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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 AIRBNB, INC.,
17 Plaintiff,
18 vs.
19 CITY OF SANTA MONICA,
20 Defendant.
21

Case No. 2:16-cv-6645

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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

2 **INTRODUCTION**

3 1. This is an action to enjoin and declare unlawful the enforcement
4 against Airbnb by the City of Santa Monica (the “City”) of its “Home-Sharing”
5 Ordinance (the “Ordinance”), set forth in Chapter 6.20 of the Santa Monica
6 Municipal Code. This action is brought pursuant to 42 U.S.C. § 1983, 18 U.S.C.
7 § 2707, the Court’s equitable powers, and the Declaratory Judgment Act, 28 U.S.C.
8 § 2201.

9 2. The Ordinance directly conflicts with, and is preempted by, the
10 Communications Decency Act of 1996, 47 U.S.C. § 230 *et seq.* (the “CDA”). The
11 Ordinance seeks to hold Airbnb liable for content created by third-party users, by
12 punishing Airbnb for listings posted to its platform where those listings do not
13 comply with City law. As such, the Ordinance unquestionably treats online
14 platforms such as Airbnb as the publisher or speaker of third-party content and is
15 completely preempted by the CDA.

16 3. In addition, the Ordinance violates the First Amendment as an
17 impermissible content-based regulation, and the First Amendment and the Due
18 Process Clause of the Fourteenth Amendment because it imposes strict liability on
19 Hosting Platforms that host non-compliant short-term rental listings, and does so in
20 an impermissibly vague manner.

21 4. The Ordinance also violates the Stored Communications Act, 18
22 U.S.C. §§ 2701 *et seq.* (the “SCA”) and the Fourth Amendment by requiring
23 disclosure to the City of certain customer information without any legal process or
24 pre-compliance review.¹

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26 _____
27 ¹ 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 provisions of the Ordinance against Airbnb; and it is a facial challenge in

1 5. The Ordinance prohibits “Vacation Rental activity,” defined as
2 the rental of any property for 30 days or less where the rental is for “exclusive
3 transient use,” i.e., the host is not present during the entirety of the stay. Santa
4 Monica Mun. Code (“S.M. Code”) §§ 6.20.010(c), 6.20.030(a). It also imposes a
5 number of restrictions on “Home-Sharing,” defined as an “activity whereby the
6 residents host visitors in their homes, for compensation, for periods of 30
7 consecutive days or less, while at least one of the dwelling unit’s primary residents
8 lives on-site, in the dwelling unit, throughout the visitors’ stay.” *Id.* § 6.20.010(a).
9 There are a variety of reasons that a third-party rental listing may violate the
10 Ordinance, including if it fails to comply “with all applicable laws, including all
11 health, safety, building, fire protection, and rental control laws.” *Id.*
12 § 6.20.020(a)(5).

13 6. The Ordinance subjects a “Hosting Platform”—defined as a
14 “marketplace in whatever form . . . which facilitates the Home-Sharing or Vacation
15 Rental, through advertising, match-making, or any other means”—to strict criminal
16 liability, including potential jail time and substantial fines, for publishing any third-
17 party advertisement that violates the Ordinance. *Id.* §§ 6.20.010(b); 6.20.030(a);
18 6.20.100(a). As such, the Ordinance requires Hosting Platforms to verify that each
19 third-party rental listing on their sites complies with *all* aspects of City law before
20 publishing the listing.

21 7. Over the past year, the City has sent several letters to Airbnb
22 demanding that Airbnb “remove” certain “advertisements for vacation rentals” from
23 its website. These letters have stated that, while there are “hundreds” of unlawful
24 vacation rentals on Airbnb’s platform, the office is issuing “administrative citations”
25 to Airbnb relating to certain properties in Santa Monica listed on Airbnb. The
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27 that certain provisions, on their face, violate the law and cannot be enforced against
28 any Hosting Platform in any set of factual circumstances.

1 letters have warned that failure to correct violations or comply with local law going
2 forward may result in additional enforcement actions, including the City “refer[ring]
3 this case to the City Attorney’s Office for prosecution.” The letters also have
4 instructed Airbnb to prepare a “report” disclosing all Santa Monica home-sharing
5 and vacation rental listings, as well as host data and price information, or face
6 possible criminal prosecution. Airbnb has paid all of the citations it has received
7 under protest.

