

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

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NEW YORKERS MAKING ENDS MEET IN THE  
SHARING ECONOMY, JOHN DOE Nos. 1-18,  
JANE DOE Nos. 1-3,

Index No.

Date Filed: 9/2/2014

Plaintiffs,

**SUMMONS**

-against-

Plaintiffs designate New York  
County as the venue pursuant to  
CPLR 509 and based on  
Defendant's threatened commission  
of tortious conduct in  
New York County.

AIRBNB, INC.,


Defendant.

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TO THE ABOVE NAMED DEFENDANT:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
September 1, 2014

ADAM LEITMAN BAILEY, P.C.

By:   
Adam Leitman Bailey

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SUPREME COURT OF THE STATE OF NEW YORK  
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NEW YORKERS MAKING ENDS MEET IN THE  
SHARING ECONOMY, JOHN DOE Nos. 1-18,  
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Plaintiffs,

**COMPLAINT**

-against-

AIRBNB, INC.,

Defendant.  
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Plaintiffs, by and through their attorneys, Adam Leitman Bailey, P.C., as and for their complaint against Defendant Airbnb, Inc., respectfully allege as follows:

**Preliminary Statement**

1. This is an action for a declaratory judgment and permanent injunction.
2. Plaintiffs seek a declaratory judgment that Airbnb, Inc. (“Airbnb”) does not have the right voluntarily to produce their names and other personal and confidential information to the Office of the Attorney General of the State of New York (“NYAG”).
3. Plaintiffs also seek a permanent injunction enjoining Airbnb from voluntarily turning over their names and other personal and confidential information to the NYAG so as to enforce their rights to privacy, to preserve their business interests, and to prevent irreparable harm to themselves.

**The Parties**

4. Plaintiff New Yorkers Making Ends Meet In The Sharing Economy (the “Association”) is an informal, unincorporated association consisting of individuals that Defendant Airbnb denominates within its business model, “Hosts.” These Hosts have associated themselves for the purposes of bringing this action and serving as an advocate and support group

for similarly situated individuals who wish to protect and enforce their rights to privacy and against warrantless search and seizure against Airbnb's voluntary disclosure of names and other personal and confidential information to the NYAG.

5. Plaintiffs JOHN DOE Nos. 1 through 18 and JANE DOE Nos. 1 through 3 are each individual Airbnb "Hosts" and members of the Association, whose identities are being kept confidential so as to not to moot the ultimate relief sought in this action.

6. Upon information and belief, Defendant Airbnb, Inc. is and at all times relevant has been a corporation organized and existing under the laws of the State of Delaware and having a principal place of business located at 888 Brannan Street, San Francisco, California 94117.

#### **Airbnb's Operation**

7. Airbnb operates a website for people to rent out lodging.

8. Upon information and belief, Airbnb has over 500,000 listings in 33,000 cities and 192 countries.

9. Upon information and belief, Airbnb's revenue comes from a 6% to 12% commission of guests' payments plus 3% of what the host receives.

10. According to its website, Airbnb was founded in August of 2008 and based in San Francisco.

11. Upon information and belief, however, in the last year, Airbnb booked nearly \$1 billion in apartment rental revenue in New York City, making New York City its most productive and important marketplace.

12. Airbnb holds itself out as a "trusted community" marketplace for people to list, discover, and book unique accommodations around the world, online or from a mobile phone.

13. According to its website, Airbnb charges Hosts a 3% host service fee every time a booking is completed on its online platform. That fee is said to cover the cost of processing guest payments and comes out of the host payout.

14. According to its website, Airbnb also charges guests a service fee to cover the cost of running the website.

15. Each of the individual plaintiffs in this action has been a “Host” on the Airbnb website and has rented out an apartment or apartments they he or she controls.

16. Since Airbnb is web-based, none of the individual plaintiffs signed a formal paper contract with Airbnb.

17. Rather, each of the individual plaintiffs checked off an “Agreed to” box on a “Click Contract” that Airbnb required each individual plaintiff to electronically sign (hereinafter “sign”) in order to be a “Host.”

18. None of the individual plaintiffs, each of whom “signed” a “Click Contract,” have or have been furnished with paper copies of these “Contracts.”

