

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

PARKER MADISON PARTNERS,
Individually and On Behalf of All Others Similarly
Situated,

Plaintiff,

v.

AIRBNB, INC.,

Defendant.

Index No.

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Class Action Complaint (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 plaintiff’s attorneys within twenty (20) days after service of this summons, exclusive of the day of service; or within thirty (30) days after completion of service if the service is made in any manner other than by personal delivery within the state; or if service of the summons is made by mail pursuant to CPLR §312-a, you must complete and mail or deliver the acknowledgement of receipt to the undersigned within thirty (30) days from date of receipt and serve an answer within twenty (20) days after the signed acknowledgement is mailed or delivered to the undersigned, 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.

Plaintiff designates New York County as the place of trial. The basis of venue is the residence of the Plaintiff.

DATED: June 11, 2018

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CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

Plaintiff Parker Madison Partners (“Parker Madison” or “Plaintiff”), by and through its undersigned counsel, brings this class action complaint against Airbnb, Inc. (“Airbnb,” the “Company”, or “Defendant”). Plaintiff’s allegations are based upon knowledge as to its own acts and experience and upon information and belief as to all other matters. Plaintiff’s information and belief is based upon, among other things, a comprehensive investigation undertaken by its attorneys, analysis of public records and other documents, and comprehensive legal analysis of the relevant law. Plaintiff believes that after a reasonable opportunity for discovery, substantial additional evidentiary support will exist for the allegations set forth herein.

NATURE OF THE ACTION

1. This is an action seeking injunctive and declaratory relief to prevent Airbnb’s unfair competition and continued violations of § 349 of New York’s General Business Law (“GBL”).

2. Through its website, www.airbnb.com, Airbnb created and maintains an operation that lists, advertises, and takes fees and/or commissions for property rentals for which it facilitates, controls, and processes payments.

3. Those individuals who sign up for Airbnb's services (*i.e.*, its "members") can either list and rent out their property (as "Hosts") or find properties to rent (as "Guests"). For every rental transaction, Airbnb takes and processes the rental payments and takes a percentage of the payment as a fee and/or commission from both the Host and the Guest. What may seem a novel and convenient enterprise is, at bottom, not only illegal, but commercial activity reserved exclusively for licensed real estate brokers, like the Plaintiff.

4. In New York, real property transactions, including residential rentals, are governed by numerous regulations, industry standards, and professional responsibilities. Among these regulations is the requirement that those who receive compensation for facilitating residential rental transactions must be licensed as a real estate broker.

5. Although Airbnb notoriously pervades the rental market, collecting fees and commissions from both sides of every transaction, and controls both the collection and distribution of rent, and controls the rental terms between lessor and lessee, it has no business or legal right to do so. Airbnb is neither registered nor licensed as a real estate broker in New York State.

6. In order to conduct business in the residential real estate market, brokers, like the Plaintiff, are required to follow strict guidelines and regulations including, but not limited to:

- a. Providing disclosures (DOS 1735-a) regarding the nature of its agency relationship with consumers and the rights and obligations created;
- b. Receiving necessary authorizations from property owners prior to advertising rental units;
- c. Adhering to time, place, and manner advertising restrictions; and

d. Securing rental payments of in separate, special accounts (*i.e.*, ensuring no comingling of rental payments with general funds).

7. Like all real estate brokers, Plaintiff abides by these rules and restrictions in order to operate responsibly, productively, and profitably in New York's residential real estate market. Airbnb does not.

8. In fact, Airbnb's total disregard for New York's residential real estate laws and regulations has allowed it to inundate the residential real estate marketplace without oversight and to substantially infringe upon the legally-restricted commercial activities of duly licensed real estate brokers, like the Plaintiff. As a result, Airbnb is directly competing for business it has no legal right to take part in, and, in the process, causing housing to be taken off the residential rental market. In other words, Airbnb has misappropriated, and continues to misappropriate, the commercial advantage Plaintiff and members of the putative Class are entitled to.

9. Plaintiff's commercial advantage comes in the form of, *inter alia*, brokers' licenses, disclosure requirements, advertising guidelines and prohibitions, and regulations regarding collection and comingling of funds. Like all members of the putative Class, Plaintiff expends considerable time and resources to maintain his competitive advantage.

