

ZIMMERMAN REED LLP
Caleb Marker (SBN 269721)
caleb.marker@zimmreed.com
Christopher Nagakawa (SBN 207433)
christopher.nagakawa@zimmreed.com
Flinn T. Milligan (SBN 323042)
flinn.milligan@zimmreed.com
Nare Kupelian (SBN 337700)
nare.kupelian@zimmreed.com
6420 Wilshire Blvd., Suite 1080
Los Angeles, CA 90048
(877) 500-8780 Telephone
(877) 500-8781 Facsimile

Attorneys for Plaintiffs

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*Superior Court of California,
County of San Francisco*

03/11/2024
Clerk of the Court

BY: MARK UDAN
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

JAMIE EDSON, individually and on behalf of
the general public,

Plaintiff,

v.

AIRBNB PAYMENTS, INC, a Delaware
Corporation, AIRBNB, INC., a Delaware
Corporation,

Defendant(s)

Case No.:

CGC-24-613019

COMPLAINT

1. Violation of the Unfair Competition Law – Unlawful Conduct, Cal. Bus. & Prof. Code § 17200;
2. Violation of the Unfair Competition Law – Unfair Conduct, Cal. Bus. & Prof. Code § 17200

1 **I. PREAMBLE**

2 Plaintiff Jamie Edson ("Plaintiff") individually and on behalf of the general public, by and
3 through the undersigned counsel of record, hereby brings this Complaint against Defendants Airbnb
4 Payments, Inc. ("AP") and Airbnb, Inc. ("Airbnb") (collectively "Defendants"), for acting as an
5 unlawful escrow in violation of California law. Plaintiff, who was injured in fact and suffered out-of-
6 pocket loss by way of Defendants' conduct, only seeks prospective public injunctive relief on behalf of
7 the general public of California under the Unfair Competition Law ("UCL") stemming from Defendants'
8 ongoing unlawful conduct as an unlicensed escrow. Plaintiff seeks public injunctive relief to correct and
9 stop Defendants' ongoing unlawful practices for the benefit of persons within the general public of
10 California, including individuals who have yet to transact with Defendants but may do so in the future,
11 who remain at risk of injury and loss by entering into future new transactions with Defendants in the
12 same manner that Plaintiff did.

13 While Plaintiff was injured and suffered out of pocket loss from Defendants' conduct, she does
14 not seek individual relief as part of this proceeding and limits the recovery sought in this proceeding to
15 public injunctive relief, from which Plaintiff will benefit only as a member of the general public and in
16 the same way that the general public will benefit. Plaintiff expressly and explicitly disclaims any
17 entitlement to individual remedies of any kind, including damages, restitution, or injunctions for
18 Plaintiff's individual benefit. Rather, in this proceeding Plaintiff seeks only and exclusively public
19 injunctive relief on behalf of the general public, which claims are expressly reserved and specifically
20 sought. Plaintiff seeks public injunctive relief to correct and stop Defendants' ongoing unlawful
21 practices for the benefit of persons within the general public of California who remain at risk of injury
22 and loss by entering into new transactions with Defendants in the future in the same manner Plaintiff
23 did, and who therefore remain at risk of future injury and loss unless enjoined and corrected. Plaintiff
24 does not seek any damages, restitution, monetary relief or any other relief on an individual basis.

25 Claims for public injunctive relief are non-arbitrable claims under the arbitration clause
26 contained in Defendants' Terms of Service and can only be pursued in a court of competent jurisdiction.
27 In turn, all claims asserted herein instead must proceed only in a court of law, rather than before this
28 arbitration forum. Pursuant to any delegation clause found in the arbitration clause contained in

1 Defendants' Terms, Plaintiff submits that the arbitrator should immediately order this dispute to proceed
2 in court.

3 While this case concerns leases and escrows and other concepts pertinent to property and/or
4 landlord-tenant cases, this is a consumer protection action and not a real property dispute.

5 II. INTRODUCTION

6 1. Airbnb has established itself as a self-described online vacation rental platform that
7 facilitates short term rental transactions between principals— those with real property to lease (“Hosts”)
8 and those seeking such a lease (“Guests”). Airbnb, Annual Report (Form 10-K) (Feb. 26, 2021), at 4
9 [hereinafter Form 10-K].

10 2. Airbnb’s financial documents identify the listings themselves as “short-term rentals”
11 which is synonymous with a lease arrangement. *See generally* Form 10-K.

12 3. A lease is “[a] contract by which a rightful possessor of real property conveys the right
13 to use and occupy the property in exchange for consideration, usu. rent.” *Lease*, Black’s Law Dictionary
14 (11th ed. 2019), *available at* Westlaw.

15 4. Each short-term rental constitutes a valid lease, granting the Guest the full spectrum of
16 rights and protections that define a lease, such as exclusive possession of the leased area.

17 5. Airbnb states that it “is not and does not become a party to or other participant in any
18 contractual relationship between [users].” Ex. A, Terms of Service, ¶ 1.2.¹

19 6. At the time of booking accommodations, the prospective Guest submits the full amount
20 of the cost of the lease to Airbnb, which holds it in a non-compliant interest-bearing account(s), with
21 interest benefitting Airbnb not the Guest. As such, these funds are subjected to the credit risk or loan
22 portfolio of the account in which they are held.

23 7. When a Guest checks in, Airbnb recognizes a service fee as revenue and initiates the
24 process to remit the payment for the rental to the Host, which generally occurs 24 hours after the
25 scheduled check-in, barring any alterations or cancellations, which may result in funds being returned
26 to the Guest. Consistent with an escrow arrangement, if a Guest objects to the short-term lease at check-
27

28 ¹ <https://www.airbnb.com/help/article/2908> (last visited August 15, 2023).

1 in (such as because it was not as advertised or otherwise unsuitable), then Airbnb will not remit funds
2 to the Host and will subsequently perform an investigation.

3 8. Due to the nature of Defendants' business, Guests frequently enter into leases far ahead
4 of the planned stay, meaning that AP is frequently holding customer money for weeks or months.

5 9. Defendants' payment arrangement constitutes an escrow under California law. The Host
6 and Guest are principals to an escrow arrangement concerning a real property lease, and AP acts as the
7 escrow agent responsible for escrowing and remitting funds. In California, escrow agents are subject to
8 a great variety of requirements and rules and owe all principals fiduciary duties, including the duty to
9 faithfully follow escrow instructions.

