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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  
23 v.

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

26 Defendants.  
27  
28

Case No. 3:20-cv-7842

CLASS ACTION COMPLAINT  
DEMAND FOR JURY TRIAL





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](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.

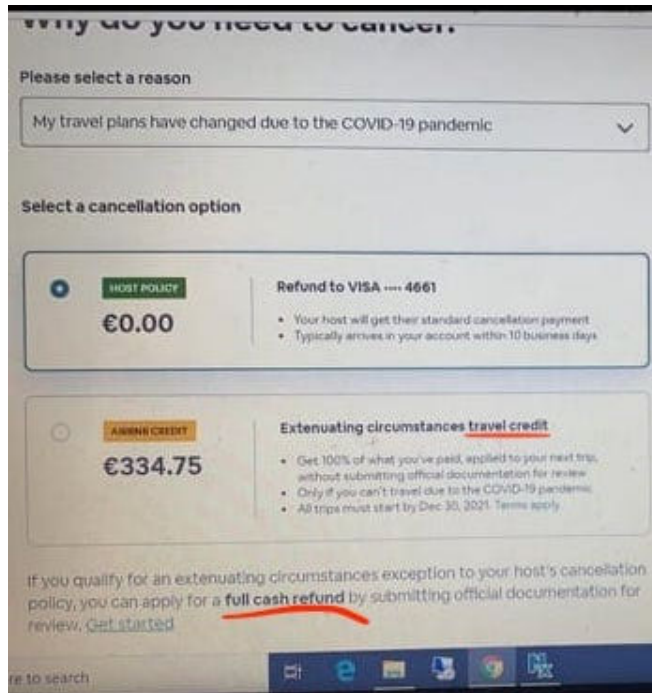
4 34. Both Airbnb's announcement that it would issue full refunds to Guests and  
5 its subsequent announcement that it would set aside \$250 million for Hosts were widely  
6 covered in the press and helped enhance the company's public appeal prior to its  
7 upcoming IPO.

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.)



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

13           

14  
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?

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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