10. Meanwhile, Airbnb is able to redirect substantial profits away from licensed real estate brokers while not incurring any of the requisite burdens and expenses of regulatory compliance. As a result, consumers forego the services provided by Plaintiff and members of the putative Class as they reasonably (albeit erroneously) presume that Airbnb can lawfully provide identical services.

11. Further, Airbnb's actions are deceptive to consumers who believe they are lawfully renting (and renting out) properties without the services of a licensed broker who is

trained and knowledgeable about New York's real estate laws. In many instances, individuals have rented and listed properties on Airbnb without any awareness as to the illegality of the transactions. *See, e.g.,* <https://www.habitatmag.com/Publication-Content/Legal-Financial/2017/2017-December/Illegal-Hotel-Fine>.

12. Similarly, those renting out properties on Airbnb are deceived into believing that they are permitted to use Airbnb for long-term rentals (up to a year or longer) in New York City. Indeed, there is an entire section of Airbnb's website dedicated to long-term rentals in New York City. *See* <https://www.airbnb.com/s/New-York--NY?sublets=monthly>.

13. While consumers are continuously deceived into believing that they can use Airbnb instead of a licensed real estate broker, Airbnb is collecting substantial fees and commissions that would otherwise have been realized by Plaintiff and members of the putative Class.

14. As residential real estate brokers, the interests of Plaintiff and members of the putative Class in not being subject to unfair and unwarranted competition from a behemoth company that operates completely outside the laws, rules, and regulations surrounding residential real estate transactions, are within the zone of interest protected by New York's unfair competition prohibition and GBL § 349.

15. Accordingly, on behalf of itself and the putative Class, Plaintiff seeks relief in the form of declaratory and injunctive relief, barring Airbnb from unfairly competing in and deceiving consumers in New York's residential real estate market.

PARTIES

16. Plaintiff Parker Madison Partners is a resident of the State of New York. Parker Madison Partner's president, Samuel Irlander, holds a brokers' license in his own name, and

Parker Madison Partners serves as his brokerage. Plaintiff is primarily engaged in the business of facilitating residential rentals for which it receives commissions based on a percentage of the rent.

17. Defendant Airbnb Inc. is a domestic corporation that was formed in Delaware and lists its principal place of business as San Francisco, California. Airbnb does substantial business within the State and City of New York. In fact, in New York City alone, Airbnb is expected to earn \$805.32 million in 2018. See <https://www.statista.com/statistics/483752/new-york-city-airbnb-revenue/>.

FACTUAL ALLEGATIONS

The Licensed New York Real Estate Broker Commercial Space

18. Real estate brokers serve as facilitators for real estate transactions. Facilitation can come in the form of connecting potential tenants with landlords, advertising units available for leasing, giving guidance on pricing of units, and collecting and distributing rental payments. Generally, real estate brokers are compensated with a flat fee or a commission based on a percentage of the unit sale price or rent.

19. New York's residential real estate market is highly regulated, and requires significant time and expense to lawfully operate in and derive revenue from.

20. A real estate broker must be licensed, which requires individuals and businesses to complete a rigorous and expensive application process and continuing obligations.

21. To become a licensed real estate broker in the State of New York, one must:

- a. have at least two years of experience as a licensed real estate salesperson or at least three years of experience in the general real estate field, or a combination of the both;

- b. meet the minimum points requirement; *i.e.*, 3500 points for two years of full time experience or 5250 for three years of equivalent experience;
- c. have satisfactorily completed both the qualifying salesperson course of 75 hours and an additional 45-hour real estate broker course as approved by the Secretary of State; and
- d. have passed a qualifying examination administered by the Department of State.

22. In order to maintain a real estate license in the State of New York, a broker must complete 22.5 hours of approved continuing education every two years, including at least three hours of instruction pertaining to fair housing and/or discrimination, and at least one hour of instruction pertaining to the law of agency.

23. Both earning and maintaining a real estate broker's license in the State of New York requires the expenditure of hundreds, if not thousands, of dollars.

24. Furthermore, once a real estate broker is licensed, they are still subject to even more requirements and standards, including, but not limited to:

- a. **prohibition against commingling money**: a real estate broker shall not commingle funds or other property of its principal with its own and shall, at all times, maintain a separate, special, federally-insured bank account to be used exclusively for the deposit of said monies;
- b. **disclosure of potential conflicts**: a real estate broker shall make it clear for which party it is acting and shall not receive compensation from more than one party except with the full knowledge and consent of all parties to the transaction;

- c. **express authorization of owner**: a real estate broker shall never offer a property for sale or lease without the express authorization of the owner;
- d. **limitation on advertisements**: only a real estate broker is permitted to place or cause to be published advertisements related to the sale or lease of property; and
- e. **maintenance of detailed records for three years**: every licensed real estate broker must keep and maintain for a period of three years, records of each transaction concerning the sale or lease of real property, including the names and addresses of the parties to the transaction, agreements and leases, rental amounts, deposits held by broker, and the amount of any commissions or fees paid to broker.

