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Superior Court of California
County of Los Angeles

DEC 16 2015

Sherri H. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CARRIE KIRSHMAN, JEROME
PODCZASKI, RONALD FONTENOT,
NINA GIOVANNITTI, and VIRGIL
MASCARENHA,

Plaintiffs,

v.

AIRBNB, INC; AIRBNB PAYMENTS,
INC.; LSJB INVESTMENTS, LLC d/b/a ST.
JOHN ASSOCIATES, INC.; CAROL
ALSMAN and DOES 1-10, inclusive,

Defendants.

Case No: BC 6 04 5 04

**COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY
RELIEF**

1. Wrongful Eviction of Tenants in Violation of Los Angeles Municipal Code Section 151.00 *et seq.*;
2. Intentional Misrepresentation; and
3. Unfair Business Practices in Violation of Business and Profession Code § 17200 *et seq.*

JURY TRIAL DEMANDED

1 Plaintiffs CARRIE KIRSHMAN, JEROME PODCZASKI, RONALD FONTENOT,
2 NINA GIOVANNITTI, AND VIRGIL MASCARENHA, bring this action against Defendants for
3 damages, and injunctive and declaratory relief. As grounds, therefore, Plaintiffs allege as
4 follows:

5 INTRODUCTION

6 1. This case presents one of the many repercussions of the increasing conversion of
7 residential rental units into dedicated short-term rentals in the City of Los Angeles. Property
8 owners and online rental services such as Airbnb, VRBO, and HomeAway profit from the
9 removal of rental units from Los Angeles' housing stock. As a result of this emerging practice,
10 long-term tenants are displaced and left to compete amidst rising rents for the dwindling number
11 of rental units available as long-term tenancies. The termination of long-term tenancies in favor of
12 short-term rentals not only unfairly burdens renters, but where the apartments are covered by the
13 Los Angeles Rent Stabilization Ordinance (LA RSO), the practice is also fraudulent and illegal.

14 2. More than 52 percent of the population of the City of Los Angeles rent their home.
15 Rosalie Ray et al., *Impacts of the Widening Divide: Los Angeles at the Forefront of the Rent*
16 *Burden Crisis 3* (UCLA Luskin School of Public Affairs 2014). With rents skyrocketing to
17 historic rates, on average, tenants in the City of Los Angeles are forced to devote a larger portion
18 of their income to rent than any other city in the country. *Id.* at 8. Los Angeles' low vacancy
19 rates drive the increasingly onerous rent burden on the city's residents. "[V]acancy rates are very
20 low, and that gives landlords a lot of pricing power so they can push rents, and they have to the
21 point where they're beyond record levels." Ben Bergman & Chris Keller, *High Rent, Few*
22 *Options*, <http://projects.scpr.org/longreads/high-rent-low-options/>.

23 3. In an effort to ease the effects of scarce and costly housing stock on the city's
24 residents, Los Angeles enacted its Rent Stabilization Ordinance (LA RSO). Los Angeles
25 Municipal Code (LAMC) § 151.00 *et seq.* It was passed in 1978 to address "a shortage of decent,
26 safe and sanitary housing in the City of Los Angeles resulting in a critically low vacancy factor."
27 LAMC § 151.01. The LA RSO ensures affordable rents for long-term tenants by regulating
28 allowable rent increases. LAMC § 151.04. In order to preserve those tenancies and ensure long-

1 term tenants the benefit of its regulation, the LA RSO also provides eviction controls by limiting
2 the reasons for which tenancies may be terminated to those enumerated within the ordinance.
3 LAMC § 151.09.A. Pursuant to California’s Ellis Act, California Gov’t Code § 7060 *et seq.*, one
4 of the enumerated reasons for which a subject tenancy may be terminated is the landlord’s
5 complete withdrawal of an apartment building from the rental market. LAMC § 151.09.A.10.

6 4. Rising rental costs, however, create a tempting profit incentive for landlords to
7 illegally circumvent the LA RSO tenant protections. Conversion to short-term rentals presents
8 the perfect opportunity to do exactly that. By terminating long-term tenancies and dedicating
9 rental units to short-term stays, landlords evade the city’s rent control regulations and unfairly
10 cash in on higher nightly rates.