8 8. The enforcement of the Ordinance against Airbnb is preempted
9 by the CDA, which aims “to promote the continued development of the Internet”
10 and “to preserve” its “vibrant and competitive free market.” 47 U.S.C. § 230(b)(1)-
11 (2). In furtherance of these goals, the CDA expressly preempts state and local laws
12 that treat a website “as the publisher or speaker of any information provided by
13 another information content provider.” *Id.* § 230(c)(1), (e)(3). The City’s
14 enforcement of the Ordinance—which threatens to hold Airbnb criminally and
15 civilly liable as a publisher of third-party advertisements—violates these provisions
16 of federal law and is preempted as a result.

17 9. The enforcement of the Ordinance also violates Airbnb’s First
18 Amendment rights. The Ordinance is a content-based restriction on advertisements
19 provided by third parties—in the form of rental listings—which are protected speech
20 under the First Amendment. The Ordinance seeks to punish Airbnb for publishing
21 third-party rental listings that do not comply with Santa Monica law. To justify this
22 content-based restriction on speech, the City bears the burden of showing that the
23 Ordinance is narrowly tailored to further a substantial government interest. The
24 City cannot carry this burden because, instead of targeting speech, the City could
25 simply enforce its existing short-term rental law directly against hosts who violate it.
26 Indeed, the City has recently increased its enforcement efforts, which has led to a
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1 “sharp increase in the number of citations issued to short-term rental hosts”² and the
2 first criminal prosecution under the Ordinance.³

3 10. The Ordinance also violates Airbnb’s rights under the First
4 Amendment and the Due Process Clause of the Fourteenth Amendment because it
5 seeks to impose criminal penalties on Hosting Platforms like Airbnb without
6 requiring any showing of mens rea or scienter. The City has impermissibly created
7 a strict-liability crime for publishing third-party advertisements for rentals that prove
8 to be unlawful for one reason or another, even if the Hosting Platform has no
9 knowledge of the violation. The Ordinance also is impermissibly vague as to what
10 measures Hosting Platforms like Airbnb must undertake to comply with its
11 provisions.

12 11. The disclosure provisions of the Ordinance separately are barred
13 by the SCA and the Fourth Amendment. The Ordinance requires Hosting Platforms
14 to disclose to the City user names and addresses, and other non-public customer
15 information, on a quarterly basis—without any legal process. S.M. Code
16 § 6.20.050(b). This disclosure requirement squarely conflicts with the SCA, which
17 bars state laws that compel services like Airbnb to release basic customer
18 information to governmental entities without legal process. One of Congress’s goals
19 in enacting the SCA was to protect the privacy of customers of electronic
20 communication service providers. The Ordinance directly undermines that
21 objective.

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24 ² Ben Bergman, *Why Airbnb Paid \$20,000 to the City of Santa Monica*, KQED
25 News (July 28, 2016), <http://ww2.kqed.org/news/2016/07/28/why-airbnb-paid-20000-to-the-city-of-santa-monica/> (last visited September 1, 2016).

26 ³ Hailey Branson-Potts, *Santa Monica Convicts Its First Airbnb Host Under Tough*
27 *Home-Sharing Laws*, Los Angeles Times (July 13, 2016),
28 <http://www.latimes.com/local/lanow/la-me-ln-santa-monica-airbnb-conviction-20160713-snap-story.html> (last visited September 1, 2016).

1 12. Similarly, the Ordinance violates the Fourth Amendment
2 because, contrary to the U.S. Supreme Court’s decision in *City of Los Angeles v.*
3 *Patel*, 135 S. Ct. 2443 (2015), it threatens Airbnb with criminal sanctions if it fails
4 to provide certain data on its users, without providing an opportunity to challenge
5 the reasonableness of those demands before a neutral decision maker. The
6 Ordinance’s reporting requirement compels regular disclosure of sensitive, private
7 data regarding Airbnb’s hosts and their listings, without pre-compliance review of
8 objections. Airbnb is given only two options: either produce user data or face
9 criminal sanctions. The Fourth Amendment precludes the City’s demand for this
10 private information without any prior review by a neutral judicial officer.

11 **PARTIES**

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

17 14. Defendant City of Santa Monica is an incorporated municipality
18 located in Los Angeles County, California.

19 **JURISDICTION AND VENUE**

20 15. This Court has jurisdiction of this action under 28 U.S.C. § 1331
21 and 42 U.S.C. § 1983 because Airbnb alleges an imminent violation of its rights
22 under the Constitution and laws of the United States.

23 16. The Court may declare the legal rights and obligations of the
24 parties in this action pursuant to 28 U.S.C. § 2201 because the action presents an
25 actual controversy within the Court’s jurisdiction.

