado “Corte de reclamos menores”.
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo? Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado), o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O visite www.courts.ca.gov/reclamosmenores/asesores.

* **Excepciones:** Existen diferentes límites en un reclamo contra un garante (Vea el Código de Procedimiento Civil, sección 116.220 (c))

Case Number: _____

This form is attached to form SC-100, item 1 or 2.

1 If more than two plaintiffs (person, business, or entity suing), list their information below:

Other plaintiff's name: _____
Street address: _____ Phone: _____
City: _____ State: _____ Zip: _____
Mailing address (if different): _____
City: _____ State: _____ Zip: _____
Is this plaintiff doing business under a fictitious name? Yes No If yes, attach form SC-103.

Other plaintiff's name: _____
Street address: _____ Phone: _____
City: _____ State: _____ Zip: _____
Mailing address (if different): _____
City: _____ State: _____ Zip: _____
Is this plaintiff doing business under a fictitious name? Yes No If yes, attach form SC-103.

Check here if more than 4 plaintiffs and fill out and attach another form SC-100A.

2 If more than one defendant (person, business, or entity being sued), list their information below:

Other defendant's name: Airbnb Payments, Inc.
Street address: 888 Brannan St, 4th floor Phone: 855-424-7262
City: San Francisco State: CA Zip: 94103
Mailing address (if different): _____
City: _____ State: _____ Zip: _____

If this defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process:

Name: Corporation Service Company dba CSC Job title, if known: _____
Address: 2710 GATEWAY OAKS DR STE 150N
City: SACRAMENTO State: CA Zip: 95833

Check here if your case is against more than two defendants, and fill out and attach another form SC-100A.

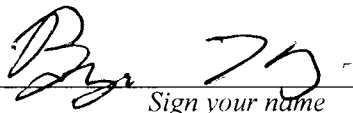
3 Is your claim for more than \$2,500? Yes No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.


4 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare under penalty of perjury under California state law that the information above and on any attachments to this form is true and correct.

Date: 2/7/17
Byron Hing
Type or print your name


Sign your name

Date: _____
Type or print your name


Sign your name

PLAINTIFF/PETITIONER: Byron Hing	CASE NUMBER:
DEFENDANT/RESPONDENT: Airbnb, Inc.	

DECLARATION

(This form must be attached to another form or court paper before it can be filed in court.)

Facts: On 12/20/16, Plaintiff reserved 6-bedroom home in New Orleans for 12-18 guys through Defendant for 3/31/17-4/2/17 (Reservation). The listing did not disclose home was for sale or that New Orleans law prohibited Reservation. Plaintiff later learned New Orleans has an Airbnb law that prohibits all of the following: reservations (i) for more than 10 guests; (ii) with more than 2 guests per bedroom; and (iii) for homes with more than 5 bedrooms (New Orleans Ordinance 27209, Sections 20.3.LLL.2(c) and 21.8.C.14.b ("Ordinance")). Plaintiff also learned the reserved home was for sale. The next day, Plaintiff requested to cancel the Reservation and requested a full refund. Defendant has refused to cancel.

Issues: 1. Does illegality of reservation make contract void, thereby entitling plaintiff to full refund?
2. Does failure to disclose home was for sale constitute Mistake of Fact entitling Plaintiff to rescission?

Analysis:

1. Contracts to perform acts prohibited by statute or regulation are void from inception and not enforceable. California Civil Code §1608; George W. Kuney & Donna C. Looper, §3.37(B). Here, Reservation violated the Ordinance in 3 ways: (I) Reservation is for 12-18 guests, which exceeds 10 guest max; (II) Reservation is for 12-18 guests in 6 bedroom home, which likely exceeds 2 guest/bedroom max; and (III) Reservation is for 6 bedroom home, which exceeds 5 bedroom max. Accordingly, Reservation is void. To ensure Defendant is not unjustly enriched, Plaintiff should receive full refund of all fees paid plus court costs.

2. A "Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in. . . [b]elief in the present existence of a thing material to the contract, which does not exist. . . ." California Civil Code §1577. Here, Plaintiff made the Reservation thinking that home was not for sale. After making the Reservation, Plaintiff learned the home was for sale. This is a material fact not disclosed at the time of booking because it makes it likely that host will cancel reservation. Plaintiff had no legal duty to make such request, because Plaintiff reasonably assumed home listed would not be for sale.

Mutual Mistakes of fact are grounds for rescission (CA Civil Code §1689(b)(1)), and unilateral mistakes of fact are grounds for rescission if mistake is due to fault of the other party or if the other party knew or had reason to know of the mistake. Hernandez v. Badger Constr. Equip. Co. (1994) 28 CA4th 1791. See also CA Civil Code §1689(b)(1). Either way, Plaintiff is entitled to rescission. If Defendant knew, Defendant was complicit in listing. If Defendant did not know, this is mutual mistake. Therefore, Plaintiff should be entitled to rescission and to ensure no unjust enrichment, full refund of all fees paid, plus court costs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 2/7/17

Byron Hing

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

Attorney for Plaintiff Petitioner Defendant
 Respondent Other (Specify):