

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

**RACHAEL SMELYANSKY &  
MAX SMELYANSKY**

Plaintiff,

**VERIFIED COMPLAINT**

-against-

Index No.

**AIRBNB, INC.**

Defendant

Plaintiff(s), Rachael Smelyansky and Max Smelyansky, set forth and allege the following, as and for the Verified Complaint herein:

1. At all times hereinafter mentioned, plaintiff, Rachael Smelyansky, lawfully resided and continues to reside in the County of Albany, State of New York.
2. At all times hereinafter mentioned, plaintiff, Max Smelyansky, lawfully resided and continues to reside in the County of Albany, State of New York.
3. At all times hereinafter mentioned, defendant, Airbnb, Inc. (hereinafter "Airbnb" and/or www.airbnb.com) is and at all times relevant has been a corporation organized and existing under the laws of the State of Delaware and having a principal place of business located at 888 Brannan Street, San Francisco, California 94117.
4. Airbnb is and at all times relevant has been a foreign business corporation authorized to do business in the State of New York.
5. Through its website, www.airbnb.com, Airbnb created and maintains an operation that lists, advertises, and takes fees and/or commissions for property rentals for which it facilitates, controls, and processes payments for.
6. Airbnb operates as an accommodation marketplace and currently facilitates tens of thousands of rental transactions per day.
7. Individuals who sign up for Airbnb services are "Members".
8. Members can either list and rent out their property as "Hosts" or find properties to rent as

"Guests".

9. For every rental transaction, Airbnb takes and processes the rental payments and takes a percentage of the payment as a fee from both the Host and the Guest.
10. Since its inception, Airbnb has not charged Hosts any fee to advertise on its website. Rather, Airbnb charges Hosts approximately a 3% commission on the revenue generated from rentals completed through its website.
11. Airbnb deducts and retains the 3% commission from rental payments it receives and processes from Guests prior to distributing the balance to the Host.
12. In addition to charging the Hosts, Airbnb also charges its Guests a fee.
13. As reflected within the terms of its various agreements, practices, and its website, Airbnb provides members with the following services:
  - a. Airbnb lists and advertises properties available to rent on its website and seeks to be the primary mechanism and intermediary agent to connect Members who are ready, willing and able to enter into real estate transactions, thereby earning and collecting fees from both Guests and Hosts in the process;
  - b. Airbnb provides, regulates, and controls an online forum upon which all Hosts and Guests must conduct their communications and negotiations prior to completing and funding their rental agreements;
  - c. Airbnb requires all members who wish to complete rental transactions to assent to using Airbnb's mandatory 86-pages of adhesion contracts - effectively requiring Airbnb to act as the lawyer for all Members;
  - d. Airbnb requires the Guest to assent to Airbnb's handling of all rental monies, requiring them to pay all of the rent and commission owed in each transaction to Airbnb, to act as an escrow agent in each and every Airbnb rental transaction, and giving Airbnb absolute discretion in deciding how such money is disbursed;
  - e. Airbnb requires all members to assent to Airbnb's absolute discretion to resolve disputes between its Members concerning Airbnb transactions and for Airbnb to make "final and binding" decisions (as an escrow agent and/or arbiter) concerning whether and how to enforce its own agreements --including any decision on whether to cancel or enforce any agreement (e.g. whether to provide a refund to the guest or find the guest another accommodation);
  - f. Airbnb offers Hosts an option to allow Airbnb to set the prices of their rentals, using