10 10. Among the many and various restrictions on escrow activities in California is the strict
11 requirement that escrows place customer funds in non-commingled, non-investment accounts where they
12 are protected from the vicissitudes of the marketplace. Cal. Code Regs. Tit. 10 §§ 1737-1737.1. Further,
13 any interest income on the deposits is exclusively the property of the principal who deposited those
14 funds, here the Guest. *Id.* § 1737(j).

15 11. "Funds receivable and amounts held on behalf of customers" by Defendants are generally
16 held in income-producing bank deposit accounts and in U.S. treasury bills. Form 10-K, at 43. Thus, AP
17 does not place this cash in a compliant, lawful escrow account, depriving Guests of escrow protections
18 under California Finance Code §§ 17000 *et seq.* Additionally, the funds are not properly segregated and
19 safeguarded from AP's other assets and holdings as required by California escrow laws. Cal. Code Regs.
20 Tit. 10 §§ 1737-1737.1. Finally, whereas interest on escrowed funds is strictly the property of the
21 escrowing party (Cal. Code Regs. tit. 10 § 1737(j)), AP instead retains the interest on held funds as
22 income.

23 12. Thus, Guest funds that should be held in secure non-commingled, non-investment escrow
24 accounts are instead held in non-escrow investment accounts for the benefit of Defendants. This
25 fundamentally unfair conduct violates the California Escrow Law and the UCL and jeopardizes the
26 funds of millions of the general public including Plaintiff.

27 13. Defendants place Guest funds into these investment accounts and collect interest on such
28 funds. Defendants profit from the interest generated, rather than remitting it back to the Guests whose

1 funds were placed in the accounts. This practice violates the California Escrow Law and the UCL and
2 constitutes lost money or property for all Guests, including Plaintiff.

3 14. Any member of the general public who seeks to lease property via Airbnb must submit
4 to Defendants' unlawful escrow system, such that the general public is at continuing risk of harm from
5 this conduct. *See generally* Ex. B, Payments Terms of Service.

6 15. AP's conduct of holding these funds in accounts other than proper escrow accounts
7 creates an unlawful ongoing risk to Plaintiff and the general public.

8 16. Defendants' conduct constitutes escrow activity, requiring AP to be licensed and
9 conform to a host of regulations under California's Escrow Law. As Defendants continue in the business
10 of an escrow agent without conforming their conduct to the law, constituting an ongoing risk to the
11 general public, Defendants' conduct should be enjoined and declared unlawful.

12 **III. FACTUAL BACKGROUND**

13 17. Defendant Airbnb is a technology company operating an online marketplace for short
14 term rentals, typically for vacation purposes and typically in spaces within the residential property of
15 the Host. Defendant Airbnb has a giant footprint² in the vacation rental industry market share, making
16 it one of the preeminent booking platforms for Guests seeking short-term property rentals.

17 18. A "Guest" on the platform is defined as the party seeking a short-term lease and the
18 "Host" is defined as the party in possession of the real property who advertises it for lease via Airbnb.

19 19. The short-term rental arrangement is typically as follows: the Guest uses the Airbnb
20 platform via Airbnb's website or mobile application to search for available property rentals in a given
21 location within a specified date range and is able to apply filters to narrow down results according to
22 certain desired criteria, such as number of beds or presence of amenities. The Guest is then presented
23 with a list of matching rentals with profiles created by the Host of the property, typically including
24 property descriptions or marketing copy as well as rules, Cancellation Policies (selected by the Host
25 from a pre-written "menu" drafted by Defendants), and photographs of the property. The Guest selects
26

27 ² Estimates conclude that as of 2019 Airbnb owned about 20 percent of the entire US consumer lodging
28 market. Rani Molla, *American Consumers Spent More on Airbnb than on Hilton Last Year*, VOX (Mar.
25, 2019), <https://www.vox.com/2019/3/25/18276296/airbnb-hotels-hilton-marriott-us-spending>.

1 a property, enters the dates of the planned stay, and submits the request to the Host, who may approve
2 or deny the application within a window of time.

3 20. When a Guest books a Reservation on the Airbnb platform, the Guest pays the cost of
4 the Reservation to AP to hold on behalf of the Parties. At this point, if it were following the law, AP
5 would deposit these funds into an approved, non-comingled, non-investment account for which AP
6 would not be entitled to interest income. To the extent such funds are held in an interest-bearing account
7 or generates other benefits, such interest or benefits should be provided to the principals—here the Guest
8 (or alternatively, the Host)—not retained by the escrow holder—here AP. Cal. Code Regs. Tit. 10 §
9 1737(j) (“Notwithstanding any provision in any escrow instructions, the interest paid or payable on any
10 interest-bearing account shall not be transferred to the account of, accrue to the benefit of, or otherwise
11 be treated as an asset of the escrow agent.”).

12 21. Instead, AP then holds the total amount of money that the Guest has paid in comingled
13 accounts (with interest income payable to Defendants and retained by Defendants) until check-in, at
14 which time Airbnb recognizes its service fee as revenue and initiates the process to remit the payment
15 to the Host, which generally occurs 24 hours after the scheduled check-in, barring any alterations or
16 cancellations, which may result in the funds being returned to the Guest, such as if the Guest finds that
17 the rental is not as advertised. In other words, Airbnb operates a traditional, albeit non-compliant and
18 unlawful, escrow service.

19 22. AP reports this money as a current asset on the company’s consolidated balance sheet as
20 a “funds receivable and amounts held on behalf of customers.” Form 10-K, at 82.

21 23. AP co-mingles this cash with its own cash and places the funds in bank accounts, money-
22 market funds, and short-term bonds.³

23 24. In the third quarter of 2022, Airbnb collected at least \$58.5 million in interest income on
24 its comingled investment accounts that contained customer funds that should have been properly
25 escrowed.⁴

26 _____
27 ³ Konrad Putzier, *Airbnb and Expedia Turn Customer Cash into Profit, Aided by Rising Interest Rates*,
28 WALL ST. J. (Jan. 31, 2023), <https://www.wsj.com/articles/airbnb-and-expedia-turn-customer-cash-into-profit-aided-by-rising-interest-rates-11675115683>.