26 17. Venue is proper under 28 U.S.C. § 1391 because the Defendant
27 is located and resides in this judicial district, and because a substantial part of the
28 events giving rise to Airbnb’s claims for relief occurred in this judicial district.

1 18. This action should be assigned to the Western Division of this
2 Court because the sole defendant, the City of Santa Monica, is located in Los
3 Angeles County.

4 **FACTUAL ALLEGATIONS**

5 **Airbnb**

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

11 20. Airbnb does not manage, operate, lease or own hosts’
12 accommodations, and it is not a party to the direct agreements between guests and
13 hosts for the booking of rentals offered by hosts. Airbnb’s platform provides a
14 means by which interested hosts can choose to list their accommodations; hosts and
15 guests can locate and connect with one another; and hosts and guests can message
16 each other directly on the platform⁴ and determine the material terms of their
17 bookings. Airbnb also enables the provision of payment processing services to
18 permit hosts to receive payments electronically. In consideration for the use of its
19 platform, Airbnb receives a service fee from both the guest and host, determined as
20 a percentage of the accommodation fee set solely by the host.

21 21. Hosts, and not Airbnb, decide whether to list their properties and
22 with whom and when to transact, provide the descriptions of their rentals, set their
23 own lengths of stay, and determine their prices. As Airbnb’s Terms of Service state,
24 hosts “alone are responsible for any and all Listings and Member Content [they]

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⁴ Airbnb also provides electronic storage of those communications on its platform.

1 post.”⁵ Likewise, the Ordinance itself defines a “Hosting Platform” as a
2 “marketplace... which facilitates the Home-Sharing or Vacation Rental, through
3 advertising, match-making or any other means.” S.M. Code § 6.20.010(b).

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

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

16 23. Similarly, the “Responsible Hosting” page for Santa Monica
17 informs hosts that “it’s important for you to understand the laws in your city” and
18 specifically references the Ordinance and provides a link to the City’s website for
19 more information. It states that “Hosted rentals . . . where at least one of the
20 primary residents lives on site throughout the visitor’s stay are allowed for 30 days
21 or less.” It also informs hosts that the Ordinance “requires a business license, taxes
22 and compliance with other health and safety laws,” and that “You may include your
23 business license number on your listing” in the “‘Other Things to Note’ field” by
24 “typ[ing] in your permit number following the acceptable permit format for Santa
25 Monica. The format is: xxxxxx. An example would be: 123456.” Last, the page
26 makes clear that “Un-hosted rentals (Santa Monica calls vacation rentals) are

26 ⁵ Airbnb, “Terms of Service,” <https://www.airbnb.com/terms> (last visited
27 September 1, 2016).

28 ⁶ *Id.*

1 prohibited unless they are 30 days or longer. If a primary resident is not living on
2 site throughout the stay, Santa Monica’s law prohibits short-term rental.”⁷

3 24. As part of the Airbnb Community Compact, the company is
4 committed to helping promote responsible home sharing to make cities stronger.
5 For example, Airbnb discretionarily removes listings that it believes may be offered
6 by hosts with multiple “entire home” listings or by unwelcome commercial
7 operators. If Airbnb is alerted to shared spaces or private rooms that appear to be
8 operated by unwelcome commercial operators or that do not reflect the community
9 vision, it generally will remove such listings.⁸

10 25. Information and data relating to platform users is confidential
11 information about Airbnb’s business operations. Airbnb takes various measures to
12 guard such confidential business information from public disclosure, which is
13 important for Airbnb’s ability to maintain its business success.

14 26. Airbnb also takes very seriously the privacy of its hosts and
15 guests, and takes various measures to protect their privacy. For example, although
16 both hosts and guests complete profiles in order to participate on the site, personal
17 information, including contact details and even last names, is not revealed until a
18 booking has been completed.

19 **The Santa Monica Ordinance**

20 27. On May 12, 2015, the Santa Monica City Council adopted the
21 Ordinance, entitled Ordinance 2484CCS, which added Chapter 6.20 to the Santa
22 Monica Municipal Code. The Ordinance became effective on June 12, 2015. It
23 prohibits within the City of Santa Monica “Vacation Rentals,” which are defined as

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25 ⁷ Airbnb, “Santa Monica, CA,” [https://www.airbnb.com/help/article/908/santa-](https://www.airbnb.com/help/article/908/santa-monica--ca)
26 [monica--ca](https://www.airbnb.com/help/article/908/santa-monica--ca) (last visited September 1, 2016).