- Airbnb's proprietary software and business data of all Airbnb rentals in that location, which supposedly allows Hosts to maximize their rental income;
- g. Airbnb makes available a free-of-charge professional photographer to take pictures of Host properties to be published on its website; and
  - h. Airbnb purchases outside advertising to promote its website to increase traffic and thus rentals (and commissions related thereto) of Host properties.
14. Pursuant to the Airbnb website, Hosts set the cancellation policies that Guests are obligated under. The terms of which are specified on the Listing page of a Hosts property. Moreover, the cancellation terms are provided again and again until the final step in the booking process.
15. Pursuant Airbnb terms and conditions, "upon receipt of a booking confirmation from Airbnb, a legally binding agreement is formed between the Guest and the Host, subject to any additional terms and conditions of the Host that apply, including in particular the applicable cancellation policy and any rules and restrictions specified in the Listing."
16. Hosts choose from several standardized cancellation policies that Airbnb claims to enforce with a goal to allegedly protect both Guests and Hosts.
17. Airbnb standardized cancellation policies include Flexible, Moderate, Strict and Long Term.
18. Despite dedicating a space on each Hosts Listing page to educate and inform a Guest of the cancellation policy with web links designed to navigate a Guest to even more information pertaining to the cancellation policies, conspicuously absent are details pertaining to cancellations initiated by a Host.
19. In fact, the details pertaining to a cancellation initiated by a Guest is the only cancellation policy provided to a Guest on the Hosts Listing Page. Said cancellation policy is repeatedly reinforced at every step throughout the four-step booking process <sup>1</sup>.
20. The details pertaining to a cancellation initiated by a Host are **not** shared with a Guest at any time during the above mentioned four-step booking process.
21. In fact, you cannot find it anywhere and it is clearly not within the legally binding terms of any agreement between the Host and his/her/its Guest.
22. Airbnb's terms and conditions applicable to a cancellation initiated by a Host is only

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<sup>1</sup> Step 1: Reserve (Guest will not be charged yet); Step 2: Review House Rules, Agree & Continue; Step 3: Who's

between the Host and Airbnb and are not disclosed to a Guest or made part of the legally binding agreement a Guest and a Host.

23. Specifically, the agreement between a Host and Airbnb is as follows: “A fee will be deducted from your first payout after a cancellation. The amount deducted will depend on when you accepted the reservation and how soon before check-in you canceled it: More than 7 days before check-in, we’ll deduct \$50 from your next payout. Less than 7 days before check-in, we’ll deduct \$100 from your next payout. The cancellation fee may be waived if you have completed at least 10 consecutive bookings without canceling, either since you started hosting or since your last previous cancellation. If you cancel 3 or more reservations within a year, we may deactivate your listing. Unless there are extenuating circumstances, there will be no exceptions to our cancellation policy.
24. Despite the Host cancellation policy acting as an agreement between a Host and Airbnb, it is absolutely a policy that significantly affects a Guest and his/her/its contract or reservation or booking with a Host.
25. At no time during the four-step booking process does a Guest have an opportunity to review and accept the Host cancellation policy and, importantly, nowhere within the legally binding agreement between a Host and a Guest is there language pertaining to a Hosts right to cancel a reservation or booking.
26. Prior to May of 2020, Plaintiffs had planned on relocating their family to Katy, TX.
27. Since May of 2019, Plaintiffs had been working with realtors in the Katy, TX area to research homes.
28. On February 28, 2020, Plaintiffs third child was born and Plaintiff, Rachael Smelyansky, began her maternity leave through July 23, 2020.
29. On or about March 15, 2020 Plaintiff, Max Smelyansky, lost his employment due to COVID-19.
30. On or about March 15, 2020 Plaintiffs child daycare was closed due to COVID-19.
31. With both plaintiffs not working and their daycare closed, the time was perfect for an extended visit to Katy, TX.
32. On or about April 1, 2020, Plaintiffs decided to speed up their relocation to Katy, TX.
33. Plaintiff’s only available travel dates were June 1, 2020 through July 1, 2020.
34. On or about April 15, 2020, Plaintiff, Max Smelyansky, applied for admission to the Texas

Bar costing approximately \$1,000.00 for the application fee.

