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16 *Counsel for Plaintiff and the Proposed Class*

17 UNITED STATES DISTRICT COURT FOR THE
 18 NORTHERN DISTRICT OF CALIFORNIA

19 ANTHONY FARMER, on behalf of
 20 himself and all others similarly situated,

21 Plaintiff,

22 v.

24 AIRBNB, INC.; AIRBNB
 25 PAYMENTS, INC.,

26 Defendants.

Case No. 3:20-cv-7842

CLASS ACTION COMPLAINT
 DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. As the COVID-19 pandemic reached the United States earlier this year,
3 Airbnb announced that it would allow Guests to cancel their reservations for a full refund
4 and no cancellation fees.

5 2. Airbnb is planning an IPO for later in the year and needed the positive press.
6 But that press came at the expense of Hosts, who had negotiated their own cancellation
7 policies with Guests and were hurt as much as anyone by the pandemic’s sudden impact
8 on travel.

9 3. Airbnb soon apologized to Hosts and announced that it was establishing a
10 \$250 million fund to help pay Hosts for cancelled bookings. It turns out, however, that this
11 was yet another ruse to burnish the company’s public image, and that Airbnb was in effect
12 paying Hosts with their own money.

13 4. Airbnb had not actually issued full refunds to Guests as it said it would.
14 Instead, Airbnb rejected many Guests’ refund requests, forced others to accept travel
15 credits that expire next year, and issued only partial refunds to still more Guests.

16 5. Airbnb then kept the remaining funds for itself – ignoring its fiduciary and
17 contractual obligations to remit any such money to Hosts.

18 6. Plaintiff is one of the hundreds of thousands of Hosts who have been
19 shortchanged by Airbnb. He brings this proposed class action in an effort to stop Airbnb’s
20 unlawful conduct, compel Airbnb to make a full accounting to Hosts, and require Airbnb
21 to compensate Hosts for profiting at their expense.

22 **JURISDICTION**

23 7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)
24 because this is a class action in which the amount in controversy exceeds \$5,000,000,
25 exclusive of interest and costs; in the aggregate, there are more than 100 members in the
26 proposed class; and at least one class member is a citizen of a state different from
27 Defendant.

1 **INTRADISTRICT ASSIGNMENT**

2 8. Assignment to the San Francisco Division or Oakland Division is appropriate
3 under Local Rule 3-2(c), as both defendants are headquartered in San Francisco and their
4 applicable terms of service require judicial proceedings to be brought in San Francisco.

5 **PARTIES**

6 9. Plaintiff Anthony Farmer is a Texas citizen who previously offered vacation
7 rentals through the Airbnb platform.

8 10. Defendant Airbnb, Inc., is a Delaware corporation headquartered in San
9 Francisco, California.

10 11. Defendant Airbnb Payments, Inc., is a subsidiary of Airbnb that is also
11 incorporated under the laws of Delaware and headquartered at the same address in San
12 Francisco, California. Plaintiff alleges upon information and belief that Airbnb wholly
13 owns and controls Airbnb Payments.

14 **FACTUAL ALLEGATIONS**

15 **A. Airbnb’s Obligation to Pay Hosts in the Event of Cancelled Bookings**

16 12. Defendant Airbnb operates an online marketplace for vacation rentals. It
17 makes money by connecting “Hosts” who own vacation properties with “Guests” in need
18 of accommodations – and taking a percentage of each booking. The company recently
19 valued itself at more than \$25 billion.

20 13. Airbnb stresses in its Terms of Service that it is only an intermediary. When
21 users “make or accept a booking, they are entering into a contract directly with each other.
22 Airbnb is not and does not become a party to or other participant in any contractual
23 relationship between [users].” Terms, ¶ 1.2.

24 14. Although Airbnb is not supposed to participate in transactions between its
25 users, it does provide users a vehicle to pay one another through a subsidiary corporation
26 called Airbnb Payments.

1 15. Airbnb users are required to agree to Payments Terms of Service, which
2 appoint Airbnb Payments as the Hosts’ agent for collecting payment from Guests and
3 obligates Airbnb Payments to turn over collected fees to Hosts.

4 16. In a typical transaction, Airbnb Payments will collect payment from the Guest
5 at the time of booking, hold that payment until after the designated check-in time, and then
6 transfer the payment to the Host after deducting taxes and Airbnb’s service fee.

7 17. In the event that a Guest cancels a confirmed booking, the Payments Terms
8 require Airbnb Payments to “remit a Payout of any portion of the Total Fees due to [the
9 Host] under the applicable cancellation policy.” Payments Terms, ¶ 7.2.4.