27 ⁸ Airbnb, “Community Compact,” [https://www.airbnbaction.com/wp-](https://www.airbnbaction.com/wp-content/uploads/2015/11/Airbnb-Community-Compact.pdf)
28 [content/uploads/2015/11/Airbnb-Community-Compact.pdf](https://www.airbnbaction.com/wp-content/uploads/2015/11/Airbnb-Community-Compact.pdf) (last visited September
1, 2016).

1 the “[r]ental of any dwelling unit, in whole or in part,” to “any person(s) for
2 exclusive transient use of 30 consecutive days or less, whereby the unit is only
3 approved for permanent residential occupancy and not approved for transient
4 occupancy or Home-Sharing as authorized by this Chapter.” S.M. Code
5 § 6.20.010(c); 6.20.020(a).

6 28. The Ordinance permits, under certain conditions, “Home-
7 Sharing,” which is defined as “[a]n activity whereby the residents host visitors in
8 their homes, for compensation, for periods of 30 consecutive days or less, while at
9 least one of the dwelling unit’s primary residents lives on-site, in the dwelling unit,
10 throughout the visitors’ stay.” *Id.* § 6.20.010(a); 6.20.020(a).

11 29. Home-sharing may be authorized by the City provided that the
12 host: (1) “Obtains and maintains at all times a City business license authorizing
13 Home-Sharing activity”; (2) “Operates the Home-Sharing activity in compliance
14 with all business license permit conditions”; (3) “Collects and remits Transient
15 Occupancy Tax (‘TOT’), in coordination with any Hosting Platform if utilized, to
16 the City and complies with all City TOT requirements as set forth in” other
17 provisions of the Code; (4) “Takes responsibility for and actively prevents any
18 nuisance activities that may take place as a result of Home-Sharing activities”;
19 (5) “Complies with all applicable laws, including all health, safety, building, fire
20 protection, and rent control laws”; and (6) “Complies with [the Ordinance].” *Id.*
21 § 6.20.020(a).

22 30. The Ordinance’s prohibitions apply not only to hosts, but also to
23 “Hosting Platforms.” A Hosting Platform is defined as a “marketplace in whatever
24 form or format which facilitates the Home-Sharing or Vacation Rental, through
25 advertising, match-making or any other means, using any medium of facilitation,
26 and from which the operator of the hosting platform derives revenues, including
27 booking fees or advertising revenues, from providing or maintaining the
28 marketplace.” *Id.* § 6.20.010(b).

1 31. The Ordinance provides that “[n]o person, including any Hosting
2 Platform operator, shall undertake, maintain, authorize, aid, facilitate or advertise
3 any Home-Sharing activity that does not comply with section 6.20.020 of this Code
4 or any Vacation Rental activity.” *Id.* § 6.20.030(a)

5 32. The Ordinance also imposes certain “responsibilities” on Hosting
6 Platforms, including the collection of Transient Occupancy Taxes (TOTs) from
7 authorized home-sharing listings. *Id.* § 6.20.050(a). The Ordinance requires
8 Hosting Platforms to “disclose to the City on a regular basis each Home-Sharing and
9 Vacation Rental listing located in the City, the names of the persons responsible for
10 each such listing, the address of each such listing, the length of stay for each such
11 listing and the price paid for each stay.” *Id.* § 6.20.050(b).

12 33. The Ordinance provides for criminal and administrative penalties
13 for non-compliance. Any person violating a provision of the Chapter “shall be
14 guilty” of an infraction, punishable by a fine not exceeding \$250, or a misdemeanor,
15 punishable by a fine not exceeding \$500 and/or by imprisonment for a period not
16 exceeding six months. *Id.* § 6.20.100(a). The Ordinance contains no scienter,
17 mental state, or mens rea requirement associated with these criminal penalties. The
18 Ordinance also provides for administrative fines and penalties. *Id.* § 6.20.100(c).

19 34. At the direction of the Santa Monica City Council, the Council’s
20 staff prepared a report (“City Council Report” or “Report”),⁹ dated April 28, 2015,
21 discussing the rationale for the Ordinance. The Report noted that “*Airbnb hosts* list
22 their properties,” “*hosts decide* how much to charge per night, per week, or per
23 month,” that “[e]ach listing *allows hosts* to promote properties” to prospective
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26 ⁹ Santa Monica City Council Report, April 28, 2015, available at
27 [https://www.smgov.net/departments/council/agendas/2015/20150428/s2015042807-](https://www.smgov.net/departments/council/agendas/2015/20150428/s2015042807-A.pdf)
28 [A.pdf](https://www.smgov.net/departments/council/agendas/2015/20150428/s2015042807-A.pdf) (last visited September 1, 2016).

