

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

AIRBNB, INC.,

Petitioner,

v.

ERIC T. SCHNEIDERMAN, ATTORNEY
GENERAL OF THE STATE OF NEW
YORK,

Respondent.

Index No. _____

VERIFIED PETITION

Petitioner Airbnb, Inc. (“Airbnb”) respectfully shows as follows:

Parties

1. Airbnb is a Delaware corporation with principal place of business at 888 Brannan Street, 4th Floor, San Francisco, CA 94103.
2. Respondent, Eric T. Schneiderman, Attorney General of the State of New York, served a Subpoena Duces Tecum on Airbnb on October 4, 2013.

Facts

3. Founded in 2008, Airbnb provides an Internet platform that connects persons who wish to offer unique accommodations (“Hosts”) with persons who want to book accommodations (“Guests”). If the Host and Guest agree on the price and terms, they can complete their booking transaction. Guests pay for the accommodations electronically via Airbnb’s internet platform.
4. Airbnb is not a party to these direct agreements between Hosts and Guests for the rental of accommodations. It does not list, own, manage, control, operate, sell or resell any accommodations in New York. It has no ability to control or transfer any

interest in property to any party, and it is not a reseller, remarketer, room remarketer or managing agent for any Host. Hosts, and not Airbnb, set the price and terms of their own bookings, including the availability of their accommodations, and Hosts decide with whom they are willing to transact.

5. On August 19, 2013, the New York Attorney General's Office sent a letter request to Airbnb (attached as Exhibit 1), which requested the following documents be produced:

1. An Excel spreadsheet identifying all Hosts that rent Accommodation(s) in New York State, including: (a) name, physical and email addresses, and any other contact information; (b) their Profiles; (c) address of the Accommodation(s) rented, including unit or apartment number; (d) the dates, duration of guest stay, and the rates charged for the rental of each associated Accommodation(s); (e) method of payment to Host including account information; and (f) total gross revenue per Host generated per year for the rental of the Accommodation(s) through Your Website.
2. For each Host identified in response to Request No. 1, documents sufficient to identify all tax-related communications You had with the Host, including tax inquiries or tax documents sent (including 1099s) whether initiated by the Host or You.

6. On September 17, 2013, counsel for Airbnb met with the NYAG to discuss this letter request. At that meeting, the NYAG made it clear that it was not targeting Airbnb, but rather was looking to Airbnb to produce information about its Hosts in order to find out whether the Hosts are paying applicable New York hotel taxes.

7. On September 30, 2013, Airbnb met again with the NYAG. Airbnb offered to cooperate with the NYAG to develop a clear set of tax disclosures that Airbnb would then place on its website so that its users could know when and how to pay any hotel occupancy taxes that might apply. The NYAG rejected this offer, refusing to articulate which of Airbnb users were subject to New York hotel taxes or how they should apply the various applicable exceptions.

8. On October 3, 2013, Brian Chesky, one of Airbnb's co-founders, made the following statement on Airbnb's blog: "Our hosts are not hotels, but we believe that it makes sense for our community to pay occupancy tax, with limited exemptions for those who earn under certain thresholds. We would like to assist New York City in streamlining this process so that it is not onerous." *Who we are, what we stand for*, October 13, 2013, <http://blog.airbnb.com/who-we-are/>, attached as Exhibit 2.
9. On October 4, 2013, the Attorney General's office served upon Airbnb a Subpoena Duces Tecum (attached as Exhibit 3), which requested that the following documents be produced for a large number of Airbnb's New York Hosts who rent or rented out accommodations over the three-year period from January 2010 to the present:
 1. An Excel spreadsheet Identifying all Hosts that rent Accommodation(s) in New York State, including: (a) name, physical and email address, and other contact information; (b) Website user name; (c) address of the Accommodation(s) rented, including unit or apartment number; (d) the dates, duration of guest stay, and the rates charged for the rental of each associated Accommodation; (e) method of payment to Host including account information; and (f) total gross revenue per Host generated for the rental of the Accommodation(s) through Your Website. The Excel spreadsheet should be capable of being organized by gross revenue per Host and per Accommodation.
 2. For each Host identified in response to Request No. 1, Documents sufficient to Identify all tax-related communications Your Website has had with the Host, including tax inquiries or tax document requests whether initiated by the Host or You.
10. The NYAG's subpoena defines Accommodation as "the room or group of rooms which a Person or Entity offers to rent to a guest or guests in exchange for payment on Your Website, but not including where the Host stays at the Accommodation during the rental period." Airbnb has no reliable method of determining whether a Host is present during the Guest's stay.

11. The burden of responding to the NYAG's subpoena will be substantial.
12. To produce the Excel spreadsheet requested by the NYAG, Airbnb would have to extract hundreds of thousands of separate records spanning millions of cells.


Preparing this data would take a significant amount of dedicated time across multiple company departments.
13. To produce the communications requested by the NYAG, Airbnb would have to: (i) manually sift through hundreds of thousands of automated communications stored in Airbnb's system to isolate and extract affected New York users; (ii) manually review tens of thousands of paper and e-statement tax forms to isolate and extract affected New York users; and (iii) download tens of thousands of separate sets of communication threads stored in the company's customer relationship management system, each of which runs as long as 20 pages, and manually review them for relevance and privilege.
14. Preparing these materials would take weeks of dedicated manual review time from attorneys, paralegals, temporary workers and multiple company departments.
15. The NYAG has declined Airbnb's request to withdraw or modify its subpoena.
16. With respect to the present case, no formal lawsuit has been commenced by any individual or agency including the Attorney General's Office, with any administrative agency or Court of competent jurisdiction, alleging that that Airbnb has engaged in any fraudulent or illegal acts.
17. No prior application for the relief requested herein has been made to this or to any other Court and upon information and belief, the Petitioner herein lacks any other remedy at law.

18. The New York City Department of Finance issued a Named Letter Ruling concerning Airbnb on August 21, 2013. A copy is attached as Exhibit 4.
19. The New York State Department of Taxation and Finance has issued guidance concerning who does and does not have to pay state and city sales taxes on hotel occupancy in Publication 848 “A Guide to Sales Tax for Hotel and Motel Operators,” published in March 2008. A copy is attached as Exhibit 5.

WHEREFORE, petitioner Airbnb prays for an order pursuant to Section 2304 of the Civil Practice Law & Rules quashing the October 4, 2013 subpoena served on Airbnb, and suspending Airbnb's obligation to respond thereto.

Dated: New York, New York
October 9, 2013

By: _____


Roberta A. Kaplan
Maria T. Vullo

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- and -

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VERIFICATION

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

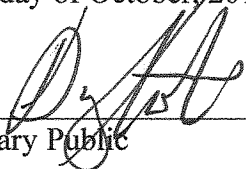
Kathryn Biber, being duly sworn, states:

I am Senior Counsel to Airbnb Inc., the Petitioner in this proceeding. The foregoing Petition is true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.




Kathryn Biber

Sworn to before me this
9th day of October, 2013



Notary Public

State of California, County of San Francisco
Subscribed and sworn to (or affirmed) before me on this
09 day of October 2013 by
Kathryn Biber
proved to me on the basis of satisfactory evidence to be
the person(s) who appeared before me.
Signature  (seal)