19. Airbnb unilaterally amended the terms of such contracts from time to time, but the individual plaintiffs had no say in what the terms would be and could only opt out of the new terms by abandoning their business relationship with Airbnb altogether.

**Airbnb Is Subpoenaed By The New York State Attorney General**

20. In 2013, the Office of the Attorney General of the State of New York (“NYAG”) issued a subpoena to Airbnb for information concerning its activities in New York State.

21. Airbnb challenged that subpoena in an action in the Supreme Court of the State of New York, County of Albany,<sup>1</sup> as being overbroad and the materials sought as being confidential.

22. Upon information and belief, on May 13, 2014, a Supreme Court Justice in Albany County agreed and entered an order quashing the subpoena on the grounds of overbreadth without addressing the confidentiality issue Airbnb had advanced.

23. The NYAG issued a second subpoena to Airbnb on May 14, 2014.

24. Upon information and belief, and in breach of its fiduciary duty to its “host” partners, including Plaintiffs, Airbnb began conducting secret negotiations with the NYAG in order to reach an agreement whereby Airbnb would turn over the identities and other personal and confidential information of a subset of its “Host” partners, including Plaintiffs.

25. Airbnb purported to represent the interests of the Hosts, including Plaintiffs, in dealings with the NYAG.

26. Airbnb failed to communicate with the hosts, including Plaintiffs, with respect to the course of negotiations with the NYAG.

27. Airbnb failed to consult with the Hosts, including Plaintiffs, as to an appropriate course of action.

28. Airbnb failed to consult with the Hosts, including Plaintiffs, as to the appropriate legal arguments to protect host data from disclosure.

29. On May 20, 2014, the NYAG wrote to Airbnb to confirm an agreement (the “Agreement”) regarding the second subpoena served upon Airbnb.

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<sup>1</sup> *Airbnb, Inc. v. Schneiderman*, 44 Misc.3d 351, 989 N.Y.S.2d 786, 793 (Sup. Ct. Albany County 2014).

30. Upon information and belief, pursuant to the Agreement, Airbnb has agreed to turn over the “(a) name, e-mail address, telephone numbers, and social media account information; (b) Website user name, HostID, Listing ID; (c) unit/apartment number(s); and (d) tax identification number(s)” for approximately 124 hosts, including the Plaintiffs.

31. As reflected in a post on its policy blog dated May 21, 2014, Airbnb “announced that we have reached an agreement that we believe appropriately balances the Attorney General’s stated objectives of going after illegal hotels, while protecting as much of our hosts’ personal data as possible.”

32. As explained in its policy blog post, pursuant to the Agreement, “Airbnb will provide the Attorney General with anonymized data about our hosts in New York. This data will not include names, apartment numbers, or other personally-identifiable information.”

33. Additionally, Airbnb stated that “[t]he Attorney General’s Office will have one year to review the anonymized data and receive information from us about individual hosts who may be subject to further investigation. We believe the Attorney General’s Office is focused on large corporate property managers and hosts who take apartments off the market and disrupt communities. We have already removed more than 2,000 listings in New York and believe that many of the hosts the Attorney General is concerned about are no longer a part of Airbnb.”

34. Airbnb further stated that “[w]e will provide even more information to hosts about the laws in New York. Hosts will see additional information before they list their space and we’ll email every host in New York with information about the law.”

35. Upon information and belief, Airbnb did not send any of the individual plaintiffs copies of the so-called “anonymized data” it intended to provide to the NYAG that would permit

the individual plaintiffs to know what information concerning the individual plaintiffs it intended to disclose.

36. According to another Airbnb policy blog entry dated August 22, 2014, “[b]efore we reached this agreement, we reviewed our community in New York and removed some bad actors who were providing a low-quality experience or failing to live up to the standards we set for our community.”

37. The Airbnb blog entry further stated that “[a]fter we reached this agreement and as this process continued, we became increasingly confident that the Attorney General was truly concerned about a relatively small number of hosts he considered to be “bad actors,” and that the vast majority of our community was never a target of his inquiries. As a result, we came to expect that we would start receiving requests for individual data at a relatively modest level.”

38. The Airbnb blog entry further stated that “[t]his week, that confidence was reinforced as the Attorney General requested unredacted, personal information on 124 individual past and present hosts. The vast majority of these hosts were no longer on our site. The remainder of records requested are all for hosts with multiple listings, and without knowing more about why the Attorney General is interested in those hosts specifically, it is hard to know why they have been targeted.”