1 guests¹⁰; and that “[h]ome-sharing, vacation rentals, and even house swapping have
2 been around for decades,” through “message boards or in advertising in magazines
3 and newspapers” (emphases added).¹¹

4 35. The Report states that failure to comply with the Ordinance will
5 result in “additional enforcement steps,” including “the issuance of a monetary
6 citation and/or criminal prosecution.”¹²

7 36. On July 1, 2016, the City established home-sharing rules that
8 implement the Ordinance. Those rules provide, among other things, that the
9 required reports under Section 6.20.050(b) be made quarterly. They also impose
10 additional obligations on hosts, including by requiring them to: include their
11 business license number in any short-term rental listing; provide guests with
12 information on emergency exit routes; and operate no more than one short-term
13 rental in the City.

14 37. To comply with the Ordinance, Airbnb would have to
15 affirmatively monitor each new and ongoing listing that was created by third-party
16 users to guarantee that no host posted any listing in violation of the Ordinance.
17 Airbnb employees would also have to regularly visit the physical location of each
18 listing to make sure hosts meet the requirements of the Ordinance by, for example,
19 monitoring whether the host is present during the stay and whether the property is in
20 compliance with all health, safety, building, and fire protection laws. And Airbnb
21 would have to regularly check the business records of each listing, including
22 permitting information and tax registration, to ensure that each listing was in
23 compliance. This type of continuous, detailed monitoring would impose a
24 significant—if not impossible—burden on Airbnb.

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26 ¹⁰ *Id.* at 12 (emphases added).

27 ¹¹ *Id.* at 2.

28 ¹² *Id.* at 28.

1 38. The Ordinance does not set forth any procedures for how full
2 compliance with the relevant provisions of the Ordinance could be achieved. To
3 avoid the continued risk of significant criminal and civil penalties, Airbnb would
4 likely need to remove all Santa Monica listings from its website, and prevent further
5 postings from being added. This would include the removal of listings that may
6 otherwise be in compliance with City law given that Airbnb likely will not be able
7 to check each listing’s compliance. The removal of these listings would
8 substantially disrupt Airbnb’s operations and harm the business goodwill that
9 Airbnb has generated from the hosts and guests who use its platform in Santa
10 Monica—and that goodwill will likely be irreparably lost.

11 **The City’s Past Enforcement Efforts Against Airbnb**

12 39. Over the past year, the Code Enforcement Division of the Santa
13 Monica Planning and Community Development Department has sent Airbnb several
14 letters regarding purported violations of the Ordinance.

15 40. These letters state that there are “hundreds” of unlawful vacation
16 rentals on Airbnb’s platform and that the office is issuing “administrative citations”
17 to Airbnb relating to certain properties in Santa Monica listed on Airbnb. For each
18 property, the letters have attached one or more “Municipal Code Administrative
19 Citations,” with fines ranging from several hundred to several thousands of dollars.

20 41. The “violation[] ... identified” in the citations is an “Online
21 advertisement of Vacation Rental via AirBnB” or “Operation of Vacation Rental via
22 Airbnb.” The citations list “Required Corrective Action(s) to Correct Violations,”
23 described as (1) payment of the fine and (2) removal from Airbnb’s platform of the
24 vacation rentals underlying the citations as well as all other advertisements for
25 vacation rentals. The letters state that if the violations are not corrected by a certain
26 date, the Office may take additional enforcement actions, such as issuing additional
27 administrative fines “and/or referring the case to the City Attorney’s Office for
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1 prosecution.” The citations also state that “FAILURE TO PAY AN
2 ADMINISTRATIVE FINE WHEN DUE IS A MISDEMEANOR.”

3 42. The letters have further demanded that Airbnb comply with other
4 provisions of the Ordinance to “avoid further enforcement action,” including
5 providing the City with a “report disclosing each home-sharing and vacation rental
6 listing located in the City, the names of the persons responsible for each such listing,
7 the address of each such listing, the number of nights that the residential use was
8 occupied for transient use, and the amounts paid for each night of transient
9 occupancy.”

10 43. On each occasion, Airbnb has paid the fines in the attached
11 citations under protest, stating that “Payment of these fines shall not be construed as
12 an admission that Santa Monica law is constitutional, valid and not preempted by
13 federal law, or that Airbnb, Inc. (“Airbnb”) is responsible or liable under any
14 provision of the Santa Monica Municipal Code.” Airbnb also has stated that
15 “payment shall not be construed as a waiver of any right, argument, or assertion
16 challenging any provision of the Santa Monica Municipal Code or the City’s
17 enforcement of such provisions, all of which is expressly preserved.”

