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13

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION
17

18 AIRBNB, INC.,
19 Plaintiff,
20 vs.
21 CITY OF ANAHEIM,
22 Defendant.

Case No. 8:16-cv-1398

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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1 For its complaint, Plaintiff Airbnb, Inc. (“Airbnb”) alleges as follows:

2 **INTRODUCTION**

3 1. This is an action under 42 U.S.C. § 1983, the Court’s equitable
4 powers, and the Declaratory Judgment Act, 28 U.S.C. § 2201, to enjoin and declare
5 unlawful the enforcement against Airbnb by Defendant City of Anaheim (the “City”
6 or “Anaheim”) of Sections 4.05.120 and 4.05.130 of Ordinance No. 6374 (the
7 “Ordinance”), passed by the Anaheim City Council on July 12, 2016 and purportedly
8 effective on August 11, 2016.

9 2. The Ordinance directly conflicts with, and is preempted by, the
10 Communications Decency Act of 1996, 47 U.S.C. § 230 (the “CDA”). The
11 Ordinance seeks to hold “hosting platforms”—defined by the law as entities that
12 “*allow[] the owner to offer to list or advertise*” a rental on the “web site provided” by
13 the platform, § 4.05.030(E)¹ (emphasis added)—criminally and civilly liable for
14 publishing, and for failing to screen and remove, their users’ advertisements of rentals
15 that lack City-issued permits or are otherwise not compliant with “any” City law or
16 regulation, § 4.05.120.020. As such, the Ordinance unquestionably treats online
17 platforms such as Airbnb as the publisher or speaker of third-party content and is
18 completely preempted by the CDA. In addition, the law violates the First
19 Amendment as an impermissible content-based regulation. It also violates both the
20 First Amendment and the Due Process Clause of the Fourteenth Amendment by
21 imposing criminal penalties on hosting platforms without requiring a showing that the
22 platform knew a rental in a listing was unpermitted or otherwise not in compliance
23 with City law before it published the listing. The enforcement of the Ordinance
24 against Airbnb should be immediately and permanently enjoined.²

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26 ¹ Unless otherwise noted, all references in this format are to the Ordinance, which
amends the City’s Municipal Code.

27 ² This action is both an as-applied and a facial challenge against the Ordinance. It is
28 an as-applied challenge in that it seeks only to prohibit the City from enforcing certain

1 3. Since May 2014, Anaheim law has permitted residents to rent out
2 their residential units on a short-term basis if they obtain a permit from the City and
3 their rentals meet other conditions. §§ 4.05.100.0109, 4.05.100.0112.

4 4. The Ordinance fundamentally changes the City’s scheme for
5 regulating short-term rentals. Previously, the City imposed penalties only on owners
6 who violated the short-term rental law. The Ordinance, by contrast, imposes penalties
7 on not only the owner or leaseholder of a short-term rental property, but also on the
8 hosting platform (and the renter). *See* §§ 4.05.130 (providing for liability for
9 “owner[s],” “responsible person[s],” and “hosting platform[s]”); 4.05.030(J) (defining
10 owner); 4.05.030(O) (defining “responsible person” as “an occupant” of the rental).

11 5. With respect to hosting platforms specifically, the Ordinance
12 provides that “[n]o hosting platform shall list or advertise a short-term rental for
13 which the city has not issued a permit.” § 4.05.120.010. It further requires hosting
14 platforms, “[u]pon written or electronic notification from the city that the city has not
15 issued a permit for a [listed] short term rental,” to remove the listing from the
16 platform within ten calendar days. *Id.* The “hosting platform thereafter shall not list
17 or advertise the short term rental without written certification from the city that the
18 required permit has been issued”—even if the short-term rental is in compliance with
19 law. *Id.* Last, the Ordinance broadly states that a “hosting platform shall not []
20 facilitate”—defined as “*allowing the owner to offer to list or advertise* the short-term
21 rental on the Internet web site”—“the occupancy of a short-term rental if the
22 occupancy will violate any ordinance, regulation or law of the city.” §§ 4.05.120.020;
23 4.05.030(E) (emphasis added).

24 6. The Ordinance thus requires platforms to verify that each listing
25 on their sites has a valid permit and that the rental in question complies with *all*

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27 provisions of the Ordinance against Airbnb; and it is a facial challenge in that certain
28 provisions, on their face, violate the law and cannot be enforced against any hosting
platform in any set of factual circumstances.