⁴ Id.

25. Defendant AP is a wholly-owned subsidiary of Airbnb. AP is responsible for the collection and remission of funds used to secure rentals on Airbnb's platform.

26. AP processes at least \$80 billion in payments from Guests to Hosts annually.⁵

27. AP engages in the conduct described herein and exercises control over the escrow funds deposits made by Plaintiff, Guests and other principals in and from its offices in California. AP receives, controls and makes decisions to retain the interest and income from the escrow funds deposited by Plaintiff, Guests and other principals in and from its offices in California.

28. As explained throughout this Complaint, Defendants' actions of operating as an unlawful escrow make them liable to Plaintiff for financial harm stemming from Defendants' unlawful escrow activities, and their ongoing scheme of escrow violations presents an ongoing unlawful risk to the general public. By way of the conduct described, Plaintiff suffered out-of-pocket loss. Plaintiff brings this action on behalf of the general public and for their benefit, in order to vindicate important public policies and rights, and to get Defendants to comply with applicable legal requirements described herein going forward. Such relief will serve as a public benefit.

IV. JURISDICTION

29. This Court has jurisdiction over all causes of action asserted herein pursuant to the Constitution of the State of California, article VI, § 10 and California Code of Civil Procedure § 395.

30. Defendant's Terms of Service ("TOS" or "Terms") contain an arbitration clause mandating that certain claims be presented for dispute resolution before AAA. However, Defendants' TOS are not absolute and contain certain exceptions. The only claims presented in this Demand are specifically delegated to a judicial forum. The arbitration agreement provides, in pertinent part, "the following causes of action and/or claims for relief are *exceptions* to the Arbitration Agreement ***and will be brought in a judicial proceeding in a court of competent jurisdiction***...(iii) a request for the remedy of public injunctive relief..." See TOS ¶ 24.5 (the "Exceptions paragraph").

31. AAA heard Plaintiff's claims and determined that Plaintiff's claims, if meritorious, would be excepted from the arbitration agreement in the TOS and must be heard in a court of competent

⁵ Id.

jurisdiction. Ex. C, ORDER No. 2, AAA No. 01-23-0003-6583 (Feb. 21, 2024) (dismissing claim from AAA arbitration forum without prejudice).

32. As such, the arbitration forum determined that it lacks jurisdiction over this dispute. Thus, the proper venue is a “state or federal court in California.” Airbnb Terms, § 21.

V. THE PARTIES

33. Plaintiff Jamie Edson has used the Airbnb platform as a Guest at relevant times, including at the present time. Plaintiff is a resident of Vallejo, California. Plaintiff having suffered injury and out-of-pocket loss in the past from Defendants’ conduct has standing to present claims seeking only public injunctive relief for the general public. Plaintiff need not recover on other individual claims, which have nonetheless not been brought, in order to pursue distinct claims for public injunctive relief. *See McGill*, 2 Cal.5th at 955.

34. The members of the general public who will primarily benefit from the public injunctive relief sought in this action are not persons who previously contracted with Defendants as Guests, but rather are members of the general public who stand to contract with Defendants as Guests in the future. Plaintiff has standing to pursue such claims for public injunctive relief on behalf of the members of the general public of California. *See McGill*, 2 Cal.5th at 955 (“Likewise, the court explained in *Cruz v. Pacificare Health Sys., Inc.*, (2003) 30 Cal. 4th 303, an injunction under the UCL or the false advertising law against deceptive advertising practices ‘is clearly for the benefit of... the general public’; ‘it is designed to prevent further harm to the public at large rather than to redress or prevent injury to a plaintiff.’ To summarize, public injunctive relief under the UCL, the CLRA, and the False Advertising Law is relief that has ‘the primary purpose and effect of’ prohibiting unlawful acts that threaten future injury to the general public.”)

35. Defendant Airbnb, Inc. (“Airbnb”) is a Delaware corporation with its principal place of business in San Francisco, California.

36. Defendant Airbnb Payments, Inc. (“AP”) is a subsidiary of Airbnb that is also incorporated under the laws of Delaware and whose principal place of business is the same address as Airbnb in San Francisco, California. Plaintiff alleges upon information and belief that Airbnb wholly owns and controls AP.

1 **VI. FACTUAL ALLEGATIONS**

2 **A. The Contracts at Issue**

3 37. The relationship between Airbnb, Airbnb Payments, Guests, and Hosts is governed by
4 two primary contracts.

5 38. The first contract is the Terms of Service (“TOS”) (Ex. A) which governs the
6 relationships between Guests, Hosts, and Defendants. The second contract is the Payments Terms of
7 Service (“PTOS”) (Ex. B) which governs the relationship between Guest and Hosts and Airbnb
8 Payments.

9 39. Plaintiff agreed to the TOS and PTOS at relevant times.

10 **B. Airbnb Payments is an Escrow Agent and Performs Escrow Activities**

11 40. The California Financial Code defines an escrow as:

12 [A]ny transaction in which one person, for the purpose of effecting the
13 sale, transfer, encumbering, or leasing of real or personal property to
14 another person, delivers any written instrument, money, evidence of title
15 to real or personal property, or other thing of value to a third person to be
16 held by that third person until the happening of a specified event or the
performance of a prescribed condition, when it is then to be delivered by
that third person to a grantee, grantor, promisee, promisor, obligee,
obligor, bailee, bailor, or any agent or employee of any of the latter.

17 Cal. Fin. Code § 17003.

18 41. In an Airbnb transaction, upon a Guest booking a rental with a Host, AP automatically
19 receives funds sufficient for the cost of the lease from the Guest. Instead of properly escrowing these
20 funds, they are instead parked in interest-bearing bank accounts, money market funds, and short-term
21 bonds by AP until approximately 24 hours after check-in, at which point the process to remit the funds
22 (but not any interest or other income) to the Host begins (if there are no alterations or cancellations). If
23 the stay occurs as planned without alterations or problems, then Airbnb recognizes the service fee as
24 revenue and remits the remaining held funds (but not any interest or income) to the Host. If the stay is
25 cancelled, then the held funds (but not any interest or income) are distributed according to the
26 Cancellation Policy of the Host.