10 18. The “applicable cancellation policy” is the cancellation policy displayed on
11 the property listing and agreed to by the Guest at the time of booking. As Airbnb states in
12 its Terms of Service, “Upon receipt of a booking confirmation from Airbnb, a legally
13 binding agreement is formed between you and your Host, subject to any additional terms
14 and conditions of the Host that apply, including in particular the applicable cancellation
15 policy.”

16 19. Hosts may choose from among six cancellation policies to include with their
17 listings: “Flexible,” “Moderate,” “Strict,” “Long Term,” “Super Strict 30 days,” and “Super
18 Strict 60 days.” See https://www.airbnb.com/home/cancellation_policies.

19 20. Depending on which of these policies was agreed to by the Host and Guest, a
20 portion of the Guest’s payment may be non-refundable upon cancellation. Under the
21 Payments Terms, that non-refundable portion—less taxes and Airbnb’s service fee—must
22 be turned over to the Host by Airbnb Payments. Payments Terms, ¶ 7.2.3-7.2.4.

23 **B. Airbnb’s Extenuating Circumstances Policy**

24 21. The portion of the Payments Terms concerning “Payouts” does not include
25 any exception for extenuating circumstances, but a section dealing with “Fees improperly
26 paid to you as a Host” provides that if “Airbnb issues a refund to the Guest in accordance
27 with the [Airbnb Terms](#), [Guest Refund Policy](#), [Experiences Guest Refund Policy](#),
28 [Extenuating Circumstances Policy](#), or other applicable cancellation policy, you agree that in

1 the event you have already been paid, Airbnb Payments will be entitled to recover the
2 amount of any such refund from you, including by subtracting such refund amount out
3 from any future Payouts due to you.”

4 22. Airbnb’s Terms of Service also makes reference to the Extenuating
5 Circumstances Policy, stating in relevant part, “Unless [extenuating circumstances](#) exist, any
6 portion of the Total Fees due to the Host under the applicable cancellation policy will be
7 remitted to the Host by Airbnb Payments pursuant to the [Payments Terms](#).” Terms, ¶ 9.2.

8 23. Similarly, in answer to the question, “What happens to my payout if my
9 guest cancels,” Airbnb’s Help Center states, “If a guest cancels (either before or during a
10 trip), they’re automatically refunded according to your cancellation policy, unless the
11 cancellation qualifies for an additional refund under the [Guest Refund Policy](#) or because of
12 a documented [extenuating circumstance](#).”

13 24. The hyperlinks concerning extenuating circumstances in the Payments Terms,
14 Terms of Service, and Help Center all currently direct the user to
15 <https://www.airbnb.com/help/article/1320/extenuating-circumstances-policy>, which
16 describes Airbnb’s current Extenuating Circumstances Policy. That same Extenuating
17 Circumstances Policy is also referenced and hyperlinked three additional times in the
18 Term’s section on Booking Modifications, Cancellations and Refunds.

19 25. Airbnb’s Extenuating Circumstances Policy is reserved for rare and
20 unforeseen events that arise between booking and the scheduled check-in date, and
21 requires supporting documentation or special review before Airbnb will approve refunds.

22 26. The Extenuating Circumstances Policy currently states that Airbnb may be
23 able to offer a full refund in the event of certain unexpected events, including death;
24 serious illness or injury; urgent travel restrictions or severe security advisories; natural
25 disaster; or epidemic disease.

26 27. The Extenuating Circumstances Policy has changed somewhat over time,
27 however, and while the precise dates of all such changes are not clear from publicly
28 available information, Plaintiff alleges upon information and belief that prior to the

1 COVID-19 pandemic, the Extenuating Circumstances Policy did not refer to epidemic
2 diseases or pandemics – it referred only to endemic diseases such as Chagas Disease, Zika,
3 and Ebola.

4 28. In addition to changing its Extenuating Circumstances Policy to cover
5 epidemic diseases rather than endemic diseases, Airbnb also recently announced that it will
6 update the Extenuating Circumstances Policy to include pandemics as well – effective
7 January 20, 2021.

8 29. In all versions of the Extenuating Circumstances Policy, Airbnb is only
9 authorized to provide Guests a refund. No version of the Extenuating Circumstances Policy
10 permits Airbnb to offer travel credits instead of refunds, and no version of the Extenuating
11 Circumstances Policy permits Airbnb Payments to retain money paid by Guests rather than
12 refunding it to Guests or paying it out to Hosts.