39. In a subsequent notice sent by Airbnb to all hosts, Airbnb explained that its agreement with the NYAG “allows us to comply with that narrowed subpoena in a way that balances the Attorney General’s stated objectives of *going after illegal hotels* while protecting as much of our hosts’ personal data as possible. You can learn more about it on our Public Policy blog.” (Emphasis added.)



40. Additionally, in response to the question of whether a particular host's data would be turned over, Airbnb stated that "we wanted to do everything we could to avoid turning over data on thousands of regular New Yorkers. We believe we have reached an agreement that will protect the privacy of thousands of Airbnb hosts, while allowing the Attorney General to *investigate a few large illegal hotels, which he says are his focus.*" (Emphasis added.)

**Airbnb Threatens To Disclose Plaintiffs'  
Names and Other Personal and Confidential Information**

41. Without any prior notice, and without having had any opportunity to protect or enforce their rights pursuant to legal process, each of the individual plaintiffs received notification from Airbnb's legal department on August 22, 2014, that "the NYAG has now requested information about approximately 130 Airbnb Hosts, including information regarding the account associated with this email address," and that "we are providing this notice to formally notify you of the request for your user and listing data."

42. The notification from the Airbnb legal department stated that "Airbnb will not produce responsive records to the NYAG until September 2, 2014. [To avoid imminent production of responsive records to the NYAG], "[w]e must receive service of any motion you file for protective relief no later than 12:00 PM California time on August 29, 2014."

43. Airbnb subsequently agreed with counsel for Plaintiffs not to produce "responsive records" to the NYAG if served with a motion for protective relief on September 2, 2014.

44. Upon information and belief based on a review of the "agreement" between the NYAG and Airbnb dated May 20, 2014, Airbnb stands ready to produce the "(a) name, e-mail address, telephone numbers, and social media account information; (b) Website user name, HostID, Listing ID; (c) unit/apartment number(s); and (d) tax identification number(s)" for each of the individual plaintiffs unless otherwise ordered by the Court.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

45. Plaintiffs repeat and re-allege all prior paragraphs of this Complaint as if fully set forth herein.

46. In order to become “hosts” on the Airbnb website, each of the individual plaintiffs had to check off an “agreed to” box in a “Click Contract.”

47. None of the individual plaintiffs received formal paper contracts.

48. None of the individual plaintiffs are aware of a provision in the Click Contracts that would permit Airbnb to collect and divulge confidential personal financial information about the individual plaintiffs’ (or other hosts’) activities on the website to any third party without the individual plaintiffs’ permission and consent as well as some type of legal compulsion and, upon information and belief, there is no such provision in the Click Contracts.

49. Absent a contractual right to reveal the individual plaintiffs’ identities and personal and confidential information, a court order to do so, or a valid subpoena, Airbnb cannot reveal this information.

50. Airbnb is not subject to a valid subpoena requiring the turnover.

51. Airbnb’s threatened action comes about as a result of an “Agreement” reached with NYAG of which the individual plaintiffs had no notice and, consequently, could not participate in.

52. Airbnb cannot rely upon an unstated “policy” to justify the threatened action, which would breach its fiduciary and contractual duties to the individual plaintiffs.

53. Moreover, in the matter of *Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, 989 N.Y.S.2d 786 (Sup. Ct. Albany County 2014), a prior court proceeding to quash a subpoena

issued by the NYAG, Airbnb argued that disclosures such as the threatened action were impermissible due to confidentiality and privacy concerns.

54. Now, in threatening to turn over the individual plaintiffs' information, Airbnb takes the opposite position.

55. In contrast to the situation in the *Schneiderman* matter where Airbnb had been served with a subpoena, in this case there is no subpoena, only a voluntary agreement by Airbnb to produce "responsive records" to the NYAG.

56. Airbnb and the individual plaintiff "hosts" operate in a joint venture relationship.

57. A joint venture relationship is a form of partnership.

58. With regards to its "hosts," Airbnb simultaneously functions as a facilitator, broker, an escrow agent, partner, mediator and arbitrator.