27 42. AP is an affiliated entity of Airbnb that facilitates payments for each booking by
28 “collecting payments from Guests,” holding those funds in escrow, and then “[e]ffecting payments to

Hosts.”⁶ This is true whether a reservation is completed or cancelled. “In the event of a Guest’s cancellation of a confirmed booking, Airbnb Payments will remit a Payout of any portion of the Total Fees due to you under the applicable cancellation policy.” Ex. B ¶ 3.4.

43. The relationship between the Host and Guest is one of a lease of real property for a set duration for an agreed-upon rent. Courts have described Airbnb’s transaction as a lease: “Airbnb provides an online marketplace for both short-term and long-term housing accommodations wherein ‘hosts’ lease or sublease their living space to ‘guests.’” *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F. Supp. 3d 1097, 1100 (C.D. Cal. 2017). As the Escrow Law’s definition, *supra*, is phrased extremely broadly to encompass any “thing of value” given to any “third person” to effect any “leasing of real or personal property” it clearly encompasses AP’s conduct.

44. Thus, at the time a reservation is made on the Airbnb platform, the Host and the Guest establish a binding real property rental contract or lease. *See* Ex. A ¶ 2.2 (“When you receive the booking confirmation, a contract for Host Services (a “Reservation”) is formed directly between you and the Host. In addition to these Terms, you will be subject to, and responsible for complying with, all terms of the Reservation, including without limitation, the cancellation policy and any other rules, standards, policies, or requirements identified in the Listing or during checkout that apply to the Reservation.”).

45. As part of its regular business practices, AP operates as an escrow agent as, “for the purposes of effecting the...leasing of real...property,” it receives “money...to be held...until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person” to the appropriate party. Cal. Fin. Code § 17003. Thus, AP’s regular business practices place it comfortably within the definition of escrow.

46. Further, AP is an “escrow agent,” defined as “any person engaged in the business of receiving escrows for deposit or delivery.” Cal. Fin. Code § 17004.1.

47. Additionally, the Escrow Law provides that “‘Person subject to this division’ means any person undertaking the performance of escrow agent services. Unless specifically exempted, as in Section 17006, however, this definition shall not be used to exclude anyone.” Cal. Fin. Code § 17005.4.

⁶ *See Payment Terms of Service*, AIRBNB, <https://www.airbnb.com/help/article/2909/payments-terms-of-service> (last visited Mar. 29, 2023).

1 Notably, under the Escrow Law, “[i]n any proceeding under this law, the burden of proving an
2 exemption or exception is upon the person claiming it.” Cal. Fin. Code § 17006.5. Obviously, neither
3 the self-description of AP as an “agent,” nor Defendants’ characterization of their leases as “licenses”
4 affects this determination in the slightest, as the statute is clearly written to encompass the *substance* of
5 an escrow transaction irrespective of the *title* that that arrangement takes.

6 48. Notably, while escrow agents are required to *act* impartially within the scope of the
7 escrow arrangement,⁷ not favoring any particular party to the escrow, there is no *definitional*
8 requirement of “independence” or similar status on the part of the escrow agent. Thus, neither the fact
9 that at certain times AP acts as the Host’s agent, nor the fact that AP is a wholly-owned subsidiary of
10 Airbnb, take AP outside the definition of escrow agent under the Escrow Law. California law defines
11 an escrow agent according to what it does, not what it is labelled as, and AP clearly meets that definition
12 through its conduct in its regular business activities. *See* Cal. Fin. Code § 17003.

13 49. AP acts as both the Host’s escrow agent, and the Guest’s escrow agent. In conducting
14 escrow agent functions and duties, AP accepts and processes funds from Guests leasing Host properties
15 on the Host’s behalf. At the same time, as escrow agent for Guests, AP accepts and holds funds from
16 Guests purchasing Host’s services on Guest’s behalf and is charged by Guests with complying with
17 certain instructions, including but not limited to processing refunds under certain conditions.

18 50. AP cannot lawfully contract to receive interest on the funds deposited into the escrow.
19 Cal. Code Regs. tit. 10 § 1737(j) provides: “Notwithstanding any provision in any escrow instructions,
20 the interest paid or payable on any interest-bearing account shall not be transferred to the account of,
21 accrue to the benefit of, or otherwise be treated as an asset of the escrow agent.” As a result, under no
22 circumstances can AP contract to receive and/or retain any interest on the escrow funds. The interest on
23 the escrow funds belongs at all times to the principals – here, the Guests (or alternatively, the Hosts),
24 but never AP or Airbnb or their affiliates. Any contractual term or escrow instruction (including any
25 provision of the PTOS) in which AP or Airbnb attempts to designate the right to the interest earned on
26 the escrow deposits as belonging to them is unlawful, unconscionable, lacking valid consideration,
27

28 ⁷ Cal. Code Regs. tit. 10, § 1740.1.

contrary to public policy and is unenforceable. Due to Cal. Code Regs. tit. 10 § 1737(j) the right to the interest cannot be contracted away or transferred by any principal (Guests and/or Hosts) to AP (or Airbnb).

C. Airbnb Payments’ Engages in Unlawful Escrow Activity

51. Cancellation Policies⁸ applicable to each transaction are chosen by the Host from a “menu” created by Defendants, ranging from “flexible” to “super strict,” and are agreed to by the Guest in advance of the booking, forming part of the lease agreement and escrow instructions to which all parties, including AP, are bound.

52. In the event of a cancellation by a Guest, the Payments Terms of Service require AP to “remit a Payout of any portion of the Total Fees due to [the Host] under the applicable cancellation policy.” Ex. B ¶ 3.4. The “applicable cancellation policy” is the Cancellation Policy drafted by Airbnb, selected from the “menu” by the Host, displayed on the property listing, and agreed to by the Guest at time of booking. This policy, and other requirements contained within the Payment Terms of Service, form the escrow instructions for the transaction, by which AP, as fiduciary escrow agent, is required to abide at all times.

53. AP is a third-party escrow agent operating solely for the purpose of receiving, escrowing, and remitting funds used to facilitate the short-term lease of real property accommodations by Guests using the Airbnb platform to secure short-term leases from Hosts, it receives escrows and acts as an escrow agent under the law.