13 **C. Airbnb’s Public Response to the COVID-19 Pandemic**

14 30. When the COVID-19 pandemic began spreading across the United States
15 earlier this year, Guests were often unable or unwilling to travel and decided to cancel
16 bookings they had made with Hosts for vacation rentals.

17 31. As businesses throughout the country struggled with how to respond to
18 widespread requests for refunds, Airbnb quickly announced that it would offer full
19 refunds to Guests who booked their vacation rentals on or before March 14, 2020 – even if
20 the agreement between the Guest and Host did not provide for a full refund. Airbnb said it
21 would be offering these refunds under its Extenuating Circumstances Policy.

22 32. In many cases, the refunds Airbnb claimed it was offering would come
23 directly out of Hosts’ pockets. The Guests and Hosts had previously agreed on a
24 cancellation policy that allocated the risk between each respective side, and Airbnb was
25 now overriding the terms of the Guest-Host contract and siding entirely with one group of
26 Airbnb users (the Guests) and against another group of users (the Hosts).

27 33. Airbnb ultimately apologized to Hosts, with its CEO writing that he was
28 “sorry that we did not consult you – like partners should.” At the same time, Airbnb

1 publicly announced it had set aside \$250 million to help pay Hosts for cancelled bookings.
2 Hosts would be eligible to receive 25% of what they would've received from a Guest under
3 the cancellation policy in place at the time of the booking.

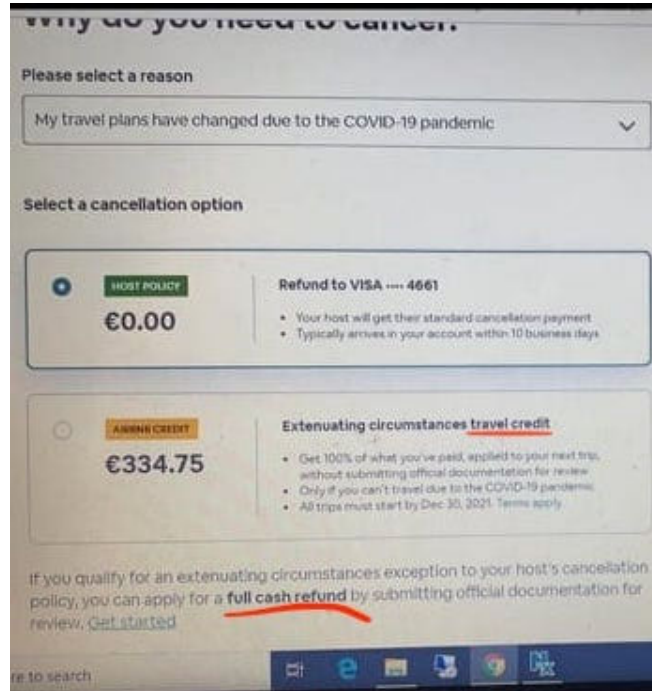
4 34. Both Airbnb's announcement that it would issue full refunds to Guests and
5 its subsequent announcement that it would set aside \$250 million for Hosts were widely
6 covered in the press and helped enhance the company's public appeal prior to its
7 upcoming IPO.

8 **D. Airbnb Shortchanges Guests and Hosts**

9 35. Airbnb has not lived up to its public promises. Rather than issuing full
10 refunds to Guests who cancelled bookings, Airbnb is giving Guests travel credits, issuing
11 partial refunds, or denying Guests any compensation whatsoever.

12 36. Hundreds of Guests have complained about Airbnb's refund process, which
13 has often required Guests to contact customer service repeatedly, navigate a confusing web
14 interface designed to force Guests to accept a travel credit rather than a full refund, and
15 upload a variety of supporting documentation to support their claim.

1 37. The screenshot below illustrates how Airbnb is using “dark patterns” to
2 withhold full refunds from Guests and instead steer them toward a travel credit or other
3 inferior options.



15 38. Airbnb’s web interface appears to offer only two cancellation options: the
16 Host’s cancellation policy, which in this case would provide the user with no refund; or a
17 €334.75 option that, upon closer examination, is actually for a “travel credit” that must be
18 used by the end of next year.

19 39. The option for a “full cash refund” appears only at the bottom of the
20 webpage, without its own radio button, and is accompanied by a warning that it will
21 “require submitting official documentation.” (To make the “travel credit” and “full cash
22 refund” options more apparent, red underlining has been added to the photo.)