25. Plaintiff is a licensed real estate broker, and has expended considerable time and money to acquire and maintain its license operating within the law. While such requirements increase operating costs and restrict Plaintiff's ability to fully exploit the residential real estate market for all possible revenue opportunities, those costs and restrictions are the price of entry into the marketplace and they are there for a reason: to protect consumers.

Airbnb Misappropriates the Real Estate Market

26. According to its website (www.airbnb.com), Airbnb was founded in 2008 and operates as an "accommodation marketplace." Since that time, Airbnb has facilitated "nearly 5 million Airbnb listings" in "81,000 cities" across "191+ countries." Airbnb has served nearly "300 million+ Airbnb guest arrivals all-time."

27. Airbnb currently facilitates tens of thousands of rental transactions per day in New York City alone, making it Airbnb's largest real estate rental market in the entire United States.

28. Airbnb regularly facilitates (and profits from) residential rentals for periods of up to a year and longer priced at monthly rates.

29. Members can list their property (or properties) to rent (in the role of a Host) or can find and request a rental booking at a Hosts' property (in the role of a Guest).

30. Since its inception, Airbnb has not charged Hosts any fee to advertise on its website. Instead, Airbnb charges Hosts approximately a 3% commission on the revenue generated from rentals completed through its website.

31. Airbnb deducts and retains the 3% commission from rental payments it receives and processes from Guests prior to distributing the balance to the Host.

32. In addition to charging the Hosts, Airbnb also charges its Guests a commission.

33. Airbnb does not disclose the percentage or amount of these Guest commissions to the Hosts or anyone other than the Guests. However, Airbnb's website claims the Guests' commissions vary with each transaction and fall somewhere within a range of 0% to 20% of the rental contract.

34. As reflected within the terms of its various agreements, practices, and its website, Airbnb provides members with the following services:

- (a) Airbnb lists and advertises properties available to rent on its website and seeks to be the primary mechanism and intermediary agent to connect members who are ready, willing and able to enter into real

estate transactions, thereby earning two commissions in the process
(*i.e.*, from both Guests and Hosts);

- (b) Airbnb provides, regulates, and controls an online forum upon which all Hosts and Guests must conduct their communications and negotiations prior to completing and funding their rental agreements;
- (c) Airbnb requires all members who wish to complete rental transactions to assent to using Airbnb's mandatory 86-pages of adhesion contracts – effectively requiring Airbnb to act as the lawyer for all members;
- (d) Airbnb requires the Guest to assent to Airbnb's handling of all rental monies, requiring them to pay all of the rent and commission owed in each transaction to Airbnb, to act as an escrow agent in each and every Airbnb rental transaction, and giving Airbnb absolute discretion in deciding how such money is disbursed;
- (e) Airbnb requires all members to assent to Airbnb's absolute discretion to resolve disputes between its members concerning Airbnb's transactions and for Airbnb to make “final and binding” decisions (as an escrow agent and/or arbiter) concerning whether and how to enforce its own agreements -- including any decision on whether to cancel or enforce any agreement (*e.g.* whether to provide a refund to the guest or find the guest another accommodation);
- (f) Airbnb offers Hosts an option to allow Airbnb to set the prices of their rentals, using Airbnb's proprietary software and business data

of all Airbnb rentals in that location, which supposedly allows Hosts to maximize their rental income;

- (g) Airbnb makes available a free-of-charge professional photographer to take pictures of Host properties to be published on its website; and
- (h) Airbnb purchases outside advertising to promote its website to increase traffic and thus rentals (and commissions related thereto) of Host properties.

35. Airbnb's substantial efforts in facilitating and completing the rental transactions involving New York properties, including the acceptance of rent and obtaining fees and commissions, satisfy the legal definition of being a "real estate broker" under NYRPL § 440(1).

36. Despite such real estate broker services and status, Airbnb has never had a New York real estate broker's license.

37. Moreover, aside from not being licensed, Airbnb fails to comply with any of the expensive and time consuming regulations that Plaintiff and the Class must follow.