59. The first three of these roles (at least) have their own distinct fiduciary obligations.

60. Like a partner, Airbnb charges Hosts a fee based upon the percentage of the transaction.

61. Like a real estate broker, Airbnb advertises the furnished apartments for rent on its websites.

62. Airbnb facilitates and controls the conversations between the Host and the potential renter, by requiring that all such communications occur on Airbnb's website before booking the apartment, and by detecting and redacting message content between guests and hosts that Airbnb determines at its sole discretion, such as host and guest contact information (forcing the parties to transact and facilitate guest rentals of host listings strictly on the Airbnb website.)

63. As a result thereof, Airbnb is an “electronic communication service” within the meaning and intendment of 18 USC §§2702 and 2703.

64. Airbnb also creates rules of operation (e.g. policies regarding refund of deposits and Hosts moving guests to other apartments) which it claims override any rules created by the Hosts for renting their own apartments.

65. Like an escrow agent, Airbnb requires that any renter pay for the rental to Airbnb in advance which Airbnb then holds until it decides whether the contract has been adequately performed (according to Airbnb’s judgment).

66. Accordingly, in all these roles, Airbnb owes the individual plaintiffs a fiduciary duty, that is, “the punctilio of an honor the most sensitive,” as declared by Chief Judge Cardozo in the landmark case of *Meinhard v. Salmon*, 249 N.Y. 458 (1928).

67. Airbnb’s threatened action clearly violates its fiduciary duty to the Plaintiffs to shield sensitive, private information from third parties.

68. Additionally, upon information and belief, none of the individual plaintiffs’ renting of their units fits within the legal definition of a hotel, and a review of Airbnb’s own website shows that Airbnb itself does not believe that the service it provides entails placing guests in hotels.

69. There is clearly a justiciable controversy between Plaintiffs and Airbnb owing to Airbnb’s threatened imminent disclosure of Plaintiffs’ sensitive, private information to the NYAG.

70. Plaintiffs are entitled to a declaration that Airbnb may not turn over Plaintiffs’ names or data under its Agreement with the Attorney General.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Injunction)**

71. Plaintiffs repeat and re-allege all prior paragraphs of this Complaint as if fully set forth herein.

72. If Airbnb is permitted to turn over Plaintiffs' personal and confidential information to the NYAG, Plaintiffs will suffer irreparable harm.

73. The NYAG is seeking to bring civil and/or criminal investigations and/or prosecutions against what it considers to be "illegal hotels."

74. While the Plaintiffs do not fit that category, and indeed do not run hotels at all, they still stand subject to investigation, to the arbitrary deprivation of their rights to be secure against warrantless searches and seizures without probable cause, and to wrongful emotional and financial expenses because of an agreement to which they were not parties and could not consent to.

75. Plaintiffs' reputations also stand to be besmirched.

76. And, once the so-called genie is out of the bottle, the Court has no means to put the genie back, as the U.S. Court of Appeals recognized in *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004).

77. The equities also tip in favor the Plaintiffs because the harm they will suffer if injunctive relief is not granted is greater than the harm to Airbnb if injunctive relief is granted.

78. Indeed, if the injunctive relief is granted, Airbnb will suffer no harm at all.

79. Plaintiffs stand to suffer public ridicule, emotional distress, pecuniary loss, deprivation of constitutional rights, and the specter of an investigation or prosecution when they have committed no wrong.

80. Airbnb, which seeks to protect itself by using the Plaintiffs as sacrificial lambs, is not under subpoena or court order to turn over this information.

81. Airbnb will suffer no immediate harm because the NYAG must recognize the authority of this Court and will recognize that the adjudication of this case must take place before it can take any action against Airbnb.

82. Plaintiffs have no adequate remedy at law.

83. Plaintiffs are entitled to an injunction enjoining Airbnb from turning over Plaintiffs' names or data under its Agreement with the Attorney General.

WHEREFORE, Plaintiffs demand judgment as follows:

A. On Plaintiffs' First Cause of Action, a declaration that that Defendant Airbnb, Inc. that Airbnb may not turn over Plaintiffs' names or data under its Agreement with the Attorney General;

B. On Plaintiffs' Second Cause of Action, an injunction enjoining Airbnb from turning over Plaintiffs' names or data under its Agreement with the Attorney General;


C. Awarding Plaintiffs the costs and disbursements of this action; and

D. Awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York  
September 1, 2014

Respectfully submitted,

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