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1 40. If Guests recognize they are being offered travel credits rather than full
2 refunds, and find the link to “Get started” on the full refund process, Airbnb then requires
3 them to justify why they can’t travel due to COVID-19—even though Airbnb’s public
4 pronouncements included no such limitation.

5 **Let us know why you can’t travel due to COVID-**
6 **19**

7
8 Government restrictions prohibit me from leaving my location or going to the destination

9 I'm sick and my healthcare provider has instructed me not to travel

10 My means of transportation have been cancelled or closed, making it impossible to travel

11 I am a healthcare professional being required to work and can't travel
12

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15 41. Guests are then required to submit documentation to support their stated
16 justification, which Airbnb often rejects as insufficient.

17 42. The end result is that many Guests are forced to accept travel credits they are
18 unlikely to use, partial refunds (under the Host’s cancellation policy), or nothing at all.

19 43. At the same time, Airbnb is forcing Hosts to accept 25% of the amount called
20 for by their own cancellation policies, or nothing at all. Airbnb Payments is uniformly
21 refusing to pay Hosts the money they are owed under the Payments Terms—even if that
22 money has not been refunded to the Guest.

23 44. By shortchanging both Hosts and Guests, Airbnb has been able to retain large
24 sums of money that Airbnb Payments was holding in escrow when the pandemic started.
25 This money doesn’t belong to Airbnb.

26 **E. Airbnb Changes Its Terms to Authorize Similar Conduct in the Future**

27 45. Airbnb recently announced that it is changing its Terms of Service, Airbnb
28 Payments’ Payments Terms of Service, and its Extenuating Circumstances Policy. These

1 terms are effective immediately for new Airbnb users and on January 20, 2021, for existing
2 Airbnb users.

3 46. The new Extenuating Circumstances Policy now provides that Airbnb may
4 issue travel credits or other consideration instead of a refund, while the new Terms of
5 Service now provide that Airbnb may reduce the Host's payout by the amount of any costs
6 Airbnb incurs as a result of a cancellation (including, presumably, the face value of travel
7 credits).

8 47. The new Terms of Service also now provide that Airbnb's Extenuating
9 Circumstances Policy may preempt the Host's cancellation policy and that Airbnb may
10 delay payment to Hosts if it reasonably expects to provide a refund under the Extenuating
11 Circumstances Policy.

12 **PLAINTIFF'S EXPERIENCE**

13 48. Plaintiff Anthony Farmer is a Host who regularly used Airbnb to list vacation
14 rentals. He is currently unemployed and previously depended on Airbnb for a large
15 percentage of his income.

16 49. As a result of Airbnb's practices and Airbnb Payments' failure to remit
17 payment for cancelled reservations, Plaintiff has lost at least \$655.

18 50. For example, one Guest booked two nights in Plaintiffs' vacation property,
19 with check-in scheduled for March 27, 2020, and agreed to a "Strict" cancellation policy
20 under which Plaintiff would retain 50% of the nightly rate if the Guest cancelled more than
21 7 days prior to check-in. The Guest cancelled the booking on March 12, 2020, and under the
22 Payments Terms, Plaintiff was entitled to receive 50% of the nightly rate from Airbnb.

23 51. Airbnb Payments initially paid Plaintiff \$99.91 in cancellation fees owed to
24 him under his cancellation policy, but then reversed the transaction two weeks later. It did
25 not allow him to retain even 25% of the cancellation fee as Airbnb had told the public it
26 would under its \$250 million Host relief fund.

27 52. Plaintiff contacted Airbnb Support to ask why Airbnb was "taking back the
28 \$99 that's already hit my account," and noting that with him "trying to count every penny

1 and make ends meet, this is an absolutely devastating blow and seemingly is coming out of
2 nowhere.”

3 53. Airbnb Support declined to reverse the transaction or provide Plaintiff with
4 any portion of the amount Plaintiff was owed by Airbnb Payments under the cancellation
5 policy he and his Guest had agreed to. When Plaintiff requested to speak to someone on
6 the phone, Airbnb Support took 18 days to respond and said it was “not able to do a phone
7 call.”

8 54. Plaintiff tried once more to get someone from Airbnb to speak with him, but
9 Airbnb again refused, writing instead, “[W]e decided that what we have provided is
10 sufficient for your query. We consider the decision final.”

11 55. Collectively, Airbnb Payments has paid Plaintiff only \$185.03 for six bookings
12 that were cancelled by Guests in March or April 2020. Under the cancellation policies that
13 the Guests agreed to at the time of booking, Plaintiff should have been paid at least \$840.03
14 by Airbnb Payments for those six bookings.