1 aspects of City law before publishing the listing—including that the rental does not
2 have “double-keyed dead bolt locks” on “exit doors” and has “[s]moke alarms . . .
3 installed in all habitable areas except the kitchen,” § 4.05.100.0103(b), (k).

4 7. The enforcement of the Ordinance against Airbnb is preempted by
5 the CDA, which aims “to promote the continued development of the Internet” and “to
6 preserve” its “vibrant and competitive free market.” 47 U.S.C. § 230 (b)(1)-(2). In
7 furtherance of these goals, the CDA expressly preempts state and local laws that treat
8 a website “as the publisher or speaker of any information provided by another
9 information content provider.” *Id.* (c)(1), (e)(3). By imposing civil and criminal
10 penalties on Airbnb for publishing and for failing to screen and remove listings that
11 lack a permit or do not comply with other City law, the Ordinance treats Airbnb as the
12 publisher or speaker of those listings, whose content is provided by third-party hosts.
13 The Ordinance therefore violates and is preempted by the CDA.

14 8. The Ordinance also violates Airbnb’s First Amendment rights
15 because it is a content-based restriction on speech, in the form of rental listings. The
16 Ordinance seeks to punish Airbnb for publishing listings advertising rentals that do
17 not comply with City law. To justify this content-based restriction on speech, the
18 City bears the burden of showing that the Ordinance is narrowly tailored to further a
19 substantial government interest. The City cannot carry this burden because, instead of
20 targeting speech, the City instead could simply enforce its short-term rental laws
21 directly against hosts who violate them—as the City acknowledges it already does
22 successfully. Further, the Ordinance will have an impermissible chilling effect on
23 speech because it will force Airbnb to remove even lawful listings that are in
24 compliance with Anaheim law, because hosting platforms often will not be able to tell
25 from the face of a listing whether that listing actually has a permit or otherwise fully
26 complies with other City laws.

27 9. The Ordinance also violates Airbnb’s rights under the First
28 Amendment and the Due Process Clause of the Fourteenth Amendment because it

1 seeks to impose criminal penalties on hosting platforms like Airbnb without requiring
2 any showing of mens rea or scienter. The City has impermissibly created a strict-
3 liability crime for publishing advertisements for rentals that prove to be unlawful for
4 one reason or another, even if the hosting platform has no knowledge of the violation.
5 Finally, the Ordinance is impermissibly vague as to what measures hosting platforms
6 like Airbnb must undertake to comply with its provisions.

7 **PARTIES**

8 10. Plaintiff Airbnb is a corporation organized and existing under the
9 laws of the state of Delaware, with its principal place of business in San Francisco,
10 California. It maintains a website that provides an online marketplace for people to
11 list, explore, and book both short-term and long-term housing accommodations.

12 11. Defendant City of Anaheim is an incorporated municipality in
13 southern California.

14 **JURISDICTION AND VENUE**

15 12. This Court has jurisdiction of this action under 28 U.S.C. § 1331
16 and 42 U.S.C. § 1983 because Airbnb alleges violation of its rights under the
17 Constitution and laws of the United States.

18 13. The Court may declare the legal rights and obligations of the
19 parties in this action pursuant to 28 U.S.C. § 2201 because the action presents an
20 actual controversy within the Court's jurisdiction.

21 14. Venue is proper under 28 U.S.C. § 1391 because the defendant is
22 located and resides in this judicial district and in the State of California; and because a
23 substantial part of the events giving rise to Airbnb's claims for relief occurred in this
24 judicial district.

25 15. This action should be assigned to the Southern Division of this
26 Court because the sole defendant, the City of Anaheim, resides in Orange County.

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1 **FACTUAL ALLEGATIONS**

2 **Airbnb**

3 16. Founded in 2008, Airbnb provides an Internet platform through
4 which persons desiring to book accommodations (“guests”), and persons listing
5 unique accommodations available for rental (“hosts”), can locate each other and enter
6 into direct agreements to reserve and book travel accommodations on a short and
7 long-term basis.

8 17. Airbnb does not manage, operate, lease or own hosts’
9 accommodations, and it is not a party to the direct agreements between guests and
10 hosts for the booking of rentals offered by hosts. Airbnb’s platform provides a means
11 by which hosts can choose to list their rentals; guests can locate those rentals; and
12 hosts and guests can communicate directly to set the terms of their bookings. The
13 platform also provides, through third-party payment processors, a secure payment-
14 processing service to permit hosts to receive payments electronically. In
15 consideration for the use of its platform, Airbnb receives a service fee from both the
16 guest and host, determined as a percentage of the accommodation fee set solely by the
17 host.