18 **Claims for Relief**

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

23 44. Airbnb incorporates all of the preceding paragraphs as if fully set
24 forth herein.

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

1 46. The third-party hosts that create listings on Airbnb.com are
2 persons responsible for the creation or development of information provided through
3 Airbnb, within the meaning of 47 U.S.C. § 230(f)(3).

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

9 48. First, the Ordinance imposes criminal and civil liability for
10 Airbnb’s publication of third-party rental advertisements that violate the Ordinance
11 or any other “applicable laws, including all health, safety, building, fire protection,
12 and rent control laws.” S.M. Code §§ 6.20.020(a)(6); 6.20.030(a). The liability in
13 these provisions derives from Airbnb’s publication of third-party rental
14 advertisements on its website.

15 49. Second, the Ordinance requires Airbnb to screen and verify
16 content associated with a third-party rental advertisement prior to publishing that
17 advertisement. Specifically, Airbnb must verify whether the rental complies with
18 the Ordinance and other applicable City law. The acts of screening and verifying
19 information associated with a third-party listing are protected editorial acts, and
20 these requirements derive from Airbnb’s status as a publisher or speaker of third-
21 party content, in violation of the CDA.

22 50. Third, the Ordinance penalizes Airbnb for failing to remove
23 content. Specifically, the City, through its enforcement efforts, has shown that it
24 will impose liability on Hosting Platforms for a failure to take down listings that the
25 City has identified as noncompliant in prior citations. Such liability targets Airbnb
26 in its role as a publisher, as choosing to remove content is a protected editorial act.

27 51. Fourth, the Ordinance violates the CDA by directly regulating
28 the structure and operation of Airbnb’s website. The Ordinance requires Airbnb to

1 verify that a listing has been issued a business license and complies with all other
2 aspects of City law before posting the listing. In doing so, the Ordinance effectively
3 requires Airbnb to alter the structure and operation of its website.

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

6 53. The enforcement of the Ordinance against Airbnb violates and is
7 preempted by 47 U.S.C. § 230.

8 54. The Ordinance also interferes with or impedes the
9 accomplishment of the full purposes and objectives of federal law, violates the
10 Supremacy Clause, U.S. Const. art. VI, cl. 2, and is invalid and preempted.

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

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

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

20 57. The Ordinance is a content-based restriction on Airbnb’s speech,
21 including commercial speech, as an online platform for third-party rental
22 advertisements and listings. The Ordinance seeks to impose both civil and criminal
23 penalties on Airbnb for publishing third-party rental listings in a manner that does
24 not comply with the Ordinance’s requirements.

25 58. The restriction on speech imposed by the Ordinance is not
26 narrowly or appropriately tailored to promote a compelling or substantial interest on
27 the part of the City, and is not likely to achieve any such interest in a direct and
28 material way. Instead of seeking to impose liability on Hosting Platforms like

1 Airbnb for publishing third-party rental listings, the City could instead enforce its
2 short-term rental laws directly against hosts who rent their residences in a manner
3 that does not comply with the law. The City has not shown, and cannot show, that
4 this less-speech-restrictive alternative would not be an adequate means of achieving
5 the City's policy goals.

6 59. The Ordinance also will have an impermissible chilling effect on
7 speech because it will prevent Airbnb from publishing any third-party listing for
8 which Airbnb cannot confirm that the listing complies with the Ordinance and other
9 applicable City law. As such, the Ordinance will likely force Airbnb to remove
10 listings that may be lawful. Given the substantial criminal and civil penalties for
11 non-compliance, and the practical impossibility of confirming that each third-party
12 listing advertises an occupancy that complies with all applicable City laws, Hosting
13 Platforms like Airbnb would be forced to refrain from publishing even lawful
14 listings from third parties.

15 60. The enforcement of the Ordinance against Airbnb therefore
16 violates the First Amendment of the U.S. Constitution, as applied to the City by the
17 Fourteenth Amendment.

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

21 **CLAIM 3: VIOLATION OF THE FIRST AND FOURTEENTH**
22 **AMENDMENTS OF THE U.S. CONSTITUTION, AND CLAIM FOR**
23 **INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE**
24 **COURT'S EQUITABLE POWERS**

25 **(Imposition of Criminal Penalties Without Scierter)**

26 62. Airbnb incorporates all of the preceding paragraphs as if fully set
27 forth herein.