15 56. Airbnb Payments has not provided a full and accurate accounting to Plaintiff
16 stating whether his Guests were refunded in full or were instead given travel credits or
17 some lesser cash payment. In fact, with respect to the Guest scheduled to check in on
18 March 27, Airbnb indicated that the Guest was only refunded \$135.50 of the \$225 that
19 Airbnb Payments originally collected from the Guest.

20 **ARBITRATION AND CHOICE OF LAW ALLEGATIONS**

21 57. Airbnb’s Terms of Service and Airbnb Payments’ Payments Terms of Service
22 both include an arbitration clause that required Plaintiff to initially file his claims with the
23 American Arbitration Association (AAA). Terms, ¶ 19; Payments Terms, ¶ 23.

24 58. Plaintiff filed his claims with AAA on July 28, 2020, and AAA sent the parties
25 an initiation letter on August 31, 2020, which required Airbnb to pay AAA \$1,8000 before
26 the arbitration could proceed. Those fees were owed by Airbnb under AAA’s Consumer
27 Arbitration Rules and were due by September 14, 2020.

1 Defendants, their current or former officers, directors, legal representatives, and
2 employees; any and all parent companies, subsidiaries, predecessors, successors, or assigns
3 of Defendants; and all judicial officers and associated court staff assigned to this case and
4 their immediate family members.

5 65. The proposed class meets the requirements for class certification pursuant to
6 Rule 23(a), Rule 23(b)(2), and Rule 23(b)(3).

7 66. *Numerosity*: The class is sufficiently numerous such that joinder of all
8 members is impracticable. The number of active Hosts in the United States is in the
9 hundreds of thousands – far too many to include in one action through individual joinders.

10 67. *Commonality*: Plaintiff’s and class members’ claims against Defendants
11 present common questions of law and fact, including:

12 a. Did Airbnb Payments breach the Payments Terms by failing to turn over
13 money owed to Hosts under their cancellation policies?

14 b. Did Airbnb breach its Terms of Service by failing to cause Airbnb Payments
15 to remit the portion of fees due to Hosts under their cancellation policies?

16 c. Was Airbnb authorized under its Extenuating Circumstances Policy to offer
17 refunds to any Guest who cancelled a booking made on or before March 14, 2020?

18 d. If so, were Defendants permitted to keep money paid by Guests who were
19 not fully refunded their money?

20 e. Did Airbnb Payments owe Hosts a fiduciary duty to act in the utmost good
21 faith with regard to money collected from Guests on Hosts’ behalf?

22 f. Did Airbnb Payments earn secret profits while operating as the Hosts’
23 collection agent?

24 g. Did Airbnb Payments provide Hosts a complete and accurate accounting of
25 its disposition of money it collected while acting as an agent for the Hosts?

26 h. Is it unfair for Defendants to retain money that Airbnb Payments collects
27 from Guests as the collection agent for Hosts?

28

1 68. *Typicality*: Plaintiff's claims against Defendants are typical of the class's
2 claims. Airbnb Payments acted as collection agent for both Plaintiff and class members, and
3 has failed to remit or give a proper accounting of money collected from both Plaintiff and
4 class members. In addition, Plaintiff and class members' claims depend in significant part
5 on uniform contractual terms that govern both Airbnb and Airbnb Payments' provision of
6 services, as well as on uniform policies administered by Airbnb.

7 69. *Adequacy*: Plaintiff is a member of the proposed class and will fairly and
8 adequately protect its interests. Plaintiff's interests are also properly aligned with those of
9 class members, as each seeks to hold Defendants liable for failing to remit or give a proper
10 accounting of money collected from Guests on their behalf.

11 70. *Predominance*: The common questions identified above are likely to
12 predominate at trial when compared to any individualized issues that may arise. The major
13 issues upon which Defendants' liability depends – in particular, the issues of whether
14 Defendants were authorized to refund money paid to Hosts by Guests under its
15 Extenuating Circumstances Policy, and whether Defendants were authorized to retain
16 money that was not actually returned to Guests – are susceptible to generalized proof that
17 could establish Defendants' liability as to all class members through a single trial.