18 18. Hosts, and not Airbnb, decide whether to list their properties and
19 with whom and when to transact, provide the descriptions of their rentals, set their
20 own lengths of stay, and determine their prices. As Airbnb’s Terms of Service state,
21 hosts “alone are responsible for any and all Listings and Member Content [they]
22 post.”³ Likewise, the Ordinance itself defines a “hosting platform” as an “entity that
23 facilitates a short-term rental for an owner,” i.e., “*allow[s] the owner to offer to list or*
24 *advertise* the short-term rental on the Internet web site provided or maintained by the
25 hosting platform.” § 4.05.030(E) (emphasis added).

26 _____
27 ³ Airbnb Terms of Service, <https://www.airbnb.com/terms> (last visited July 20,
28 2016).

1 19. Airbnb advises its hosts and guests to be aware of and comply
2 with local laws in listing and renting units listed on Airbnb. The Airbnb Terms of
3 Service reference at their outset parties’ “OBLIGATIONS TO COMPLY WITH
4 APPLICABLE LAWS AND REGULATIONS,” and that

5 IN PARTICULAR, HOSTS SHOULD UNDERSTAND HOW THE
6 LAWS WORK IN THEIR RESPECTIVE CITIES. SOME CITIES
7 HAVE LAWS THAT RESTRICT THEIR ABILITY TO HOST
8 PAYING GUESTS FOR SHORT PERIODS.... IN MANY CITIES,
9 HOSTS MUST REGISTER, GET A PERMIT, OR OBTAIN A
LICENSE BEFORE LISTING A PROPERTY OR ACCEPTING
GUESTS. CERTAIN TYPES OF SHORT-TERM BOOKINGS MAY
BE PROHIBITED ALTOGETHER.⁴

10 20. Similarly, Airbnb’s website informs hosts that “it’s important for
11 you to understand the laws in your city” and provides an overview of the sorts of
12 regulations that affect Airbnb hosts, including “business licenses,” “building and
13 housing standards,” “zoning rules,” “special permit” requirements, and “taxes.” The
14 Airbnb website specifically informs users that “[s]ome cities or counties may require
15 a special permit to rent out your home.”⁵

16 21. As part of the Airbnb Community Compact, the company is
17 committed to helping promote responsible home sharing to make cities stronger. For
18 example, Airbnb discretionarily removes listings that it believes may be offered by
19 hosts with multiple “entire home” listings or by unwelcome commercial operators. If
20 Airbnb is alerted to shared spaces or private rooms that appear to be operated by
21 unwelcome commercial operators or that do not reflect the community vision, it
22 generally will remove such listings.

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26 ⁴ *Id.*

27 ⁵ Airbnb, “What regulations apply to my city?”,
28 <https://www.airbnb.com/help/article/961/what-regulations-apply-to-my-city> (last visited July 20, 2016).

The Ordinance

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2 22. The Ordinance was passed by the City Council on July 12, 2016
3 and goes into effect on August 11, 2016. The Ordinance amends the City’s short-
4 term rental law to impose penalties on hosting platforms, like Airbnb, that list or
5 advertise short-term rentals that do not comply with the City’s permit requirements or
6 other City law. The law further prevents the issuance of new short-term rental
7 permits to owners in residential districts, though allows certain short-term rentals that
8 have already received or applied for a permit, or have been authorized by other City
9 laws.

10 23. In May 2014, the City Council first enacted a law specifically
11 allowing and regulating short-term rentals. The Council added Chapter 4.05 to Title 4
12 of the Anaheim Municipal Code. Chapter 4.05 expressly allowed short-term
13 rentals—rentals for less than 30 days—within certain zoning districts so long as the
14 owners of those rentals acquired a permit and met other conditions, such as providing
15 a minimum number of parking spots and including the permit number on all short-
16 term rental advertising. *Id.* §§ 4.05.100.0109, 4.05.100.0112. In March 2015, the
17 City expanded the zoning districts in which it would permit short-term rentals. The
18 City requires owners to include their “City issued permit number” in “all advertising,”
19 and prohibits them from advertising rentals that do not “comply with” City law. *See*
20 §§ 4.05.100.0109; 4.05.040.010.