35. On or about May 1, 2020, Plaintiffs searched a variety of sources offering housing accommodations for their stay in Katy, TX.
36. On or about May 8, 2020, Plaintiffs registered as Members with Airbnb and created a user profile.
37. On May 8, 2020, Plaintiffs contacted a Host through Airbnb inquiring about their property located in Katy, TX and specifically having an address of 24903 Laguna Edge Drive, Katy, TX 77494.
38. It was necessary for Plaintiffs to find housing accommodations within a specific area/neighborhood where Plaintiff's intended to relocate to.
39. Following negotiations and discussions with a Host, on May 8, 2020, Plaintiffs completed the four-step booking process, paid a total of \$6,965.60 for a 30-day reservation and received a booking confirmation from the Host and Airbnb.
40. Pursuant to Airbnb terms and conditions, upon receipt of a booking confirmation from Airbnb, a legally binding agreement was formed between Plaintiffs and the Host, subject to any additional terms and conditions of the Host that apply, including in particular the applicable cancellation policy and any rules and restrictions specified in the Listing.
41. During each step of the booking process, the disclosed cancellation policy was limited to the rules and consequences of plaintiffs' cancellation. Specifically, if plaintiffs cancelled their reservation/contract/booking at any time plaintiffs would not receive any financial refund whatsoever.
42. Absent from the disclosed cancellation policy was any information pertaining to a cancellation initiated by a Host.
43. The Host had no legal right to cancel the booking/reservation as there was absolutely no term or condition within the legally binding agreement between Plaintiff and the Host to do so.
44. Plaintiffs' booking was for two adults, one 4-year-old, one 2-year-old and an infant.
45. Plaintiffs intended to travel by vehicle from Albany, NY to Katy, TX (a twenty-six-hour drive) with their three children from May 28, 2020 through June 1, 2020.
46. Plaintiffs' informed the host of their travel plans prior to the confirmed booking.
47. On May 9, 2020, Plaintiffs purchased a rental vehicle from Hertz costing \$1,235.21.
48. On May 11, 2020, Plaintiffs' purchased a travel insurance policy through Travel Guard in the amount of \$147.00.

49. Between May 9, 2020 and May 24, 2020, plaintiffs purchased multiple products and items needed for their trip, including but not limited to bicycles, bicycle trailers, pool related items, clothing, travel equipment, sunglasses, and more all totaling around \$1,000.00.
50. Between May 9, 2020 and May 24, 2020, plaintiffs met with and arranged for a third party to house their 9-month-old French bulldog for the duration of their trip.
51. Between May 9, 2020 and May 24, 2020, plaintiffs met with and arranged for a third party to care of their fish tank and maintain their landscaping needs during their trip.
52. On May 24, 2020, without justification, the Host breach their legally binding agreement with Plaintiffs and cancelled Plaintiffs reservation.
53. Plaintiffs contacted Airbnb customer support.
54. Plaintiffs waited to speak with a customer service representative for over an hour.
55. Upon speaking with an Airbnb customer service representative, plaintiffs were told nothing could be done and that someone would reach out to discuss further within 24 hours.
56. Despite plaintiffs' several additional follow-ups with Airbnb, Airbnb had neither returned plaintiffs calls, messages or assisted plaintiffs in any meaningful capacity.
57. Plaintiffs' were unable to find alternative housing accommodations similar to that of 24903 Laguna Edge Drive, Katy, TX 77494 in both quality and cost.
58. Plaintiffs' travel plans have been indefinitely canceled due to the action and inaction of Airbnb.
59. Plaintiffs' are unlikely to ever have an opportunity to travel for such an extended stay again.
60. Plaintiffs plans for relocation have been significantly delayed and/or permanently cancelled.
61. Plaintiffs' have been damaged due to the actions and inactions of Airbnb.
62. Plaintiffs' are entitled to compensatory damages for the money they lost and exemplary damages or punitive damages authorized by statute.

### AS AND FOR A FIRST CAUSE OF ACTION

63. Plaintiffs' repeat and re-allege paragraphs 1 through 62 hereof, as if fully set forth herein.
64. Defendant intentionally, fraudulently and deceitfully misrepresented to Plaintiffs that its website, [www.airbnb.com](http://www.airbnb.com), was safe and reliable for the purpose of booking short term

housing accommodations. Specifically, defendant fraudulently and deceitfully misrepresented that plaintiffs could “search and book with confidence”.

65. Defendant knew that its representations were false but made them to induce Plaintiffs to register an account and book a reservation.