11 5. The Los Angeles Alliance for a New Economy, LAANE, a local public policy and
12 advocacy organization, published a study earlier this year describing the impact of short-term
13 rentals on the Los Angeles rental market. Roy Samaan, Airbnb, Rising Rent, and the Housing
14 Crisis in Los Angeles (LAANE 2015). LAANE identified 11,401 units in Los Angeles which are
15 offered as short-term rentals on Airbnb, 64% of which were rented as “whole units.” *Id.* at 8.
16 This means that no long-term tenant resides there. LAANE asserts that the “7,316 units taken off
17 the rental market by Airbnb is equivalent to seven years’ of affordable housing construction in
18 Los Angeles.” *Id.* at 3.

19 6. While the reduction in housing stock detrimentally affects Los Angeles’ tenants
20 generally, it has a particularly devastating effect on those residing in rent controlled apartments.
21 The LAANE study describes the effects of short-term rentals on rent controlled apartments. One
22 example was of an apartment in Venice Beach, California which when offered as a whole unit,
23 maintains “an occupancy rate of 93 percent indicating this rent controlled unit is a near-constantly
24 occupied hotel.” *Id.* at 10. In this way, a rental unit intended to preserve affordable housing for
25 the city’s long-term tenants is instead dedicated to transitory tourist housing needs as an
26 unregulated hotel.

27 7. Carrie Kirschman, Jerome Podczaski, Ron Fontenot, Nina Giovannitti and Virgil
28 Mascarenhas (collectively, “Plaintiffs”) are Los Angeles residents who once enjoyed the security

1 of long-term rent controlled tenancies in a four-unit apartment building in the Fairfax District (the
2 “Apartments”). Despite the area’s rising rates, their rents remained stable and as affordable as
3 when they first entered the units, allowing them to maintain their homes.

4 8. In November 2012, Carol Alsman (“Alsman”) and LSJB Investments, LLC d/b/a
5 St. John Associates, Inc. (“LSJB”), (collectively, the “Landlords”) became joint owners of those
6 Apartments. On December 3, 2013, Landlords filed a Notice of Intent to Withdraw Units from
7 Rental Housing with the Los Angeles Housing and Community Investment Department
8 (“HCID”). In a sworn statement, Landlords asserted that the Apartments were being
9 permanently withdrawn from rental housing. Landlords terminated each of Plaintiffs’ tenancies
10 by April 2014, and Plaintiffs were forced to abandon their homes.

11 9. Despite Landlords’ representations that the Apartments were to be withdrawn from
12 the market, within months, Landlords partnered with Airbnb, Inc. and Airbinb Payments, Inc.
13 (collectively, “Airbnb”) to offer the units for rent as short-term rentals. Landlords and short-term
14 rental platforms, including Airbnb, have fraudulently circumvented the LA RSO by illegally
15 converting rent controlled housing in the City of Los Angeles into de-facto hotels.

16 10. Landlords entered into a written agreement with Airbnb (collectively with
17 Landlords, “Defendants”) pursuant to the Airbnb website’s Terms of Service. Through its
18 extensive offering of both online and real world services, as well as its oversight and control over
19 the property’s rental, Airbnb actively partnered with Landlords to re-rent the Apartments
20 following the Apartments’ ostensible withdrawal from the rental market. Together, Defendants
21 profited, and continue to profit, from the Landlords’ illegal rental of the fraudulently withdrawn
22 units.

23 11. Airbnb also independently demands, collects and retains illegal rents in excess of
24 those permitted under the LA RSO.

25 **JURISDICTION AND VENUE**

26 12. Jurisdiction is proper in this Court, with respect to each cause of action, under the
27 California Constitution, Article VI, § 10, Los Angeles Municipal Code § 151.25.A, and the
28 California Unfair Competition Law (“UCL”), Business and Professions Code § 17202 and 17203.

1 inclusive, sued herein pursuant to Code of Civil Procedure § 474.

2 **FACTUAL BACKGROUND**

3 **Defendants' Termination of Plaintiffs' Tenancies**

4 21. Plaintiffs are former residents of a four-unit residential apartment building in the
5 City of Los Angeles' Fairfax District. Constructed in 1928, the property, and each of Plaintiffs'
6 tenancies, are subject to the rent control and eviction regulations of the LA RSO.

7 22. Plaintiffs Carrie Kirshman and Ron Fontenot began their tenancy as roommates in
8 one unit of the Apartments in April 1992. A second unit was leased by Nina Giovannitti and
9 Virgil Mascarenhas beginning in September 2002. Jerome Podczaski leased a third unit in 2007.

10 23. Alsman purchased the Apartments in 2005. LSJB became joint owner of the
11 Apartments with Alsman in November 2012.