21 24. The City’s efforts to regulate short-term rentals have been
22 successful. Over 350 short-term rental owners in the City registered and received
23 permits.⁶ The City also employs 31 code-enforcement officers to enforce the law,
24 three of whom monitor hosting platforms, others who monitor neighborhoods, and
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26 ⁶ Joseph Pimentel, *Anaheim the Latest O.C. City to Decide the Fate of Short-Term*
27 *Rentals*, The Orange County Register, June 27, 2016,
28 <http://www.ocregister.com/articles/term-720756-city-short.html> (last visited July 24,
2016).

1 still others who respond to complaints from community members.⁷ The City’s
2 Director of Planning stated at a City Council hearing that the City’s enforcement of its
3 short-term rental law has been “certainly working” and “very effective.”⁸ The City
4 has recently adopted new measures to further enhance the effectiveness of its
5 enforcement regime, including a “hotline” and website that residents can use to voice
6 concerns or report suspected short-term rental violations.⁹ The City Planner has
7 described these and other measures as representing a “switch[] from mostly reactive
8 to proactive enforcement” of the City’s short-term rental laws.¹⁰

9 25. Despite the success of the City’s regulation of short-term rentals,
10 based on “community concerns regarding incompatibility and neighborhood impacts,”
11 in September 2015 the City enacted a moratorium on the issuance of short-term rental
12 permits to evaluate the state of short-term rentals in the City.¹¹ That moratorium was
13 eventually extended through May of 2017. During the moratorium, City staff were
14 tasked with researching potential alternative approaches to short-term rentals in
15 Anaheim.¹² That research culminated with a City Council workshop on February 23,
16 2016, during which City staff presented findings regarding the state of the short-term
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20 ⁷ Lily Leung & Joseph Pimentel, *Bye-Bye Airbnbs: Short-Term Rental Owners*
21 *‘Reeling’ After Anaheim Says They Have to Shut Down*, The Orange County Register,
22 June 30, 2016, <http://www.ocregister.com/articles/anaheim-721181-short-term.html>
(last visited July 24, 2016).

23 ⁸ Video, City of Anaheim City Council Meeting (June 29, 2016)
24 http://anaheim.granicus.com/MediaPlayer.php?view_id=2&clip_id=1648, at 6:59–
7:15 (last visited July 24, 2016).

25 ⁹ *Id.*

26 ¹⁰ *Id.*

27 ¹¹ City of Anaheim Planning and Building Department, City Council Agenda Report,
28 June 29, 2016, at 2, available at <http://goo.gl/FmduJ6> (last visited July 24, 2016).

¹² *Id.* at 7.

1 rental market in Anaheim and potential paths forward.¹³ Following that workshop,
2 the Mayor instructed City staff to prepare the Ordinance.¹⁴

3 26. The City Council then initially considered the Ordinance at a
4 special session on June 29, 2016 and passed the Ordinance on July 12, 2016. The
5 Ordinance will go into effect on August 11, 2016.

6 27. The Ordinance significantly alters the City’s regulatory scheme for
7 short-term rentals, by imposing penalties for violations of the short-term rental law
8 not just on owners but also on hosting platforms (and renters). *See* §§ 4.05.130
9 (providing for liability for “owner[s],” “responsible person[s],” and “hosting
10 platform[s]”); 4.05.030(J) (defining owner); 4.05.030(O) (defining “responsible
11 person” as “an occupant” of the rental).

12 28. The Ordinance imposes three major obligations on hosting
13 platforms. First, it provides that “[n]o hosting platform shall list or advertise a short-
14 term rental for which the city has not issued a permit.” § 4.05.120.010. Second, it
15 requires hosting platforms, “[u]pon written or electronic notification from the city that
16 the city has not issued a permit for a [listed] short term rental,” to remove the listing
17 from the platform within ten calendar days. *Id.* The “hosting platform thereafter shall
18 not list or advertise the short term rental without written certification from the city
19 that the required permit has been issued”—even if the rental is in compliance with
20 law. *Id.* Third, the Ordinance states that a “hosting platform shall not [] facilitate”—
21 defined as “*allowing the owner to offer to list or advertise* the short-term rental on the
22 Internet web site”—“the occupancy of a short-term rental if the occupancy will
23 violate *any* ordinance, regulation or law of the city.” §§ 4.05.120.020; 4.05.030(E)
24 (emphases added).

