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14 IN THE UNITED STATES DISTRICT COURT
15 THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 AIRBNB, INC. and HOMEAWAY.COM, INC.,
18 Plaintiffs,
19 v.
20 CITY AND COUNTY OF SAN FRANCISCO,
21 Defendant.

Case No. 3:16-cv-03615-JD

**DECLARATION OF BILL FURLONG IN
SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION**

22 I, Bill Furlong, declare:

23 1. I am Vice President of North American business for HomeAway.com, Inc.
24 ("HomeAway"). I make this statement from personal knowledge and am competent to testify to
25 the matters herein.

26 2. Since 2006, HomeAway has operated an online forum that allows property owners
27 to list their properties for short-term rentals and connect with individuals who are looking to rent
28 a house or apartment when visiting a city, rather than stay in a hotel. Three of HomeAway's

1 websites are directed primarily to listings and travelers in the United States: HomeAway.com,
2 VRBO.com, and VacationRentals.com. These sites provide listings and allow owners to connect
3 with travelers in all fifty states. Thousands of owners have listed properties in San Francisco on
4 HomeAway's websites in 2016, and I would estimate that more than 10,000 listings have been
5 posted for properties in the city in the last five years.

6 3. HomeAway does not own or operate any properties and is not a party to rental
7 transactions between listing owners and travelers. Instead, HomeAway's websites provide a
8 forum for owners to advertise their properties and users to review and find properties. Listing
9 owners arrange bookings and rentals with travelers directly.

10 4. Owners listing their properties on HomeAway's websites can pay for the services
11 in one of two ways. First, they can buy subscriptions to list their properties for a specified period
12 of time (such as a year). Second, they may choose a pay-per-booking option, paying for
13 HomeAway's services based on a percentage of the total cost of a confirmed booking.

14 5. To list a property on a HomeAway website, an owner must first register for an
15 account. This requires filling out online forms to provide personal information such as name,
16 address, telephone number, and credit card information. HomeAway takes steps to safeguard
17 such personally identifying information (and does the same for such information provided by
18 travelers using the HomeAway websites).

19 6. Once an owner has an account, he or she can create a listing by providing
20 information about the property, the rental rate and other charges, and other details. After an
21 owner provides this information, the listing appears on the HomeAway website almost
22 immediately. Owners provide the information for their listings, and they are solely responsible
23 for the contents of their listings. HomeAway does not author or generate listings on its own.
24 HomeAway does not review listings before they appear on the website. Attached as **EXHIBIT**
25 **A** is a true and correct copy of the forms that owners complete to create a listing.

26 7. HomeAway makes clear that owners are responsible for knowing and complying
27 with the relevant laws. For example, owners listing on HomeAway agree "they are responsible
28 for and agree to abide by all laws, rules, ordinances, or regulations applicable to their listings and

1 rental of their properties, including but not limited to laws and requirements relating to taxes....”

2 Attached as **EXHIBIT B** is a true and correct copy of HomeAway’s Terms and Conditions.

3 8. HomeAway also provides a guide to help owners understand the laws where they
4 offer short-term rentals, which is available at [https://help.homeaway.com/articles/What-are-my-](https://help.homeaway.com/articles/What-are-my-city-s-potential-regulations)
5 [city-s-potential-regulations](https://help.homeaway.com/articles/What-are-my-city-s-potential-regulations). The website warns that “[b]efore you advertise your property for
6 rent, you should review the state and local laws that may apply.” Under the heading “San
7 Francisco,” the following text appears:

8 Rentals in San Francisco, California, for less than 30 days, may be subject to the
9 City’s Administrative Code Chapters 37 and 41A. The regulations indicate that to
10 rent your home, you must be a permanent resident. That is, you must live in your
11 home for at least 275 days per year, or if you have owned or rented for less than a
12 year, 75% of the days.

13 The regulations also require: registration with the San Francisco Planning
14 Department before renting; collection and remittance of transient occupancy taxes
15 for all short-term rentals; and filing quarterly reports reflecting rental activity and
16 the taxes paid based on that activity. Details about the laws and regulations can be
17 found in the City of San Francisco’s Short Term Rental Starter Kit. Additional
18 information about San Francisco’s transient occupancy tax can be found here.

19 9. Owners and travelers can make arrangements to book and rent properties in several
20 ways. In general, they can do so by messaging each other through HomeAway’s websites (a
21 service called HomeAway Secured Communication), or by providing or exchanging telephone
22 numbers or personal email addresses and communicating with one another directly. For
23 example, for some listings, a traveler can click a link on the HomeAway websites to make an
24 “inquiry” regarding a property, which goes through HomeAway’s systems and causes an email
25 to be sent to the owner about the traveler’s message. As noted, further communications between
26 the owner and traveler may occur either through HomeAway’s secured system or offline.