D. As an Escrow Agent, Airbnb Payments is Required to Follow the Escrow Law

54. As an escrow agent, AP is a fiduciary and is required to follow the Escrow Law. Cal. Fin. Code §§ 17000 *et seq.*

55. The Escrow Law contains a robust scheme of protections for consumers to ensure the appropriate behavior of escrow agents such as AP, including requirements for licensure and bonding and, most importantly, the requirement that escrow agents act in accordance with the escrow instructions on a given transaction. Cal. Fin. Code § 17414.

⁸ Find the Cancellation Policy for Your Stay, AIRBNB, <https://www.airbnb.com/help/article/149> (last visited Feb. 8, 2023).

1 56. The purpose of the Escrow Law is the protection of the public. *Escrow Inst. of Cal. v.*
2 *Pierino*, 24 Cal. App. 3d 361, 366 (1972) (“The provisions of the Escrow Law which the plaintiffs have
3 challenged...are reasonably related to the purpose of protecting the public from unfair, fraudulent and
4 incompetent service in the handling of escrows.”).

5 57. As a fiduciary in performing its duties, the escrow holder must at all times exercise
6 reasonable care, loyalty, and good faith towards the principals of the escrow. An escrow holder’s
7 fiduciary duty is generally limited to the faithful performance/execution of the instructions given by the
8 principals to the escrow. *See Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.*, 27 Cal.
9 4th 705, 711 (2002); Cal. Civ. Code § 2297; Cal Fin. Code § 17004.

10 58. The Cancellation Policy of the Host, along with other requirements found in the Payment
11 Terms of Service, constitute the escrow instructions to which AP, as an escrow agent, is bound for the
12 duration of the transaction. Deviation from those instructions, therefore, constitutes a violation of the
13 Escrow Law (Cal. Fin. Code § 17414), AP’s fiduciary duties as an escrow agent, and the UCL.

14 59. Under applicable law and standards, an escrow holder/agent should retain neutrality and
15 not participate in controversies among the principals or among the parties to the escrow or arbitrate
16 disputes. *See Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.*, 27 Cal. 4th 705, 711
17 (2002) (quoting *Claussen v. First Am. Title Guaranty Co.*, 186 Cal. App. 3d. 429, 435-36 (1986)) (“[A]n
18 escrow holder ‘has no general duty to police the affairs of its depositors’; rather, an escrow holder’s
19 obligations are ‘limited to faithful compliance with [the depositors’] instructions.’”).

20 60. In the transactions at issue, however, AP unlawfully participates in active disputes
21 between the parties and has illegally modified established escrow instructions and escrow requirements
22 in furtherance of such disputes. This is contrary to applicable law and standards.

23 61. As a result, protection of the members of the general public in California, including
24 persons within the general public, who are not currently, but are in a position to become Guests in the
25 future, from Defendants’ ongoing and continue legal violations described further herein, is both
26 necessary and appropriate. Members of the general public are likely to become customers of Defendants
27 in the future and will benefit from the relief sought as new customers start to transact with Defendant
28 on a daily basis. The risk of future harm, injury and out-of-pocket-loss to members of the general public

1 is evident unless the challenged practices are enjoined. The practices at issue should be revised and
2 corrected at this time as members of the general public should not have to wait for the requested
3 injunctive relief until after their transactions with Defendants are completed and further harm and injury
4 occurs. As a result, public injunctive relief is appropriately sought on behalf of the general public in
5 California and such relief will create a public benefit.

6 **E. Airbnb’s Escrow Activities Are Not in Compliance with the Escrow Law**

7 **1. Airbnb Payments is Not Licensed as an Escrow Agent**

8 62. Under the Escrow Law, escrow agents are required to be licensed. Cal. Fin. Code § 17200
9 (“It shall be unlawful for any person to engage in business as an escrow agent within this state except
10 by means of a corporation duly organized for that purpose licensed by the commissioner as an escrow
11 agent.”).

12 63. To the best of the undersigned’s knowledge,⁹ AP is not licensed as required by Section
13 17200 yet engages in business as an escrow agent as described above.

14 64. Licensing statutes are intended to protect the general public (including persons who may
15 become Guests or Hosts in the future) from abuses and incompetence by unlicensed actors. AP’s failure
16 to operate under the correct licensure is a proximate cause of Plaintiff’s economic harm and the risk of
17 same to the general public in this case.

18 65. As AP engages in business as an escrow agent without correct licensure, AP violates the
19 Financial Code and thus the UCL’s “Unlawful” prong, causing harm to Plaintiff and risk of additional
20 harm to both Plaintiff and the members of the general public.

21 **2. Airbnb Payments Lacks the Requisite Experience as an Escrow Agent**

22 66. The Escrow Law requires that, “within the organization of each escrow agent
23 corporation...there shall be one or more persons possessing a minimum of five years of responsible
24 escrow or joint control experience” at the main office. Cal. Fin. Code § 17200.8.

25
26 ⁹ The undersigned performed a search for “Airbnb” and “Airbnb Payments” on the California
27 Department of Financial Protection and Innovation website and the searched returned no results. License
28 Search for Airbnb and Airbnb Payments, CAL. DEP’T. FIN. PROTECTION & INNOVATION,
<https://docqnet.dfpi.ca.gov/licensesearch/> (search Company Name Contains “Airbnb”) (last visited Feb.
8, 2023).

1 67. Given that AP does not appear to be licensed as an escrow agent, the undersigned asserts
2 on information and belief that it also lacks the requisite experienced personnel under the Code. This is
3 important as “[s]ome standard as to training and experience on the part of those responsible for the
4 proper consummation of the transactions undertaken in the business of an independent escrow concern
5 is essential.” *Pierno*, 24 Cal. App. 3d at 367.

6 68. As AP engages in business as an escrow agent without the requisite experienced staff,
7 AP violates the Financial Code and in turn, the UCL’s “Unlawful” prong, causing harm to Plaintiff and
8 risk of additional harm to both Plaintiff and members of the general public.

9 **3. Airbnb Payments Has Not Posted the Requisite Bonds**

10 69. Under the Escrow Law, at the time of filing for an escrow agent license, a bond of at least
11 \$25,000 must be posted. Cal. Fin. Code §§ 17202-17202.2.

12 70. The bond of an escrow agent is conditioned on:

13 Faithfully conform[ing] to and abid[ing] by the provisions of [The Escrow
14 Law] and all the rules made by the commissioner under [The Escrow
15 Law]. The bond [is] conditioned that the licensee will honestly and
 faithfully apply all funds received, [and] will faithfully and honestly
 perform all obligations and undertakings under [The Escrow Law.]