27 ¹³ *Id.*

28 ¹⁴ *Id.* at 3, 5.

1 29. The Ordinance would hold hosting platforms liable for failing to
2 verify numerous compliance requirements on short-term rental properties before
3 listing rentals. For example, the hosting platform would be liable if the short-term
4 rental property has “double-keyed dead bolt locks” on “exit doors,” or lacks a
5 “property address . . . visible from the street and in contrasting colors” and “[s]moke
6 alarms . . . installed in all habitable areas except the kitchen.” § 4.05.100.0103. In
7 addition, platforms would be liable if listed properties do not have off-street parking
8 spaces (§ 4.05.100.0112), or a notice in the property regarding trash pick-up days
9 (§ 4.05.100.0120(c)). The Ordinance neither provides nor describes any mechanism
10 by which hosting platforms could determine whether particular short-term rentals are
11 permitted or otherwise in compliance with the City’s ordinances, laws, and
12 regulations.

13 30. In addition, the Ordinance specifies that short-term rental permits
14 will no longer be issued within zoning districts “in which residential uses are a
15 permitted or conditionally permitted use.” 4.05.040.030. The law also affects short-
16 term rentals that already have permits: It allows certain “pre-moratorium short term
17 rentals”—defined as rentals issued a permit or with a pending application before
18 August 11, 2016—to continue, but a separate law passed by the City states that pre-
19 moratorium rentals will be phased out in eighteen months.

20 31. The Ordinance imposes significant penalties on hosting platforms
21 that fail to meet its requirements. First, it provides for criminal liability, stating that
22 “any violation of this chapter may constitute a misdemeanor, which may be subject to
23 the maximum punishment therefor as allowed by law,” which under the City’s
24 Municipal Code, would include imprisonment of up to six months. § 4.05.130.020;
25 Ana. Mun. Code § 1.01.370. The Ordinance also allows the City to issue “a civil
26 citation to . . . the hosting platform if there is any violation . . . committed, caused or
27 maintained by [the hosting platform].” § 4.05.130.010. Such civil citations can be
28 issued without “warning or notice to cure” and “[e]ach and every day, or portion

1 thereof, that a violation . . . exists constitutes a separate and distinct violation.” *Id.* A
2 first offense results in a \$500 citation, and subsequent offenses result in increased
3 penalties of up to \$2,000 per violation. § 4.05.130.0103. Last, the Ordinance
4 declares that failure “to comply with any of the requirements of this chapter”
5 constitutes a public nuisance, punishable by “civil action and/or criminal
6 prosecution.” § 4.05.130.030.

7 32. In passing the Ordinance, the City was well aware that it might
8 conflict with federal law. Indeed, the Ordinance itself contains two specific
9 references to the potential conflict. First, the portion of the Ordinance imposing
10 duties on hosting platforms contains a clause stating that “[t]he provisions of this
11 section shall be interpreted in accordance with otherwise applicable state and federal
12 law(s) *and will not apply if determined by the city to be in violation of any such*
13 *law(s).*” § 4.05.120.030 (emphasis added). Second, the Ordinance’s penalty
14 provision for hosting platforms states that hosting platforms will be subject to
15 administrative penalties “[u]nless prohibited by any state or federal law.”
16 § 4.05.130.0103.

17 33. During a City Council hearing, the City’s Director of Planning
18 explained the insertion of these clauses, stating that hosting platforms “have
19 protections under various forms of federal law” and that “if we’re in contradiction or
20 if we’ve been preempted by federal law, we would not be able to issue that citation.”¹⁵
21 A representative from the City Attorney’s office, along similar lines, stated that the
22 City was aware that it was regulating “Airbnb here [and] dealing with the hosting
23 platforms. And they do have federal rights . . . with respect to their content,” though
24 the representative stated that “it’s an issue that we’re still looking at.”¹⁶ The City has
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26 ¹⁵ Video, City of Anaheim City Council Meeting (June 29, 2016),
27 http://anaheim.granicus.com/MediaPlayer.php?view_id=2&clip_id=1648, at 19:29–
20:22 (last visited July 24, 2016).

28 ¹⁶ *Id.* at 5:04:17–5:05:04.

1 not made any determination as to whether the Ordinance is in violation of federal or
2 state law, and the law remains in force and will become effective on August 11.