66. Defendant fraudulently and deceitfully misrepresented that plaintiffs could get exactly what they were looking for by thoroughly reviewing a Host’s profile and listing description and paying special attention to the amenities, house rules, and the cancellation policy.

67. Defendants’ representations were and continue to be false, misleading and fraudulent.

68. Importantly, Defendants were and continue to be aware that these representations are false, misleading and fraudulent.

69. Despite stating that plaintiffs could get exactly what they were looking for by thoroughly reviewing a Host’s profile and listing description and paying special attention to the amenities, house rules, and the cancellation policy, Airbnb intentionally hid extremely relevant and important details regarding its separate cancellation agreement with a Host.

70. Pursuant to Airbnb terms and conditions, upon receipt of a booking confirmation from Airbnb, a legally binding agreement was formed between the Plaintiffs and the Host, subject to any additional terms and conditions of the Host that apply, including in particular the applicable cancellation policy and any rules and restrictions specified in the Listing.

71. Despite disclosing the cancellation policy on the Hosts Listing page and every page thereafter relevant to the booking process, conspicuously absent from the disclosures are details pertaining to cancellations initiated by a Host.

72. In fact, the disclosure pertaining to a cancellation initiated by Plaintiffs or a Guest was the only cancellation policy proffered to the plaintiffs on the Hosts Listing Page and repeatedly reinforced at every step throughout the four-step booking process mentioned in paragraph eighteen above.

73. The details pertaining to a cancellation initiated by a Host were *not* shared with Plaintiffs at any time during the above mentioned four-step booking process.

74. In fact, plaintiff could not find it anywhere except in the fine print of Airbnb’s terms and conditions and even there the Host cancellation policy is limited to an agreement between the Host and Airbnb. It is not an agreement to which a Guest or Plaintiffs were a party to.

75. Despite the Host’s cancellation rights pursuant to a separate agreement between the Host and Airbnb, it is absolutely a cancellation right that significantly affected Plaintiffs and

their contract or reservation or booking with the Host and should have been provided to plaintiffs as part of the overall cancellation policy.

76. At no time during the four-step booking process did Plaintiffs have an opportunity to review and accept Airbnb's cancellation terms as applicable between Airbnb and the Host.

77. Defendants had an affirmative duty to disclose the full cancellation policy which would include both cancellations initiated by Plaintiffs and, likewise, cancellations initiated by the Host.

78. Defendants intentionally misled plaintiffs by limiting its cancellation policy disclosure to cancellations initiated by plaintiffs, the Guest.

79. Defendant fraudulently, deceitfully and in bad faith misrepresented the cancellation policy by intentionally and fraudulently omitting critical and equally important disclosures regarding cancellations initiated by the Host.

80. Both cancellation policies were and still are equally important in the decision-making process of booking through www.airbnb.com with confidence.

81. Defendants knowingly, intentionally and fraudulently concealed the material disclosures pertaining to a cancellation initiated by the Host.

82. Plaintiffs' knowledge of the Host cancellation policy would have heavily affected plaintiffs' level of confidence in booking through defendants website www.airbnb.com.

83. Plaintiffs' knowledge of the cancellation policy pertaining to a cancellation initiated by a Host would have stopped Plaintiff from booking through the Airbnb website and allowed plaintiffs to book through an alternative source.

84. The Host cancellation policy was strategically separated from the Plaintiffs cancellation policy and specifically omitted from the actual booking page of Plaintiffs reservation to prevent Plaintiffs from catching wind of the great risk involved with booking through Airbnb.

85. Airbnb knowingly, intentionally and fraudulently allowed the omission of its Host cancellation policy from the actual booking page of Plaintiffs reservation to prevent Plaintiffs from catching wind of the great risk involved with booking through Airbnb.

86. The omission of the Host cancellation policy directly contradicts defendant's representation that plaintiffs' or any other Guest of Airbnb can "search and book with confidence".

87. In fact, an Airbnb Host can, at their discretion, quickly and easily cancel a Guest's



reservation at any time, up to and including the day of check-in and with minimal to no consequences to a Host regardless of the prejudice and harm it causes to a Guest.