28 63. The imposition of criminal penalties under the Ordinance
violates the First Amendment and Due Process Clause of the Fourteenth

1 Amendment of the United States Constitution because the Ordinance purports to
2 impose strict criminal liability for the publication of third-party rental listings in the
3 absence of proof of mens rea or scienter.

4 64. The Ordinance seeks to impose criminal penalties on Hosting
5 Platforms like Airbnb without requiring a showing that the platform *knew* the third-
6 party listing at issue advertised a non-compliant rental. The Ordinance therefore
7 would impose strict criminal liability on Airbnb for publishing any third-party
8 listing that ultimately proves to be unlawful for any reason, even if Airbnb has no
9 knowledge of the violation.

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

14 **CLAIM 4: VIOLATION OF THE FIRST AND FOURTEENTH**
15 **AMENDMENTS OF THE U.S. CONSTITUTION, AND CLAIM FOR**
16 **INJUNCTIVE RELIEF, PURSUANT TO 42 U.S.C. § 1983 AND THE**
17 **COURT’S EQUITABLE POWERS**
18 **(Vagueness)**

19 66. Airbnb incorporates all of the preceding paragraphs as if fully set
20 forth herein.

21 67. The imposition of criminal penalties under the Ordinance
22 violates the First Amendment and Due Process Clause of the Fourteenth
23 Amendment of the United States Constitution because the Ordinance is
24 unconstitutionally vague and fails to provide an ordinary person with notice of the
25 conduct it punishes.

26 68. The Ordinance is impermissibly vague, without limitation,
27 because it fails to inform an ordinary person what it means for a Hosting Platform to
28 “maintain, authorize, aid, facilitate or advertise” a short-term rental that does not
“[c]ompl[y] with all applicable laws, including all health, safety, building, fire

1 protection, and rent control laws.” S.M. Code §§ 6.20.030(a); 6.20.020(a)(5). The
2 Ordinance is impermissibly vague as to what measures Hosting Platforms like
3 Airbnb must undertake to comply with these provisions.

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

8 **CLAIM 5: VIOLATION OF THE STORED COMMUNICATIONS ACT, 18**
9 **U.S.C. §§ 2701 ET SEQ., AND CLAIM FOR INJUNCTIVE RELIEF,**
10 **PURSUANT TO 18 U.S.C. § 2707, 42 U.S.C. § 1983, AND THE COURT’S**
11 **EQUITABLE POWERS**

12 70. Airbnb incorporates all of the preceding paragraphs as if fully set
13 forth herein.

14 71. Under the SCA, “a provider of remote computing service or
15 electronic communication service to the public shall not knowingly divulge a record
16 or other information pertaining to a subscriber to or customer of such service . . . to
17 any governmental entity,” without a subpoena or other legal process, absent one of
18 the other applicable exceptions, none of which apply here. 18 U.S.C. §§ 2702(a)(3),
19 (c)(1); 2703(c).

20 72. Airbnb is a provider of an electronic communication service
21 within the meaning of the SCA, as it provides to its users “the ability to send or
22 receive wire or electronic communications.” 18 U.S.C. § 2510(15). Airbnb also is a
23 provider of a remote computing service within the meaning of the SCA, as it
24 provides to users “computer storage or processing services by means of an
25 electronic communications system.” *Id.* § 2711(2).

26 73. The City is a “governmental entity” under the SCA. *See id.*
27 § 2711(4) (defining “governmental entity” as “a department or agency of the United
28 States or any State or political subdivision thereof”).

1 74. The Ordinance requires Hosting Platforms to “disclose to the
2 City on a regular basis each Home Sharing and Vacation Rental listing located in the
3 City, the names of the persons responsible for each such listing, the address of each
4 such listing, the length of stay for each such listing and the price paid for each stay.”
5 S.M. Code § 6.20.050(b). The City has established home-sharing rules that state
6 such disclosures must occur on a quarterly basis.

7 75. The enforcement of this provision violates and conflicts with the
8 SCA, and Airbnb’s rights thereunder, because it requires Airbnb to “divulge a
9 record or other information pertaining to a subscriber to or customer of such
10 service” to a “governmental entity,” without a subpoena or other form of legal
11 process. 18 U.S.C. §§ 2702(a)(3), (c)(1); 2703(c). Further, the requirement that
12 Airbnb disclose the rental address, length of stay, and price paid violates the SCA
13 because the City cannot compel this information without a court order requiring it to
14 “offer[] specific and articulable facts showing that there are reasonable grounds to
15 believe that the contents of a wire or electronic communication, or the records or
16 other information sought, are relevant and material to an ongoing criminal
17 investigation.” 18 U.S.C. § 2703(d).