16 Cal. Fin. Code § 17203.

17 71. Given that AP is not licensed, the undersigned asserts on information and belief that AP
18 has also failed to post a bond. This fact is material as if AP had posted a bond as required, Plaintiff and
19 other members of the general public would retain the option of making a claim under said bond in the
20 amount of their losses in this matter, such that this failure is a proximate cause of both Plaintiff’s losses
21 and the unacceptable ongoing risk to the general public.

22 72. In addition to the bond required under Section 17202, escrow agents are required to post
23 a fidelity bond in an amount determined by the Commissioner. Cal. Fin. Code § 17203.1. For the same
24 reasons, the undersigned asserts that AP has failed to post this bond, which for the same reason is a
25 causal factor in Plaintiff’s losses.

26 73. As AP has failed to post a bond, it has violated the Escrow Law and in turn, the UCL’s
27 “Unlawful” prong, and Plaintiff and members of the general public are at risk of harm.

1 **4. Airbnb Payments Would Not Qualify for an Escrow Agent License**

2 74. Notably, even if AP were to seek licensure, as it should have, it would not qualify. The
3 Escrow Law provides that licensure shall be denied if it is found that:

4 (a) That the corporation is to be formed for any business other than
5 legitimate escrow agent services, or proposes to use a name that is
6 misleading or in conflict with the name of an existing licensee.

7 * * *

8 (c) That there is no officer or manager possessing a minimum of five years
9 of responsible escrow or joint control experience stationed or to be
10 stationed at the main office of the corporation and that there is no officer,
11 manager or employee possessing a minimum of four years of responsible
12 escrow or joint control experience stationed or to be stationed at each
13 branch.

14 * * *

15 (f) The applicant, any officer, director, general partner, or incorporator of
16 the applicant, or any person owning or controlling, directly or indirectly,
17 10 percent or more of the outstanding equity securities of the applicant
18 has violated any provision of [The Escrow Law] or the rules thereunder
19 or any similar regulatory scheme of the State of California or a foreign
20 jurisdiction.

21 * * *

22 (g) The applicant has failed to comply with the Fidelity Corporation's
23 membership requirements set forth in subdivision (b) of Section 17312,
24 in subdivision (a) of Section 17320, and in Sections 17331 and 17331.1.

25 Cal. Fin. Code § 17209.3.

26 75. AP has violated and continues to violate Section 17209.3(a) as the business was not
27 formed for the purpose of legitimate escrow agent services, but rather for unlawful escrow agent services
28 performed without correct licensure. Additionally, the name "Airbnb Payments" is misleading and
confusing as it fails to inform the public that it is in the business of escrow services.

76. AP has violated and continues to violate Section 17209.3(c) because, as noted above, AP
does not have at its main office an individual with the requisite experience.

77. AP has violated and continues to violate Section 17209.3(f) as it has been conducting,
and continues to conduct, escrow agent activities without a license.

78. AP has violated and continues to violate Section 17209.3(g) as—given its unlicensed
status—AP has not complied with the Fidelity Corporation's membership requirements.

1 79. In addition, any person who engages in business as an escrow agent must be a corporation
2 organized for that purpose, and the Articles of Incorporation must include a clause that states that the
3 primary purpose of the corporation is to engage in business as an escrow agent. Cal. Fin. Code § 17200.
4 As AP is unlicensed and is not a corporation but rather a wholly-owned subsidiary of Airbnb, Plaintiff
5 alleges on information and belief that it has violated and continues to violate this section. Corporate
6 status is not a pointless technical requirement but means that customers have an enduring entity with
7 which to deal that is not compromised by, *e.g.*, the death of a given agent. As such, Defendants deviation
8 from the required corporate form is in itself an unlawful and unacceptable risk to the general public.

9 80. As the requirements of the Escrow Law are intended to protect the general public from
10 unlawful, non-compliant, and highly risky conduct by unlicensed operators like AP, their continued
11 violation presents an ongoing risk of harm to Plaintiff and the members of the general public in
12 California.

13 **5. Airbnb Does Not Qualify for Any Exemption Under the California Escrow Law**

14 81. Under California Finance Code Section 17006.5, the burden of proving an exemption or
15 an exception from a definition in the escrow law is upon the person claiming it. As such, AP must prove
16 that it is exempt from California Escrow law.

17 82. Guests are given exclusive control of the property (or parts of the property subject to the
18 lease, such as a room) for the duration of the stay, including a right to complete possession of the subject
19 property good against the owner. Although Airbnb describes the rental as a “license” in its Terms of
20 Service, the rental transaction is in fact a lease. Guests are given the legal right to exclusive use and
21 control of the property and can exclude other individuals (including the Host) from entering the property
22 during the duration of the stay. There is no difference between the Host-Guest relationship and any other
23 landlord-tenant relationship while the lease is in effect.

24 83. Airbnb’s rentals/leases are therefore subject to California escrow law. Cal. Fin. Code §
25 17003.

1 **F. The Terms of Service and Payment Terms of Service Contain Escrow Instructions Which**
2 **Must be Followed**

3 84. The Terms of Service and Payment Terms of Service contain instructions as to
4 reservation procedure, holding of funds, payout, and remittance of funds. As such, both documents
5 contain escrow instructions which must be followed. The parties and principals to the escrow are 1) the
6 Guest, from whom funds are received and to whom funds may be remitted in the event of a cancellation,
7 subject to the terms; 2) Airbnb, which receives its fee; and 3) the Host, who receives the balance of the
8 escrow less any fees to Airbnb.

9 85. The Payment Terms of Service inform AP of the proper course of conduct in the event
10 of a cancellation by a Guest, *i.e.*, the Payment Terms of Service, as escrow instructions, tell AP what to
11 do with escrowed funds at various points in time during the transaction between Guest and Host.

12 **G. Plaintiff's Experience**

13 86. Plaintiff is a Guest who has leased short-term rentals using the Airbnb platform.

14 87. Airbnb's unlawful business arrangement of holding funds in bank accounts, money-
15 market funds, and short-term bonds, instead of properly in escrow funds, has subjected Plaintiff's funds
16 to illegal treatment under California escrow law, causing them to lose money or property as a result of
17 the unlawful conduct.