88. Following an Airbnb Host's cancellation, a guest receives no compensations whatsoever regardless of the prejudice and/or harm such a cancellation causes.

89. In fact, only the defendant benefits from a Host's cancellation through its collection of an unbelievably inadequate penalty fee of between 50.00 and 100.00 dollars.

90. Such an inadequate financial penalty is hardly a sufficient deterrent to protect a Guest and only benefits Airbnb.

91. Airbnb's actions and inactions effectively killed any chance of Plaintiffs salvaging their trip.

92. The Hosts cancellation and Plaintiffs surprise therefrom could not have been possible without the fraud, deceit and misrepresentations perpetrated by Airbnb.

93. Plaintiff entered into the Agreements with the Host in justifiable reliance on Defendant's misrepresentations.

94. But for the fraud, deceit and misrepresentations perpetrated by Airbnb, Plaintiffs would not have felt safe and confident in booking their trip through Airbnb.

95. But for the fraud, deceit and misrepresentations perpetrated by Airbnb, Plaintiffs would not have booked through Airbnb and, instead, Plaintiffs would have planned their trip through an alternate source.

96. Plaintiffs have been damaged by Defendants' misrepresentations, fraud, and deceit.

97. Defendant also fraudulently and deceitfully misrepresented that plaintiff could use its website to "search and book with confidence" through its fraudulent and deceitful misrepresentation that the Plaintiffs could look through feedback from past guests to help find the right property and host. Defendant specifically represented that "You'll find ratings on several quality dimensions, like cleanliness and accuracy, and detailed reviews with authentic feedback."

98. Defendants representations were and continue to be false, intentionally misleading and fraudulent.

99. Defendants were and continue to be aware that these representations are false, intentionally misleading and fraudulent.

100. Defendant has an affirmative duty to allow all guests to leave reviews about specific hosts to ensure accurate, relevant and authentic feedback,

101. Defendant does not, however, allow all guests to leave a review and through the omission of potentially relevant, necessary and important reviews, defendant is fraudulently, deceitfully and intentionally misleading Airbnb Member's and prospective Members that they can "search and book with confidence"
102. Pursuant to the defendant's terms and conditions, "upon receipt of a booking confirmation from Airbnb, a legally binding agreement is formed between you and your Host, subject to any additional terms and conditions of the Host that apply, including in particular the applicable cancellation policy and any rules and restrictions specified in the Listing."
103. It is a clear that an Airbnb Member's status changes to the status of a Guest immediately upon Airbnb's confirmation of that Member's booking.
104. Despite the definition of a Guest, Defendant, does not treat all Guests equally in its allowance to leave reviews.
105. In fact, a Guest whose reservation is ultimately cancelled by the Host prior to check-in cannot leave a review unless the reservation is cancelled on the day of check-in or later.
106. Defendants intentionally misled plaintiff by limiting its reviews and preventing plaintiff from having knowledge of a particular Hosts record, if any, of cancellations.
107. Reviews pertaining to a Hosts record, if any, of cancellations was and is directly relevant, necessary and important to ensure Plaintiffs' booking with confidence.
108. From the moment a reservation is confirmed, a Guests experiences with both the Host and Airbnb begins. Relevant and useful information is generated from those experiences even if the reservation is ultimately cancelled prior to the Guests check-in.
109. Reviews pertaining to Host cancellations in conjunction with knowledge that a Host has the right to cancel at any time would have greatly benefited Plaintiffs decision-making process to book through Airbnb and/or a particular Host. Omitting such reviews directly misled Plaintiffs and rendered Plaintiffs Airbnb booking unreliable, directly in contradiction to Airbnb's statement that Plaintiffs could "search and book with confidence".
110. Finally, defendant fraudulently and deceitfully misrepresented that its "global team is standing by 24/7 in 11 different languages to help make things right with rebooking assistance, refunds, [and] reimbursements."
111. Defendant did not provide any support to plaintiffs' whatsoever.