38. Indeed, Airbnb neither executes, nor ask its members to execute, the New York State Disclosure Form (DOS 1735-a).

39. Airbnb fails to put rental payments it receives from renters into separate, special accounts sufficiently segregated from Airbnb's general accounts.

40. Airbnb does not seek authorization from property owners before advertising units on its website.

41. Unhindered by New York's regulatory scheme, Airbnb advertises to, contracts with, and profits from customers in the residential real estate market, overrunning the

marketplace with its enormous resources, and competing for revenue reserved for real estate brokers, like the Plaintiff.

42. Making matters worse (and significantly more unfair) for real estate brokers and consumers, Airbnb operates in ways that are strictly prohibited, with or without a license.

Plaintiff and Other Real Estate Brokers Suffer Direct Harm

43. In its capacity as a residential building manager/exclusive broker, Plaintiff has had units advertised and rented through Airbnb without his knowledge or authorization.

44. Further, because Airbnb is providing not just the services that Plaintiff is authorized to provide, but also a host of clearly-unauthorized services that no broker should or could provide, it continues divert business away from Plaintiff and other members of the Class.

45. And, while Plaintiff and other members of the Class continue to incur the costs and burdens that allow real estate brokers to earn a living in New York's residential real estate market, Airbnb incurs none of those costs and burdens and generates billions of dollars in the process.

46. In its Terms of Service, Airbnb continues to misrepresent to consumers that it is not providing real estate broker services and thus not bound to comply with regulations and laws pertaining to real estate brokers. However, unbeknownst to consumers, these self-serving disclaimers are false and directly contradicted by New York law. This added deception of consumers gives Airbnb an unfair competitive advantage over Plaintiff and other real estate brokers as consumers are led to believe (erroneously) they are not required to seek out the services of a licensed real estate broker.

47. Airbnb's impact on the residential real estate market is significant. In fact, real estate brokers like the Plaintiff are not being harmed solely as a result of Airbnb's unfair competition in the marketplace and decreased ability to attract new customers, but by virtue of the fact that Airbnb is systematically shrinking the marketplace by reducing the number of available rental units in New York.

48. Studies have demonstrated that Airbnb has had a profound impact upon the supply of units available for leasing (*i.e.*, potential customers and offerings available for Plaintiff and members of the Class). In the past 3 years alone, estimates suggest that "Airbnb listings have removed between 7,000 and 13,500 housing units from circulation" in New York City. <http://www.nydailynews.com/newswires/news/business/report-airbnb-reduces-housing-availability-drives-rents-article-1.3787081>.

49. For these reasons, the unfair competition and deception of Airbnb has caused harm to the Plaintiff and members of the Class and that harm will continue until Airbnb is forced to comply with the law.

CLASS ACTION ALLEGATIONS

50. Plaintiff bring this class action, under the provisions of CPLR 901, *et seq.*, on its own behalf and on behalf of all similarly situated entities and individuals (the "Class"), consisting of: "All licensed real estate brokers and real estate brokerage companies currently licensed in the State of New York who operate in and derive revenue from the residential real estate market."

51. Excluded from the above Class are: (1) Defendant, including its officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns; (2) any entity in which Defendant has a controlling interest, its officers, directors, affiliates, legal

representatives, employees, successors, subsidiaries, and assigns; and (3) judicial and governmental entities including any judge, justice, or judicial officer presiding over this matter and members of their staff and immediate families.

52. Plaintiff reserves the right to amend the above Class definition if further investigation indicates that the Class definition should be expanded, narrowed, subdivided, or otherwise modified.

53. Defendant's improper and illegal practices apply uniformly to all members of the Class and arise out of the New York statutory and common law claims alleged herein, so that the questions of law and fact are common to all members of the Class.

54. All members of the Class are similarly affected by Airbnb unfairly competing by not expending any of the resources required to comply with the numerous regulations governing real estate brokers such as Plaintiff and the putative Class, and deceiving customers into believing that Airbnb can lawfully perform identical services to that of Plaintiff and the Class.

55. There are hundreds of thousands of real estate brokers and brokerage companies within New York State.

56. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendant, and the relief sought within the Class is common to its members.

57. Plaintiff will fairly and adequately represent, advance, and protect the interests of the members of the Class.

58. Plaintiff has retained counsel that is competent and experienced in both consumer protection and class action litigation.