3 34. Instead of punishing Airbnb for publishing non-compliant listings,
4 the City could continue to enforce its short-term rental law directly against hosts who
5 violate it, as provided under the Ordinance. As mentioned, the City has a number of
6 code enforcement officers dedicated to enforcing its short-term rental law, and by the
7 account of the City’s own Director of Planning, its enforcement scheme is “certainly
8 working” and has “been very effective.”¹⁷

9 35. The Ordinance imposes a significant—indeed, impossible—
10 burden on Airbnb to verify that each of the hundreds of Anaheim rental listings on its
11 platform has a valid permit and does not violate any other ordinance, regulation, or
12 law. The Ordinance does not provide a mechanism by which Airbnb can confirm that
13 rentals are permitted or otherwise comply with other law.

14 36. If the Ordinance goes into effect, it will require Airbnb to screen
15 and remove from its site any listing in which Airbnb is unable to verify that a
16 particular listing has a valid permit and meets the requirements of all other City laws.
17 To comply with the Ordinance, Airbnb likely would need to remove all Anaheim
18 listings from its site, including listings that comply with Anaheim law. There is no
19 other practical way for Airbnb to ensure that it is not in violation of the Ordinance’s
20 prohibition on publishing listings that do not comply with all aspects of City law.
21 Removing these listings would cause a substantial disruption to Airbnb’s business and
22 have a significant detrimental effect on Airbnb’s goodwill and reputation among both
23 hosts and guests, thus threatening irreparable injury to Airbnb’s business.

24 37. The Ordinance also creates the perception that Airbnb’s activities
25 are unlawful. This perception will lead to the sort of reputational injury and loss of
26 goodwill that irreparably harms a business.

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28 ¹⁷ *Id.* at 6:59–7:15.

1 **CLAIM 1: VIOLATION OF THE COMMUNICATIONS DECENCY ACT, 47**
2 **U.S.C. § 230, AND CLAIM FOR INJUNCTIVE RELIEF,**
3 **PURSUANT TO 42 U.S.C. § 1983 AND THE COURT’S EQUITABLE**
4 **POWERS**

5 38. Airbnb incorporates all of the preceding paragraphs as if fully set
6 forth herein.

7 39. Airbnb is a provider of an interactive computer service within the
8 meaning of 47 U.S.C. § 230, because it operates the interactive online platform
9 Airbnb.com. Airbnb provides information to multiple users by giving them computer
10 access to a computer server within the meaning of 47 U.S.C. § 230(f)(2).

11 40. The third-party hosts that create listings on Airbnb.com are
12 persons responsible for the creation or development of information provided through
13 Airbnb, within the meaning of 47 U.S.C. § 230(f)(3). Additionally, the permit
14 numbers hosts obtain and are required to include in their listings are also information
15 developed or created by another information content provider.

16 41. The Ordinance violates and conflicts with 47 U.S.C. § 230, and
17 Airbnb’s rights thereunder, because it imposes duties and obligations on Airbnb that
18 derive from Airbnb’s status as a publisher or speaker of third-party content and treats
19 Airbnb as the publisher or speaker of information provided by another information
20 content provider, all in a manner prohibited by section 230.

21 42. First, the Ordinance imposes criminal and civil liability for
22 Airbnb’s publication of third-party rental advertisements for which the City has not
23 issued a permit or that “violate any ordinance, regulation or law of the city.”
24 § 4.05.120.020. The liability in these provisions derives from Airbnb’s publication of
25 third-party rental advertisements on its website.

26 43. Second, the Ordinance imposes liability on hosting platforms for
27 failure to *remove* certain listings upon receiving notice from the City. The CDA
28 protects websites from liability for failure to remove objectionable content, so this

1 basis for liability also violates the CDA.

2 44. Third, the Ordinance requires Airbnb to verify content associated
3 with a third-party rental advertisement prior to publishing that advertisement.
4 Specifically, Airbnb must verify the existence of a permit number, which hosts are
5 required under the Ordinance to include on their listings, and whether the rental
6 otherwise complies with City law. The act of verifying information associated with a
7 third-party listing is a protected editorial act, and this verification requirement derives
8 from Airbnb’s status as a publisher or speaker of third-party content, in violation of
9 the CDA.

10 45. The Ordinance is a “State or local law that is inconsistent with”
11 section 230, in violation of 47 U.S.C. § 230(e)(3).