12 24. On December 3, 2013, Landlords filed with the HCID a Notice of Intent to
13 Withdraw Units from Rental Housing Use, attesting under penalty of perjury that all
14 accommodations in the Apartments were being withdrawn from rent or lease.

15 25. That same day, Landlords issued each Plaintiff a written Notice to Vacate, based
16 on their representation to Plaintiffs that the Apartments were to be withdrawn from the rental
17 market.

18 26. In March 2014, as provided for by the LA RSO, Plaintiffs provided written notice
19 to Landlords of their interest in renewing their tenancy should the Apartments be offered for rent
20 in the future.

21 27. Pursuant to Landlords' December 2013 Notice, and in reliance on Landlords'
22 representation that the Apartments would be removed from the rental market, Plaintiffs had each
23 vacated their long-term homes by April 2014.

24 28. At the time Defendants terminated the tenancy of Plaintiffs, Carrie Kirshman and
25 Ron Fontenot, shared a rent of \$1,600 a month, Plaintiffs Nina Giovannitti and Virgil
26 Mascarenhas shared a monthly rent of \$1,926.93, and Plaintiff Jerome Podczaski paid Defendants
27 \$2,600 in rent per month.

28 29. Plaintiffs sought, but were unable to attain, comparable housing at similar rents

1 within the vicinity of the Apartments. Plaintiffs each subsequently undertook tenancies in less
2 desirable areas at increased costs for smaller accommodations.

3 **Joint Venture Between Landlords and Airbnb**

4 30. By or about May 2014, within weeks of the termination of Plaintiffs' tenancies,
5 Landlords partnered with Airbnb, pursuant to its website's Terms of Service, to offer the units to
6 the general public for short-term rental. Defendants have pooled their skills, knowledge and
7 resources to jointly offer the Apartments for rent since Landlords' ostensible removal of the units
8 from the rental market.

9 31. Under the terms of that agreement, Airbnb provides a plethora of services to
10 "hosts," those offering property for rent through the Airbnb website. The Airbnb Terms of
11 Service allocate costs and risks and describe the profits shared between the hosts and Airbnb. In
12 support of their shared efforts to rent the Apartments and increase their shared profits, Airbnb
13 encourages, markets, oversees, regulates and mediates Landlords' rental of the Apartment to
14 short-term renters through the Airbnb website.

15 32. Under the Terms of Service, upon Landlords' offering the Apartments on the
16 Airbnb website, Airbnb became Landlords' agent demanding, accepting and retaining rent from
17 short-term renters. Airbnb's Terms of Service prohibit any attempt either by Landlords or short-
18 term renters to rent the Apartments directly between themselves or otherwise attempt to avoid
19 Airbnb's sharing in profits from the rental. Without Airbnb's participation, Defendants could not
20 have circumvented the LA RSO.

21 33. Airbnb offers its hosts detailed instructions on how to effectively present and
22 manage offered accommodations to successfully garner bookings through the Airbnb website.
23 For example, the "Hosting Standards" posted on Airbnb's website outline instructions for how to
24 describe and present the offered accommodations on the website, how to respond to potential
25 renters' inquiries and booking requests, how to maintain the posts' calendar, how to maintain the
26 accommodations, and what services and amenities hosts are expected to provide in order to meet
27 Airbnb's standards. Airbnb, at its own expense, also contracts professional photography services
28 to photograph rental properties and best showcase the offered apartments.

1 34. Airbnb oversees, administers, mediates and enforces the rental relationship
2 between the property owner and short-term renters. Renters, for example, may appeal directly to
3 Airbnb for reimbursement of rent paid for the rental should the offered apartments fail to adhere
4 to the posted description. Through its “US\$1M Guarantee,” Airbnb agrees to repair damage to
5 the rental property. Airbnb may, at its own discretion, supersede a host’s policy, cancel a short-
6 term renters’ booking and determine whether or not to reimburse any rent it collected on behalf of
7 hosts. Airbnb mediates disputes between hosts and short-term renters through its “Resolution
8 Center” services and determines each parties’ rights under their shared agreement. Airbnb
9 administers any security deposits demanded by Landlords, determining to which party the funds
10 will be disbursed.

11 35. Airbnb also oversees and manages the rental property and guests. For example,
12 through its “Neighbor Hotline,” neighbors to the offered accommodations may contact Airbnb
13 directly with any complaints regarding the short-term renters’ conduct at the offered
14 accommodations. If advised of disturbing behavior, excessive noise or damage to the property,
15 Airbnb claims that it will itself contact the short-term renters and may terminate the rental
16 immediately without consulting the host.