18 71. *Superiority*: A class action is superior to other available methods for the fair
19 and efficient adjudication of this controversy. Successfully prosecuting class members'
20 claims will likely take several years and involve extensive pre-trial litigation against a \$25
21 billion company, large amounts of electronically stored information, and multiple expert
22 witnesses. These are matters that are best handled through unified class-wide
23 representation, which can be conducted on a contingency basis and offers class members
24 economies of scale unavailable in individual proceedings. A class action also has the
25 benefit of comprehensive supervision by a single court and will avoid the risk of
26 inconsistent results.

27 72. *Injunctive Relief*: Defendants have wrongly withheld funds and failed to
28 provide a proper accounting to Plaintiff and class members on common grounds, such that

1 final injunctive relief or corresponding declaratory relief is appropriate respecting the class
2 as a whole.

3
4 **FIRST CAUSE OF ACTION**
Breach of Contract Against All Defendants

5 73. Plaintiff alleges this cause of action on his own behalf and on behalf of the
6 proposed class, and in so doing, incorporates all preceding allegations.

7 74. Airbnb's Terms of Service constitute a binding contract between Hosts and
8 Airbnb. The Terms of Service incorporate by reference Airbnb's Extenuating Circumstances
9 Policy.

10 75. Airbnb Payments' Payments Terms of Service constitute a binding contract
11 between Hosts and Airbnb Payments.

12 76. Plaintiff and class members have fulfilled their contractual obligations or
13 were excused from doing so, but Airbnb and Airbnb Payments have not.

14 77. Airbnb Payments breached the Payments Terms by failing to "remit a Payout
15 of any portion of the Total Fees due to [Hosts] under the applicable cancellation policy."
16 Payments Terms, ¶ 7.2.4.

17 78. Airbnb Payments collected money from Guests as the collection agent for
18 Plaintiff and class members, but when Guests later cancelled their rental bookings, Airbnb
19 Payments did not remit to Plaintiff and class members the portion of those fees owing to
20 them under the cancellation policy that Guests had previously agreed would apply.

21 79. Airbnb similarly promised in its Terms of Service that, "[u]nless extenuating
22 circumstances exist, any portion of the Total Fees due to the Host under the applicable
23 cancellation policy will be remitted to the Host by Airbnb Payments pursuant to the
24 Payments Terms." Terms, ¶ 9.3.

25 80. Airbnb breached that promise by failing to cause Airbnb Payments to remit to
26 Plaintiffs and class members the money they were owed.

27 81. Airbnb also breached the Terms of Service by offering Guests refunds that it
28 was not authorized to provide under its Extenuating Circumstances Policy. The

1 Extenuating Circumstances Policy that applied when Guests booked their vacation rentals
2 did not authorize Airbnb to offer refunds to entire regions or groups of people affected by a
3 new disease. Airbnb was only authorized to offer refunds to regions or groups of people
4 affected by endemic diseases, and COVID-19 is not an endemic disease.

5 82. To the extent the Terms and incorporated Extenuating Circumstances Policy
6 afforded Airbnb discretion to decide whether to issue refunds to Guests affected by the
7 COVID-19 pandemic, Airbnb breached the implied covenant of good faith and fair dealing
8 by exercising that discretion unfairly and in bad faith.

9 83. As a result of Defendants' breaches of their contractual obligations, Plaintiff
10 and class members have been denied funds owed to them under Defendants' Terms of
11 Service and Payments Terms and have been damaged in an amount according to proof.

12 **SECOND CAUSE OF ACTION**
13 **Breach of Fiduciary Duty Against Airbnb Payments**

14 84. Plaintiff alleges this cause of action on his own behalf and on behalf of the
15 proposed class, and in so doing, incorporates all preceding allegations.

16 85. Airbnb Payments was appointed to serve as the payment collection agent for
17 Hosts under the Airbnb Payments Terms of Service. Payments Terms, ¶ 9.

18 86. In its capacity as the payment collection agent, Airbnb Payments collected
19 money from Guests who purchased services from Plaintiff and class members.

20 87. Airbnb Payments owed Plaintiff and class members a fiduciary duty to act
21 with the utmost good faith in its handling and disposition of the money it collected.

22 88. Airbnb Payments breached its fiduciary duty by knowingly and intentionally
23 acting against Plaintiff's and class members' interests, secretly profiting from its agency
24 relationship, and failing to disclose to Plaintiff and class members all information relevant
25 to the subject matter of its agency.

26 89. Airbnb Payments failed to remit money it had collected from Guests and that,
27 upon the Guests' cancellation of their bookings, was owed to Plaintiff and class members
28 under their contracts with Guests.

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Dated: November 5, 2020

/s/ Michael L. Schrag

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