12 46. The enforcement of the Ordinance against Airbnb violates and is
13 preempted by 47 U.S.C. § 230.

14 47. The Ordinance also interferes with or impedes the accomplishment
15 of the full purposes and objectives of federal law, violates the Supremacy Clause,
16 U.S. Const. art. VI, cl. 2, and is invalid and preempted.

17 48. Pursuant to 42 U.S.C. § 1983 and the Court’s equitable powers,
18 Airbnb seeks injunctive relief against the City to prevent its enforcement of the
19 Ordinance, which would conflict with and violate the CDA.

20 **CLAIM 2: VIOLATION OF THE FIRST AND FOURTEENTH**
21 **AMENDMENTS OF THE U.S. CONSTITUTION AND CLAIM FOR**
22 **INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE**
23 **COURT’S EQUITABLE POWERS**
24 **(Content-Based Restrictions on Speech)**

25 49. Airbnb incorporates all of the preceding paragraphs as if fully set
26 forth herein.

27 50. The Ordinance is a content-based restriction on Airbnb’s speech,
28 including commercial speech, as an online platform for rental advertisements and
listings. The Ordinance seeks to impose both civil and criminal penalties on Airbnb

1 for publishing rental listings in a manner that does not comply with the Ordinance's
2 screening and verification requirements.

3 51. The restriction on speech imposed by the Ordinance is not
4 narrowly or appropriately tailored to promote a compelling or substantial interest on
5 the part of the City, and is not likely to achieve any such interest in a direct and
6 material way. Instead of seeking to impose liability on hosting platforms like Airbnb
7 for publishing listings, the City could instead enforce its short-term rental laws
8 directly against hosts who rent their residences in a manner that does not comply with
9 the law. The City has not shown, and cannot show, that this less-speech-restrictive
10 alternative would not be an adequate means of achieving the City's policy goals.

11 52. The Ordinance also will have an impermissible chilling effect on
12 speech because it will prevent Airbnb from publishing any listing for which Airbnb
13 cannot confirm that the listing has a valid permit number and is in compliance with all
14 other City law. As such, the Ordinance will likely force Airbnb to remove listings
15 that may be lawful. Given the substantial criminal and civil penalties for non-
16 compliance, and the practical impossibility of confirming that each listing advertises
17 an occupancy that complies with all applicable City laws, hosting platforms like
18 Airbnb would be forced to refrain from publishing even lawful listings.

19 53. The enforcement of the Ordinance against Airbnb therefore
20 violates the First Amendment of the U.S. Constitution, as applied to the City by the
21 Fourteenth Amendment.

22 54. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers,
23 Airbnb seeks injunctive relief against the City, whose enforcement of the Ordinance
24 would conflict with and violate the First Amendment.

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1 **CLAIM 3: VIOLATION OF THE FIRST AND FOURTEENTH**
2 **AMENDMENTS OF THE U.S. CONSTITUTION, AND CLAIM FOR**
3 **INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE**
4 **COURT’S EQUITABLE POWERS**
5 **(Imposition of Criminal Penalties Without Scienter)**

6 55. Airbnb incorporates all of the preceding paragraphs as if fully set
7 forth herein.

8 56. The imposition of criminal penalties under the Ordinance violates
9 the First Amendment and Due Process Clause of the Fourteenth Amendment of the
10 United States Constitution because the Ordinance purports to impose strict criminal
11 liability for the publication of rental listings in the absence of proof of mens rea or
12 scienter.

13 57. The Ordinance seeks to impose criminal penalties on hosting
14 platforms like Airbnb without requiring a showing that the platform *knew* the
15 published listing at issue advertised an unpermitted or otherwise non-compliant rental.
16 The Ordinance therefore would impose strict criminal liability on Airbnb for
17 publishing any listing that ultimately proves to be unlawful for any reason, even if
18 Airbnb has no knowledge of the violation.

19 58. Pursuant to 42 U.S.C. § 1983 and the Court’s equitable powers,
20 Airbnb seeks injunctive relief against the City, whose enforcement of the Act through
21 criminal penalties would conflict with and violate the First Amendment and Due
22 Process Clause of the Fourteenth Amendment.