18 88. As the escrow agent to the parties' transaction, AP; 1) owed fiduciary duties to Plaintiff
19 to pay interest owed to principals that submit funds to be held in escrow; and/or 2) was required by
20 statute to pay interest to principals that submit funds to be held in escrow. *See* Cal. Code Regs. tit. 10 §
21 1737(j)). AP fails to pay interest on escrowed funds to principals including Plaintiff and other Guests as
22 required by § 1737(j)).

23 89. Defendant's ongoing conduct operating as an unlicensed and non-compliant escrow
24 continues to jeopardize Plaintiff's improperly held funds and create the ongoing threat of future injury
25 for both Plaintiff and members of the general public.

26 **H. Defendants Earn Substantial Revenue Off Their Violation of Escrow Law**

27 90. By earning interest income on funds held in escrow and self-dealing by retaining it—
28 instead of properly remitting to Guests including Plaintiff, Defendants violated the Escrow Law in

multiple respects, as described above, and caused financial harm to Plaintiff and continues to threaten additional harm to members of the general public unless enjoined and declared unlawful. Through this action Plaintiff seeks public injunctive relief to prevent that future harm to the general public, creating a public benefit.

COUNT ONE

Violation of the Unfair Competition Law

Unlawful Conduct

Cal. Bus. & Prof. Code § 17200

91. Plaintiff alleges this cause of action on Plaintiff's own behalf and on behalf of the general public of California and in doing so incorporates all preceding and succeeding allegations as though fully set forth herein.

92. When acting as an escrow agent, as defined *supra*, AP acts as a fiduciary to the parties to the escrow, here the Host, the Guest, and Airbnb itself. In this role as an escrow agent, AP has fiduciary duties to all parties to the escrow, including particularly the duty to abide by escrow instructions, here as outlined in the Terms of Service and Payment Terms of Service. *Summit Fin. Holdings, Ltd. v. Cont'l Laws. Title Co.*, 27 Cal. 4th 705, 711 (2002), *modified, reh'g denied* (May 15, 2002).

93. AP's unlawful conduct while serving as an escrow agent is demonstrated by its conduct of improperly holding Guest funds. AP's policies and procedures remain the same and are ongoing, creating the risk of future harm to both Plaintiff and members of the general public.

94. Plaintiff was harmed by Defendants' breach of fiduciary duty in improperly holding funds in non-escrow accounts. Defendants currently deny Plaintiff interest owed on money held in non-escrow accounts. This denial to Plaintiff is done pursuant to a common business policy employed by Defendant for which public injunctive relief is sought to modify for the benefit of the general public.

95. AP cannot lawfully contract to receive interest on the funds deposited into the escrow. Cal. Code Regs. tit. 10 § 1737(j)) provides: "Notwithstanding any provision in any escrow instructions, the interest paid or payable on any interest-bearing account shall not be transferred to the account of, accrue to the benefit of, or otherwise be treated as an asset of the escrow agent." As a result, AP cannot

enter into any contract, agreement or understanding to receive and/or retain any interest on the escrow funds. The interest on the escrow funds belongs at all times to the principals—here, the Guests (or alternatively, the Hosts), but never AP (or Airbnb).

96. California’s Unfair Competition Law prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The UCL covers a wide range of conduct, embracing “anything that can properly be called a business practice and that at the same time is forbidden by law.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (2003). Bus. & Prof. Code “Section 17200 ‘borrows’ violations from other laws by making them independently actionable as unfair competitive practices.” *Id.*

97. Defendants’ above-described conduct violates the unlawful prong of the UCL.

98. In this case, in addition to its breach of fiduciary duties, Defendants have violated multiple provisions of the Escrow Law including, *inter alia*, the following:

- a. Failure to obtain licensure. Cal. Fin. Code § 17200;
- b. Failure to engage in business as an escrow agent except by means of a corporation duly organized for that purpose. Cal. Fin. Code § 17200;
- c. Failure to post a license bond. Cal. Fin. Code § 17202;
- d. Failure to post a fidelity bond. Cal. Fin. Code § 17203.1;
- e. Failure to maintain an officer or manager possessing a minimum five years of responsible escrow or joint control experience stationed in the main office of the corporation. Cal. Fin. Code § 17209.3(c); and
- f. Failure to comply with the Fidelity Corporation’s membership requirements. Cal. Fin. Code §§ 17312(b), 17320(a), 17331, 17331.1.
- g. Failure to pay interest and/or other income received on funds deposited to an escrow to principals. Cal. Code Regs. tit. 10 § 1737(j)).

99. The purpose of these restrictions and requirements is to protect members of the general public, including Plaintiff, from unfair, fraudulent, and incompetent service in the handling of escrows. *Pierno*, 24 Cal. App. 3d at 366.

1 100. Defendants' conduct is ongoing, and members of the general public remain at risk of
2 harm from Defendants' continuing unlawful and abusive escrow practices. New escrow transactions
3 entered into by members of the general public after the filing of this action will be negatively affected
4 and future Guests harmed and financially injured in a manner similar to Plaintiff unless public injunctive
5 relief is granted ordering Defendants to modify their current business practices to comply with the law.
6 Public injunctive relief, as sought here, is relief that has "the primary purpose and effect of" prohibiting
7 unlawful acts that threaten future injury to the general public. *See McGill v. Citibank, N.A.*, 2 Cal. 5th
8 945, 955 (2017). Among other things, future escrow transactions by AP lack compliance with applicable
9 licensure, experience, bonding, and interest on escrow requirements unless public injunctive relief is
10 granted modifying AP's ongoing practices.

11 101. Public injunctive relief, as sought here, by and large benefits the general public and that
12 benefits Plaintiff, if at all, only incidentally and/or as a member of the general public. An injunction
13 against Defendants' deceptive and unlawful business methods, acts, and practices generally benefits the
14 public directly by the elimination of such practices, protecting future transactions. As a result, public
15 injunctive relief is appropriate here. Such relief will create a public benefit.