17 36. As hosts on Airbnb, Landlords had available to them all of Airbnb’s support,
18 infrastructure, intervention, investment and participation in undertaking their joint venture into
19 the hotel business.

20 37. Defendants now offer the Apartments for rent through Airbnb’s website.
21 Defendants, including Airbnb, have failed to offer any Plaintiff the opportunity to renew their
22 tenancy since offering the Apartments for rent as of approximately May 2014 as required under
23 the LA RSO.

24 38. Since offering the Apartments for rent as of approximately May 2014, Defendants
25 continuously demand, accept and retain rents which far exceed those permissibly imposed under
26 the LA RSO. At the time Plaintiffs’ tenancies were terminated, their monthly rent ranged from
27 \$1600 to \$2600 a month or approximately \$53 to \$87 a night. Defendants’ current typical rental
28 rate for each rental unit is approximately \$500 a night, representing a monthly rent of \$15,000.

1 **The Los Angeles Rent Stabilization Ordinance (LA RSO)**

2 39. The LA RSO prohibits an action by a landlord to recover possession of a rental
3 unit, except for those reasons permitted under its regulation. LAMC § 151.09.A. One of the 14
4 enumerated bases for which a landlord may recover possession of a rental unit is if the “landlord
5 seeks in good faith to recover possession of the rental unit [...] to remove the rental unit
6 permanently from rental housing use.” LAMC § 151.09.A.10.

7 40. The LA RSO regulates the withdrawal of subject rental units from the market in
8 compliance with the Ellis Act. Cal Gov’t Code § 7060 *et seq.* To facilitate its oversight, the LA
9 RSO requires a landlord who intends to withdraw a rental unit from rental housing use to notify
10 the HCID in writing no later than 120 days before the withdrawal of the unit. LAMC
11 §§ 151.23.A-B. Within five days of providing notice to the HCID, the landlord must, *inter alia*,
12 provide notice to the tenant in writing that HCID has been notified. LAMC § 151.23.C.

13 41. To avoid rental units being withdrawn merely as a pretext to avoid the rent and
14 eviction control provisions, the LA RSO also regulates the return of withdrawn units to the
15 market. A landlord may not offer a rental unit that was the subject of a Notice of Intent to
16 Withdraw for lease or rent without first providing 30 days’ notice to the HCID. LAMC § 151.24.

17 42. A landlord that offers a withdrawn unit for rent or lease within two years of its
18 withdrawal is liable for actual and exemplary damages to the displaced tenants. LAMC
19 § 151.25.A.

20 43. Upon offering a withdrawn unit for rent or lease within two years from its
21 withdrawal, the LA RSO requires the landlord first offer the unit to the previously displaced
22 tenant. LAMC § 151.27.A. In order to receive a first offer, the tenant must have advised the
23 landlord in writing within 30 days of displacement of his or her desire to renew the tenancy and
24 provide the landlord with an address to which that offer is to be directed. *Id.*

25 44. A landlord is liable to any tenant displaced by the landlord’s withdrawal of a rental
26 unit, for failure to offer to re-rent the withdrawn unit to that tenant. LAMC § 151.27.B.

27 45. To preclude the profiting from a pretextual withdrawal of rent controlled units
28 from the market, the LA RSO further requires any withdrawn unit which is returned to the market

1 within five years of its withdrawal to be offered for rent at the lawful rent amount in effect at the
2 time the rental unit was withdrawn, plus permitted annual adjustments. LAMC § 151.26. Pursuant
3 to LA RSO § 151.10.A, any entity “who demands, accepts or retains any payment of rent in
4 excess of the maximum rent [in violation of the LARSO] shall be liable in a civil action to the
5 person from whom such payment is demanded, accepted or retained.”

6 **FIRST CAUSE OF ACTION**
7 **WRONGFUL EVICTION OF TENANTS**
8 **IN VIOLATION OF THE LOS ANGELES RENT STABILIZATION ORDINANCE**
9 **(LAMC § 151.00 ET SEQ.)**
10 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS:**

11 46. Plaintiffs hereby incorporate paragraphs 1 through 45 above as though fully set
12 forth herein.

13 47. On December 3, 2013, Landlords filed a Notice of Intent to Withdraw Units from
14 Rental Housing with the HCID. By April 2014, Landlords terminated Plaintiffs’ tenancies at the
15 Apartments pursuant to that notice.