112. Plaintiffs contacted Airbnb customer support and waited to speak with a customer service representative for over an hour.
113. Upon speaking with an Airbnb customer service representative, plaintiffs were told nothing could be done and that someone would reach out to discuss further within 24 hours.
114. Despite plaintiffs' several additional follow-ups with Airbnb, Airbnb has neither returned plaintiffs calls, messages or assisted plaintiffs in any capacity.
115. Plaintiffs' were unable to find alternative housing accommodations similar to that of 24903 Laguna Edge Drive, Katy, TX 77494 in both quality and cost.
116. Plaintiffs' travel plans have been indefinitely canceled due to the action and inaction of Airbnb and its partner Host.
117. Plaintiffs respectfully requests that a jury award be rendered in their favor against defendant for (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the defendant's wrong conduct.

### AS AND FOR A SECOND CAUSE OF ACTION

118. Plaintiffs' repeat and re-allege paragraphs 1 through 117 hereof, as if fully set forth herein.
119. Upon information and belief, Airbnb knew, or was reckless in failing to know, each of its statements mentioned above too be false when it made them.
120. Defendant negligently misrepresented to Plaintiffs that its website, www.airbnb.com, was safe and reliable for the purpose of booking short term housing accommodations. Specifically, negligently misrepresented that plaintiffs could "search and book with confidence".
121. Defendant was reckless in not knowing that its representations where false and made them to induce Plaintiffs to register an account and book a reservation.
122. Defendant negligently misrepresented that plaintiffs could get exactly what they were looking for by thoroughly reviewing a Host's profile and listing description and paying special attention to the amenities, house rules, and the cancellation policy.

123. Defendant was reckless in not knowing its actions to be false, misleading and fraudulent.
124. Airbnb was reckless in failing to know, that Plaintiffs and other Members were forgoing other booking opportunities and/or services such as Homestay, VRBO and more.
125. Plaintiffs did have specific other options for booking their trip.
126. Plaintiffs reasonably relied on the reckless actions, inactions and statements made in deciding to forgo their other options and book through Airbnb.
127. Plaintiffs reliance on the misrepresentations directly caused Plaintiffs to lose their trip and all the benefits and opportunities that were expected from the trip.
128. Plaintiffs reliance on Airbnb's statements caused them significant and specific damages.
129. Plaintiffs respectfully requests that a jury award be rendered in their favor against defendant for (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the defendant's wrong conduct.

### AS AND FOR A THIRD CAUSE OF ACTION

130. Plaintiffs' repeat and re-allege paragraphs 1 through 129 hereof, as if fully set forth herein.
131. Plaintiffs and their Airbnb Host were parties to an exclusive agreement, a valid and binding agreement under which Plaintiffs agreed to lease a property and the Airbnb Host agreed to rent the same property located at 24903 Laguna Edge Drive, Katy, TX 77494 from June 1, 2020 to July 1, 2020.
132. Pursuant to Airbnb terms and conditions, "upon receipt of a booking confirmation from Airbnb, a legally binding agreement is formed between the Guest and the Host, subject to any additional terms and conditions of the Host that apply, including in particular the applicable cancellation policy and any rules and restrictions specified in the Listing."
133. Despite a legally binding agreement between Plaintiff and their Host, an agreement Airbnb facilitated, executed and acknowledged as a legally binding agreement, Airbnb

simultaneously entered into a separate legally binding agreement with the Airbnb Host to circumvent and delegitimize the legally binding agreement between Plaintiffs and their Host.

134. Specifically, Airbnb entered into a separate agreement with the Host with terms and conditions permitting the Host to breach its agreement with Plaintiff, despite the fact that none of the terms and conditions were included or contemplated within the legally binding agreement between the Host and Plaintiff.

135. As a direct and proximate result of Airbnb's interference with the legally binding agreement between Plaintiff and their Host, Plaintiff's have suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

136. Plaintiffs respectfully requests that a jury award be rendered in their favor against defendant for (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the defendant's wrong conduct.

#### AS AND FOR A FOURTH CAUSE OF ACTION

137. Plaintiffs' repeat and re-allege paragraphs 1 through 136 hereof, as if fully set forth herein.

138. Airbnb operates as an accommodation marketplace and currently facilitates tens of thousands of rental transactions per day.