16 102. Defendants' conduct is ongoing, and members of the general public remain at risk of
17 harm from Defendants' abusive practices and violations described above. The members of the general
18 public who remain at risk and are in need of public injunctive relief are those persons who have not
19 transacted with Defendants yet as Guests but stand to in the future. As shown by its growth since starting
20 business operators in or about 2008, new consumers start transacting with Defendants on a continuing
21 and ongoing basis. Therefore, members of the general public are likely to benefit from the public
22 injunctive relief sought. Modified and corrected business practices are necessary to prevent these
23 members of the general public from being harmed at that time in the same way as Plaintiff. While
24 Plaintiff may also benefit from such injunctive relief, that is incidental to the primary benefits which
25 will be to the general public. Such relief will create a public benefit. Further, Plaintiff explicitly,
26 expressly, and unconditionally waives any entitlement to any relief other than public injunctive relief
27 for the benefit of the general public.
28

103. As a result of the foregoing, Plaintiff, on behalf of the general public seeks public injunctive relief; reasonable attorneys' fees and costs pursuant to Civil Code § 1021.5, and/or other applicable law, and all relief available to the general public at law or equity.

COUNT TWO

Violation of the Unfair Competition Law

Unfair Conduct

Cal. Bus. & Prof. Code § 17200

104. Plaintiff alleges this cause of action on Plaintiff's own behalf and on behalf of the general public of California and in doing so incorporates all preceding and succeeding allegations as though fully set forth herein.

105. By way of the foregoing, Defendants acted in violation of the UCL and its prohibition on “unfair” business practices. Defendants’ conduct violates established public policy and is immoral, unethical, oppressive, and unscrupulous.

106. The standard for finding an “unfair” practice in a consumer action is intentionally broad, thus allowing courts maximum discretion to prohibit new schemes to defraud. The test of whether a business practice is unfair involves an examination of that practice’s impact on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must weigh the utility of the Defendant’s conduct against the gravity of the harm to the alleged victim. An “unfair” business practice occurs when that practice offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

107. Defendants' conduct, as described above, satisfies the standard for establishing an unfair business practice under the UCL.

108. Defendants' conduct, described more fully above, harmed Plaintiff and other Guests by depriving them of interest (and/or other income) owed on wrongfully held funds. But for Defendants' conduct, Plaintiff and other Guests would be in possession of interest and have thus suffered a direct financial injury and out-of-pocket loss of money as a result of Defendants' conduct.

109. Additionally, by failing to *lawfully* escrow rent money, Defendants subject the general public to the risk of loss of such funds, such as the loan portfolio of the institution holding such funds

1 or due to bankruptcy by Defendants. The ongoing failure to properly escrow funds is an ongoing harm
2 to Plaintiff and the general public.

3 110. Additionally, the current version of Airbnb's TOS contains a modification provision that
4 states "Airbnb may modify these Terms at any time. When we make material changes to these Terms,
5 we will post the revised Terms on the Airbnb Platform and update the "Last Updated" date at the top of
6 these Terms. We will also provide you with notice of any material changes by email at least 30 days
7 before the date they become effective. If you disagree with the revised Terms, you may terminate this
8 agreement immediately as provided in these Terms. If you do not terminate your agreement before the
9 date the revised Terms become effective, your continued access to or use of the Airbnb Platform will
10 constitute acceptance of the revised Terms."¹⁰ This ability to unilaterally modify any aspect of the
11 contract with no notice upon Airbnb satisfying itself that a given change is not "material" renders the
12 contract as a whole unconscionable, such that its use is a further unfair practice under the UCL. As long
13 as Airbnb maintain this unconscionable term, the general public remains at risk of having this
14 unconscionable term enforced against them.

15 111. Further, as noted, Airbnb inserts a term in its PTOS that reserves for itself proceeds from
16 the escrow account, in patent violation of Cal. Code Regs. tit. 10 § 1737(j). Pushing its PTOS containing
17 an unlawful term is a further unfair practice of Airbnb that is ongoing and directed to the general public
18 as a whole.

19 112. Defendants' conduct is ongoing, and members of the general public remain at risk of
20 harm from Defendants' abusive practices and violations described above. The members of the general
21 public who remain at risk and are in need of public injunctive relief are those persons who have not
22 transacted with Defendants yet as Guests but stand to in the future. Modified and corrected business
23 practices are necessary to prevent these members of the general public from being harmed at that time
24 in the same way as Plaintiff. While Plaintiff may also benefit from such injunctive relief, that is
25 incidental to the primary benefits which will be to the general public. Such relief will create a public
26
27

28 ¹⁰ TOS ¶ 14.

benefit. Further, Plaintiff explicitly, expressly, and unconditionally waives any entitlement to any relief other than public injunctive relief for the benefit of the general public.

113. As a result of the foregoing, Plaintiff, on behalf of the general public seeks public injunctive relief; reasonable attorneys' fees and costs pursuant to Civil Code § 1021.5 and/or other applicable law, and all other relief available to the general public at law or equity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the general public, prays for relief and judgment against Defendants as follows:

- a. A declaration requiring Defendants to comply with the UCL and all other applicable law to cause Defendants to abide by the requirements of the Escrow Law and duties of an escrow, including without limitation the requirement to obtain correct licensure, experience, bonding;
- b. An order granting injunctive and declaratory relief to remedy Defendants' violations of California law, including an order declaring the parties' respective legal rights and obligations and enjoining Defendants from continuing their unlawful and unfair business practices;
- c. An order granting injunctive and declaratory relief under the UCL and all other applicable law to cause Defendants to start to pay interest on escrow deposits to Plaintiff and Guests similarly situated;
- d. Reasonable attorney's fees and costs pursuant to Code of Civil Procedure 1021.5 and/or any other applicable standard; and
- e. For an order from the arbitration forum stating that it lacks jurisdiction over this dispute pursuant to ¶TOS 24.5, as this Demand only seeks public injunctive relief and therefore the dispute should be transferred to an appropriate court of law, without prejudice to Plaintiff;
- f. All other relief available to the general public that is just and equitable under the circumstances.

ZIMMERMAN REED LLP

Date: March 11, 2024

By: /s/ Caleb Marker

Caleb Marker
Christopher Nagakawa

Flinn T. Milligan
Nare Kupelian
6420 Wilshire Blvd., Suite 1080
Los Angeles, CA 90048
caleb.marker@zimmreed.com
christopher.nagakawa@zimmreed.com
flinn.milligan@zimmreed.com
nare.kupelian@zimmreed.com

Attorneys for Plaintiff