16 48. Landlords’ intentional misrepresentation to HCID and Plaintiffs of Landlords’
17 intent to withdraw the Apartments from the rental market was intended to cause injury to
18 Plaintiffs in willful and conscious disregard of Plaintiffs’ rights. Landlords’ despicable conduct
19 subjected Plaintiffs to cruel and unjust hardship including, but not limited to, depriving Plaintiffs
20 of their legal rights and property.

21 49. Within two years of withdrawing the Apartments from the rental market,
22 Defendants offered the Apartments for rent or lease at rates well above those permitted under the
23 LA RSO; the rents in effect at the time of their withdrawal plus annual allowed adjustments.

24 50. Landlords failed to provide notice to the HCID of their intent to re-rent the
25 withdrawn rental units.

26 51. Landlords failed to offer Plaintiffs the opportunity to renew their tenancies in their
27 respective previously withdrawn rental units before offering those withdrawn units for rent to the
28 general public.

1 market.

2 58. Landlords intentionally misrepresented their intentions to Plaintiffs to deceive
3 Plaintiffs and induce their reliance on Landlords' stated intentions in willful disregard of
4 Plaintiffs' rights.

5 59. Plaintiffs justifiably relied on Landlords' misrepresentation to their own detriment
6 resulting in damages. Landlords' despicable conduct subjected Plaintiffs to cruel and unjust
7 hardship including, but not limited to, depriving Plaintiffs of their legal rights and property.

8 **THIRD CAUSE OF ACTION**
9 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
10 **(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)**
11 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS:**

12 60. Plaintiffs hereby incorporate Paragraphs 1 through 59 above as though fully set
13 forth herein.

14 61. Business and Professions Code § 17200, *et seq.*, prohibits unfair, unlawful,
15 fraudulent or deceptive business practices.

16 62. Landlords' practices as alleged herein constitute ongoing and continuous unfair
17 business practices within the meaning of Business and Professions Code § 17200.

18 63. Landlords' pretextual withdrawal of Plaintiffs' rental units resulted in the illegal
19 termination of Plaintiffs' tenancies and Defendants' circumvention of the LA RSO's rent control
20 provisions.

21 64. Defendants' unlawful failure to offer to renew Plaintiffs' tenancies at the
22 Apartments before offering them on the market denied Plaintiffs their lease interest in their
23 property from which Defendants have profited and continue to profit.

24 65. By their fraudulent, deceptive and unlawful business practices, Defendants accrued
25 an unfair business advantage over landlords within the same market who abide by the LA RSO's
26 regulations.

27 66. By their fraudulent, deceptive and unlawful business practices, Defendants accrued
28 an unfair business advantage over lawful short-term rental providers, including duly licensed and
legally operated hotels and motels.

1 D. That the Court find and declare that Defendants' failure to offer to renew
2 Plaintiffs' tenancy upon the re-rental of the Apartments is unfair, unlawful, deceptive and/or
3 fraudulent under the UCL, Business and Professions Code § 17200, *et seq.*;

4 E. That the Court award Plaintiffs restitution of money and/or property lost as a result
5 of Defendants' unlawful, deceptive and/or fraudulent business act or practices, and interest
6 thereon, pursuant to Business and Professions Code § 17200, *et seq.* and Civil Code § 3827;

7 F. That the Court order Defendants to disgorge any profits received as a result of any
8 unfair competition;

9 G. That the Court award any and all appropriate injunctive relief to prevent further
10 repetition of the alleged unlawful, unfair, and fraudulent practices;

11 H. That the Court award such other and further relief as this Court may deem
12 appropriate.

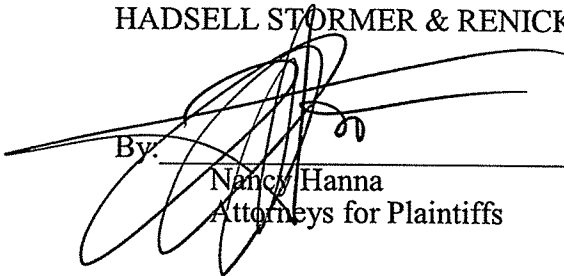
13 **JURY TRIAL DEMAND**

14 Plaintiffs hereby demand a jury trial on all issues so triable.

15 Dated: December 16, 2015

16 Respectfully submitted,

17 HADSELL STORMER & RENICK LLP

18 
19 By: _____
20 Nancy Hanna
21 Attorneys for Plaintiffs