59. Questions of law and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

- (a) whether Airbnb is providing services in New York State reserved for licensed real estate brokers;
- (b) whether Airbnb is unfairly competing against Plaintiff and the Class; and
- (c) whether Airbnb is engaging in deceptive conduct by representing to consumers that it does not provide services reserved for licensed real estate brokers.

60. Certification of this class action is appropriate under CPLR 901 because Airbnb has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

61. Further, given the large number of class members harmed by Airbnb's conduct, allowing individual actions to proceed, in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

62. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender.

63. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regards to management of this class action.

CLAIMS FOR RELIEF

COUNT I

*(Declaratory and Injunctive Relief for Violation of GBL § 349
for Deceptive Trade Practices)*

64. Plaintiff incorporates by reference and realleges paragraphs 1-62, above, as though fully set forth herein.

65. Defendant makes and has made numerous false, misleading, and deceptive statements and omissions of material facts with regard to its conduct, including, but not limited to, representing to consumers in New York's residential real estate market that it is not acting as a real estate broker but can lawfully provide services, including listing and advertising residential units for rent, brokering residential rentals, collecting and distributing residential rental payments, and collecting fees and commissions, when only licensed real estate brokers, such as the Plaintiff and members of the Class, can provide such services.

66. Defendant's deceptive acts and practices were such that a reasonably prudent consumer would likely be misled.

67. Plaintiff, as a corporate competitor, has a private right of action in equity to assert claims against Airbnb for engaging in deceptive acts and practices.

68. As a consequence of Airbnb's deceptive conduct, Airbnb has redirected a significant amount of the business in the residential real estate market to itself and away from the Plaintiff and members of the Class who are legally entitled to such business.

69. Furthermore, Airbnb's conduct has and continues to deceive and bring harm to consumers and the public at large, by:

- a. falsely representing that Airbnb rental transactions are legal;
- b. falsely representing that Airbnb can lawfully collect fees and commissions for rentals;

- c. falsely representing that Airbnb can lawfully advertise units for rent;
- d. falsely representing that Airbnb can lawfully collect and disperse rental monies;
- e. failing to disclose that Airbnb is prohibited from serving as agent for both sides of a rental transaction without making legally-required disclosures;
- f. putting consumers into uniquely dangerous situations that would not occur when contracting with a licensed real estate broker. *See, e.g.*, <http://www.nydailynews.com/new-york/brooklyn/nyc-hammers-landlord-airbnb-rooms-brooklyn-rooftop-article-1.3174910>; <http://losangeles.cbslocal.com/2017/11/07/goldstein-investigation-airbnb-hosts-felony-records/>;
- g. creating a housing shortage within New York City. *See* <https://www.politico.com/states/f/?id=00000161-44f2-daac-a3e9-5ff3d8740001>; and
- h. causing an increase in rents all across New York City. *See* <https://www.nytimes.com/2018/05/03/nyregion/airbnb-rent-manhattan-brooklyn.html>.

70. Accordingly, Plaintiff is entitled to declaratory and injunctive relief preventing Airbnb from engaging in further deceptive acts and practices.

COUNT II

(Declaratory and Injunctive Relief for Unfair Competition)

71. Plaintiff incorporates by reference and realleges paragraphs 1-62, above, as though fully set forth herein.

72. Without legal authorization, Airbnb has engaged, and continues to engage, in commercial activities which are identical to and in competition with Plaintiff and members of the Class.

73. Airbnb has misappropriated, and continues to misappropriate, the commercial advantage rightfully belonging to the Plaintiff and members of the Class.

74. Further, Airbnb has created an unfair commercial advantage for itself conduct by misleading consumers into believing it can lawfully provide the exact same services as Plaintiff and members of the Class.

75. As a result of Airbnb's conduct, Plaintiff and members of the Class have suffered, and will continue to suffer, damage to its business (including but not limited to substantial lost revenues redirected away from Plaintiff and members of the Class) in the absence of declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and others similarly situated, pray for relief pursuant to each cause of action set forth in this Complaint as follows:

- a. For an order certifying that the action may be maintained as a class action, certifying Plaintiff as class representative, and designating his counsel as counsel for the Class;
- b. Declaratory and injunctive relief as described above;
- c. Attorneys' fees, expenses, and court costs; and
- d. Such other and further relief that this Court deems just and proper.

DATED: June 11, 2018

Respectfully submitted,

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