18 76. This provision also interferes with or impedes the
19 accomplishment of the full purposes and objectives of federal law, violates the
20 Supremacy Clause, U.S. Const. art. VI, cl. 2, and is invalid and preempted.

21 77. Pursuant to 18 U.S.C. § 2707(a)-(b), 42 U.S.C. § 1983, and this
22 Court’s equitable powers, Airbnb seeks injunctive relief against the City to prevent
23 its enforcement of the Ordinance, which would conflict with and violate the SCA.

24 **CLAIM 6: VIOLATION OF THE FOURTH AMENDMENT OF THE U.S.**
25 **CONSTITUTION, AND CLAIM FOR INJUNCTIVE RELIEF, PURSUANT**
26 **TO 42 U.S.C. § 1983 AND THE COURT’S EQUITABLE POWERS**

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

1 79. The Ordinance requires Hosting Platforms to “disclose to the
2 City on a regular basis each Home Sharing and Vacation Rental listing located in the
3 City, the names of the persons responsible for each such listing, the address of each
4 such listing, the length of stay for each such listing and the price paid for each stay.”
5 S.M. Code § 6.20.050(b).

6 80. The enforcement of this provision against Airbnb violates the
7 Fourth Amendment of the Constitution, as applied to the City by the Fourteenth
8 Amendment, because it constitutes an unreasonable search and/or seizure by
9 compelling Airbnb to disclose to the City sensitive, private business records and/or
10 other information in which Airbnb has a reasonable expectation of privacy, without
11 prior judicial authorization or pre-compliance review, upon penalty of criminal
12 sanction.

13 **CLAIM 7: DECLARATORY RELIEF PURSUANT TO 28 U.S.C. § 2201**

14 81. Airbnb incorporates all of the preceding paragraphs as if fully set
15 forth herein.

16 82. This action presents an actual controversy between Airbnb and
17 the City concerning the validity of the Ordinance and its enforceability against
18 Airbnb and other online Hosting Platforms.

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff Airbnb respectfully requests that the Court:

26 84. Declare that, as applied to Airbnb, the Ordinance violates 47
27 U.S.C. § 230 and the Supremacy Clause because it would permit the imposition of
28 criminal and civil penalties as a result of the publication of third-party rental

1 advertisements or other information by third-party hosts on Airbnb.com and impose
2 duties on Airbnb with respect to its protected editorial acts concerning third-party
3 rental advertisements.

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

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

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

18 88. Declare that, as applied to Airbnb, the Ordinance violates 18
19 U.S.C. §§ 2701 *et seq.* and the Supremacy Clause because it would compel Airbnb,
20 an electronic communication service provider and remote computing service
21 provider, to divulge information pertaining to a subscriber or to a customer of such
22 service to the City, a governmental entity, without a subpoena or any other form of
23 legal process.

24 89. Declare that, as applied to Airbnb, the Ordinance violates the
25 Fourth Amendment of the United States Constitution because the Ordinance
26 compels Airbnb to disclose to the City sensitive, private business records in which
27 Airbnb has a reasonable expectation of privacy, without prior judicial authorization
28 or pre-compliance review, upon penalty of criminal sanction.

1 90. Preliminarily and permanently enjoin the City; its officers,
 2 agents, servants, employees, and attorneys; and those persons in concert or
 3 participation with them from taking any actions to enforce Sections 6.20.030,
 4 6.20.050(b), and 6.20.100 of the Santa Monica Municipal Code, as well as the other
 5 portions of the Ordinance providing for enforcement and penalties that would
 6 penalize Airbnb—including any investigation, arrest, prosecution, or penalty—for:
 7 (a) the publication of rental advertisements provided by third parties or other
 8 information of third-party hosts on Airbnb.com; (b) the failure to disclose to the City
 9 each rental listing located in the City as well as the names of the persons responsible
 10 for the listings, the addresses of the listings, and length of stay and price information
 11 associated with the listings; or (c) the maintenance, authorization, aiding,
 12 facilitation, or advertisement of short-term rentals that violate Chapter 6.20 of the
 13 Santa Monica Municipal Code or any other Santa Monica law.

14 91. Award Airbnb its reasonable costs and attorneys’ fees pursuant
 15 to 42 U.S.C. § 1988; and

16 92. Award Airbnb such other and further relief as the Court deems
 17 just and proper.

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 19 DATED: September 2, 2016 MUNGER, TOLLES & OLSON LLP

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By: /s/ Jonathan H. Blavin
 JONATHAN H. BLAVIN
 Attorneys for Plaintiff Airbnb, Inc.