139. Through its website, www.airbnb.com, Airbnb created and maintains an operation that lists, advertises, and takes fees and/or commissions for property rentals for which it facilitates, controls, and processes payments for.

140. Furthermore, Airbnb facilitates contractual agreements between Guests and Hosts, assists in providing the terms and conditions of the contractual agreements, helps the parties to execute said agreements and then claims to be available 24/7 to resolve any questions, concerns or disputes.

141. As such, Defendant owes Plaintiffs a duty of good faith and fair dealing.

142. Defendant's failure to disclose the Host cancellation policy acted to deprive

Plaintiff of the implied covenant of good faith and fair dealing which is a general presumption that the parties to a contract will deal with each other honestly, fairly, and in good faith, so as to not destroy the right of the other party or parties to receive the benefits of the contract.

143. Defendant's failure to disclose the Host cancellation policy was an effort to prevent the Plaintiffs from the general presumption that Plaintiffs contractual agreement or reservation or booking with the Host was honest, fair, and in good faith.

144. Plaintiff suffers damages attributable to Defendant's breach of the duties of good faith and fair dealing.

145. The actions of Defendants were willful and wanton and warrant the imposition of punitive damages.

146. Plaintiffs respectfully requests that a jury award be rendered in their favor against defendant for (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the defendant's wrong conduct.

### AS AND FOR A FIFTH CAUSE OF ACTION

147. Plaintiffs' repeat and re-allege paragraphs 1 through 146 hereof, as if fully set forth herein.

148. By their wrongful acts and omissions, Defendant has been or stands to be unjustly enriched at the expense of and to the detriment of Plaintiffs' as a result of the fee's it received or stands to receive because of the Hosts cancellation.

149. Following an Airbnb Host's cancellation, a guest receives no compensations whatsoever regardless of the prejudice and/or harm such a cancellation causes.

150. A Host cancellation is only possible after a Guest completes an Airbnb booking.

151. After a booking is confirmed and a Host cancels said booking, the defendant benefits through its collection of a penalty fee of between 50.00 and 100.00 dollars paid from the profits of the Hosts next booking.

152. Pursuant to the Airbnb website, the amount deducted will depend on how soon

before check-in the Host canceled. If more than 7 days before check-in, Airbnb will deduct \$50 from the Hosts next payout. If less than 7 days before check-in, Airbnb will deduct \$100 from the Hosts next payout.

153. Plaintiffs reservation was cancelled on May 24, 2020.
154. Plaintiffs check-in date was June 1, 2020.
155. Defendant is likely to collect at least \$100.00 from the Host as a result of the cancellation.
156. Plaintiff, seeks restitution from Defendant, and seeks an order of this Court disgorging all fees or other compensation collected by the Defendants from the Host directly resulting from the hosts cancellation of plaintiffs' reservation.

**WHEREFORE**, the plaintiff demands judgment against the defendants as follows:

- a) With respect to the First Cause of Action, Plaintiff demands (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the attorneys wrong conduct; and
- b) With respect to the Second Cause of Action, Plaintiff demands (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the attorneys wrong conduct; and
- c) With respect to the Third Cause of Action, Plaintiff demands (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the attorneys wrong

conduct; and

- d) With respect to the Fourth Cause of Action, Plaintiff demands (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the attorneys wrong conduct; and
- e) With respect to the Fifth Cause of Action, Plaintiff demands (i) compensatory damages in an amount exceeding the *monetary* jurisdictional limitation of all lower courts and no less than \$2,000,000.00 and (ii) punitive damages in an amount to be determined by the jury, together with the legal rate of pre-judgment interest and reasonable costs, disbursements and legal fees incurred in an effort to correct the attorneys wrong conduct; and
- f) Plaintiffs reserves their right to amend this Complaint prior to trial to seek recovery for additional injuries each may suffer or to assert additional theories of recovery.

DATED: August 20, 2020  
Albany, New York

Respectfully Submitted,



MAX SMELYANSKY



RACHAEL SMELYANSKY