27 10. HomeAway also offers options for online reservations and payments (payments
28 are handled and processed by a third-party service). For owners who have enabled the online

1 booking feature, a traveler may make a booking request, which sends a message to the owner's
2 "dashboard" (akin to an inbox) within HomeAway's online systems, and, once again, subsequent
3 communications may take place through the website or offline.

4 11. When travelers use HomeAway's online booking feature, in the vast majority of
5 instances, a reservation is not effective until accepted by the listing owner (usually within
6 twenty-four hours). Owners using this feature may choose to make payment arrangements
7 separately (*e.g.*, by communications through the website or offline) without using the online
8 payment feature. That a traveler requested a booking does not mean an owner accepted or
9 confirmed the reservation, or, even if he or she did, that the reservation was not later cancelled.
10 For instances when owners use the online payment feature, HomeAway does not act as the
11 merchant of record for properties in the United States and does not handle payments and charges
12 to travelers' credit cards, nor adjustments, reversals or refunds for rentals that did not occur.

13 12. I understand that San Francisco has enacted a new ordinance regarding short-term
14 residential rentals. I have reviewed the ordinance, including the language that "[a] Hosting
15 Platform may provide, and collect a fee for, Booking Services in connection with short-term
16 rentals for Residential Units located in the City and County of San Francisco only when those
17 Residential Units are lawfully registered on the Short Term Residential Registry at the time the
18 Residential Unit is rented for short term rental." I am not a lawyer and so cannot opine about the
19 legal effect of this language, but it appears HomeAway could violate the law if an owner posted
20 a listing for a property that is not "lawfully" registered at the time it "is rented." For the
21 following reasons, such a requirement would make it extraordinarily difficult, if not impossible,
22 to present listings by owners of properties in San Francisco.

23 13. Because HomeAway does not generally review listings before they appear on its
24 websites, it does not know whether the properties featured are registered with the City. At a
25 minimum, the ordinance would force HomeAway to adopt a new practice of checking with the
26 City agency responsible for maintaining the Registry to confirm a property is registered before
27 that listing is published. Given the volume of listings in San Francisco, this would require
28 HomeAway to decide between removing San Francisco listings altogether or committing

1 substantial resources to screening listings, which would significantly delay the time it takes for a
2 listing to appear on the websites and effectively destroy two key benefits of its websites—speed
3 and efficiency.

4 14. Even if HomeAway could verify a property has a registration number, there is no
5 way for HomeAway to know whether a given property is registered at the time it “is rented.”
6 For example, and as noted above, owners and travelers often make arrangements for rentals by
7 phone or using their personal email accounts and without using HomeAway’s online payment or
8 booking functions, meaning that in these instances, HomeAway has no way to know whether
9 owners or travelers reached an agreement, much less whether a rental took place. Even for
10 owners and travelers who use HomeAway’s online booking function, HomeAway cannot know,
11 before publishing a listing, whether the property is registered at the time it will be occupied by
12 the traveler in the future, especially since bookings can take place more than a year in advance.

13 15. The ordinance prohibits HomeAway from allowing listings by owners who do not
14 have a “lawful” registration. If this means HomeAway cannot permit listings by owners who
15 have not complied with all applicable short-term rental laws, this would also pose substantial
16 logistical problems. Again, HomeAway would either have to remove San Francisco listings
17 altogether or to devote employees to research all owners’ listings and inspect properties (with
18 substantial costs). But even if it did, it could not be assured that HomeAway would not be
19 subject to liability if the city believed a listing or property was non-compliant. And requiring
20 such review would significantly encumber and delay owners’ listings and use of the HomeAway
21 websites by owners and travelers.

22 16. I understand that the ordinance also requires HomeAway to provide monthly
23 signed affidavits that it has complied with these requirements. This would appear to require
24 HomeAway to conduct a second review of each of thousands of listings to be sure that the
25 property featured was “lawfully registered” at the time it was rented.

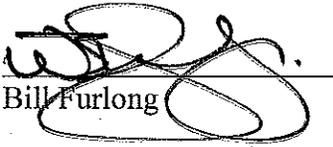
26 17. I understand that the ordinance also requires HomeAway to “maintain” certain
27 information about a listing for three years, including, among other data, “dates for which the
28 tourist or transient user procured use of the Residential Unit” and the property registration

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number. As mentioned above, HomeAway does not necessarily know when a property is rented. Thus, the ordinance appears to require HomeAway to collect information that it does not always collect in operating its website, including the dates of a rental and the registration number (the latter of which owners do not always provide). In addition, the ordinance appears to require HomeAway to retain the extensive, private communications between owners and travelers made through the HomeAway websites to the extent those communications may reflect rentals, so that the City may someday require HomeAway to turn over that information.

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

Executed this 6th day of September, 2016, at Austin, Texas.


Bill Furlong