23 **CLAIM 4: VIOLATION OF THE FIRST AND FOURTEENTH**
24 **AMENDMENTS OF THE U.S. CONSTITUTION, AND CLAIM FOR**
25 **INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE**
26 **COURT’S EQUITABLE POWERS**
27 **(Vagueness)**

28 59. Airbnb incorporates all of the preceding paragraphs as if fully set
 forth herein.

1 60. The imposition of criminal penalties under the Ordinance violates
2 the First Amendment and Due Process Clause of the Fourteenth Amendment of the
3 United States Constitution because the Ordinance is unconstitutionally vague and fails
4 to provide an ordinary person with notice of the conduct it punishes.

5 61. The Ordinance is impermissibly vague, without limitation, because
6 it fails to inform an ordinary person what it means for a hosting platform to “list or
7 advertise a short-term rental for which the City has not issued a permit” and fails to
8 explain what it means for a hosting platform to “facilitate ... the occupancy of a short-
9 term rental if the occupancy will violate any ordinance, regulation or law of the city.”
10 §§ 4.05.120.010, 4.05.120.020. The Ordinance is impermissibly vague as to what
11 measures hosting platforms like Airbnb must undertake to comply with these
12 provisions.

13 62. Pursuant to 42 U.S.C. § 1983 and the Court’s equitable powers,
14 Airbnb seeks injunctive relief against the City, whose enforcement of the Act through
15 criminal penalties would conflict with and violate the First Amendment and Due
16 Process Clause of the Fourteenth Amendment.

17 **CLAIM 5: DECLARATORY RELIEF PURSUANT TO 28 U.S.C. § 2201**

18 63. Airbnb incorporates all of the preceding paragraphs as if fully set
19 forth herein.

20 64. This action presents an actual controversy between Airbnb and the
21 City concerning the validity of the Ordinance and its enforceability against Airbnb
22 and other online hosting platforms.

23 65. Based on the foregoing allegations, Airbnb is entitled to a
24 declaration, pursuant to 28 U.S.C. § 2201, that the Ordinance cannot be enforced
25 against Airbnb because such enforcement would violate the CDA, 47 U.S.C. § 230,
26 the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the First and Fourteenth
27 Amendments of the United States Constitution.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Airbnb respectfully requests that the Court:

66. Declare that, as applied to Airbnb, the Ordinance violates 47 U.S.C. § 230 and the Supremacy Clause because it would permit the imposition of civil or criminal penalties as a result of the publication of advertisements or other information by third-party hosts on Airbnb.com and impose duties on Airbnb with respect to its protected editorial acts concerning third-party rental advertisements.

67. Declare that, as applied to Airbnb, the Ordinance violates the First and Fourteenth Amendments of the U.S. Constitution because it would place content-based restrictions on speech by imposing civil and criminal penalties on Airbnb as a result of the publication of content, and the restrictions the Ordinance would impose are not narrowly tailored to promote a compelling or substantial interest on the part of the City.

68. Declare that, as applied to Airbnb, the Ordinance violates the First Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution because it purports to impose strict criminal liability for the publication of listings in the absence of proof of mens rea or scienter.

69. Declare that, as applied to Airbnb, the Ordinance violates the First Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution because the Ordinance is unconstitutionally vague and fails to provide an ordinary person with notice of the conduct it punishes.

70. Preliminarily and permanently enjoin the City; its officers, agents, servants, employees, and attorneys; and those persons in concert or participation with them from taking any actions to enforce against Airbnb Sections 4.05.120 and 4.05.130 of Ordinance No. 6374, as well as the other portions of Chapter 4.05 of the Anaheim Municipal Code providing for enforcement and penalties that would penalize Airbnb—including any investigation, arrest, prosecution, or penalty—for: (a) the publication of rental advertisements or other information of third-party hosts on

1 Airbnb.com; (b) the failure to verify whether a rental listing is associated with a valid
2 permit or is in compliance with other ordinances, regulations, or laws; (c) the failure
3 to remove listings upon notification from the City that such listings do not have a
4 valid permit; or (d) the facilitation of short-term rentals that violate Anaheim law.

5 71. Award Airbnb its reasonable costs and attorneys' fees pursuant to
6 42 U.S.C. § 1988; and

7 72. Award Airbnb such other and further relief as the Court deems just
8 and proper.

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10 DATED: July 28, 2016

MUNGER, TOLLES & OLSON LLP

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By: /s/ Jonathan H. Blavin

JONATHAN H. BLAVIN

Attorneys for Plaintiff Airbnb, Inc.

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