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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 AIRBNB, INC. and HOMEAWAY.COM, INC.,)
15 Plaintiffs,)
16 vs.)
17 CITY AND COUNTY OF SAN FRANCISCO,)
18 Defendant.)
19)
20)

Case No. 3:16-cv-03615-JD
**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF OF ELECTRONIC FRONTIER
FOUNDATION, CENTER FOR
DEMOCRACY AND TECHNOLOGY,
DAPHNE KELLER, ERIC GOLDMAN
AND EUGENE VOLOKH IN SUPPORT
OF PLAINTIFFS' JOINT MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. James Donato
Crtm: 11, 19th Floor
Time: October 6, 2016 at 10:00 a.m.

1 **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF**

2 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that Electronic Frontier Foundation, Center For Democracy
4 and Technology, Daphne Keller, Eric Goldman, and Eugene Volokh respectfully move this
5 Court for leave to file a brief as *amici curiae* in support of Airbnb, Inc. and HomeAway.com,
6 Inc.’s joint motion for preliminary injunction.

7 *Amici curiae* base this request on this Notice of Motion and Motion, the Memorandum of
8 Points and Authorities below, and the proposed *Amicus Curiae* Brief, attached to this
9 submission.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. THE PROPOSED BRIEF WILL PROVIDE A DIFFERENT AND SPECIALIZED**
12 **PERSPECTIVE ON THE ISSUES BEFORE THE COURT: THE IMPORTANCE**
13 **TO THE PUBLIC INTEREST IN APPLYING SECTION 230 IMMUNITY**
14 **BROADLY**

15 This Court has stated that *amicus* briefs in this case “should provide a new, different or
16 specialized perspective on the issues raised in the injunction motion” and should not “simply
17 endorse, repeat or extend arguments made by the parties.” See Dkt No. 22.

18 The brief *amici curiae* seek leave to file does indeed provide a different and specialized
19 perspective on the issues before the court: the importance of Section 230 immunity as a
20 structural component of the Internet that promotes freedom of speech online and preserves
21 valuable fora for speech that are sorely lacking for those without the financial means to
22 disseminate their ideas directly. The brief also addresses how those public interests are not
23 diminished in cases, such as this one, where a regulation purports to target only commercial
24 activity. *Amici curiae* have a special interest and expertise in the public interest benefits of
25 Section 230 immunity, and have offered that expertise to other courts throughout the country in
26 other cases, as described below.

27 The proposed brief meets the other requirements for *amicus* briefs as set forth by the
28 Court in its July 11, 2016 minute order. See Dkt No. 22. The proposed brief does not exceed

1 twelve pages and offers a new and distinct perspective on the issues raised in the Plaintiffs’
2 injunction motion.

3 **II. STATEMENT OF INTERESTS**

4 *Amici curiae* are nonprofit, public interest organizations that promote freedom of speech
5 and innovation on the Internet and academics who have extensively studied the intermediary
6 immunity created by 47 U.S.C. § 230 (“Section 230”) and its resulting benefits to the public
7 interest. Each *amicus* has a strong interest in ensuring that Section 230 immunity remains a
8 potent protection for Internet intermediaries and as a result continues to foster the availability of
9 the Internet as a platform for diverse voices.

10 Electronic Frontier Foundation (EFF) is a member-supported civil liberties organization
11 working to protect free speech and privacy rights in the online world. With more than 28,000
12 dues-paying members, EFF represents the interests of technology users in both court cases and in
13 broader policy debates surrounding the application of law in the digital age. EFF actively
14 encourages and challenges industry and government to support free expression, privacy, and
15 openness in the information society. EFF has frequently represented public interest plaintiffs, and
16 assisted courts as *amicus curiae*, in cases presenting difficult issues arising from Section 230. In
17 many such cases, the intermediary that is the intended object of liability is unpopular and a
18 sympathetic target for governmental regulation. EFF finds it especially important in such cases to
19 help courts understand the broader public interests served by a robust and inclusive interpretation
20 of Section 230.

21 The Center for Democracy & Technology (CDT) is a non-profit, public interest, Internet
22 policy organization. CDT represents the public’s interest in an open, innovative, and
23 decentralized Internet, reflecting constitutional and democratic values of free expression,
24 privacy, and individual liberty. CDT has litigated or otherwise participated in a broad range of
25 Internet free expression and intermediary liability cases.

26 Daphne Keller is Director of Intermediary Liability at The Center for Internet and Society
27 (CIS), a public interest technology law and policy program at Stanford Law School. CIS studies
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1 the interaction of new technologies and the law, examining ways in which the two can either
2 promote or harm public goods like free speech, innovation, privacy, public commons, diversity,
3 and scientific inquiry.

4 Prof. Eric Goldman is a Professor of Law at Santa Clara University School of Law. He
5 has taught and written about Internet Law for over 20 years, and he has blogged virtually every
6 Section 230 ruling since 2005. He is interested in the advancement of Internet law generally, and
7 Section 230 specifically, as a foundation to enable the growth of innovative new services, such
8 as those that create more efficient matches between consumers and vendors.

9 Prof. Eugene Volokh is the Gary T. Schwartz Professor of Law at UCLA School of Law,
10 where he specializes in free speech law and Internet law.

11 No one, except for *amici*, authored this brief in whole or in part, or contributed money
12 toward the preparation of this brief.

13 III. CONCLUSION

14 For these reasons, *amici* respectfully request that the Court grant this motion for leave to
15 file the accompanying brief.

16 DATED: September 9, 2016

17 Respectfully submitted,

18 By: /s/ David Greene

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