

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

JAMES MAY, on behalf of himself and all others :  
similarly situated, :

Plaintiff, :

v. :

Case No. 1:16-cv-01211

EXPEDIA, INC., a Delaware corporation, :  
as successor by merger to HOMEAWAY, INC., :  
a Delaware corporation; and :  
HOMEAWAY.COM, INC., a Delaware :  
corporation, :

Defendants. :

**CLASS ACTION COMPLAINT**

Plaintiff James May (“Plaintiff” or “May”), individually and on behalf of all others similarly situated, by and through his undersigned counsel, asserts the following claims against defendants Expedia, Inc., a Delaware corporation, as successor by merger to HomeAway, Inc., a Delaware corporation, and HomeAway.com, Inc., a Delaware corporation, demanding trial by jury as to all claims which are triable as of right by jury. Plaintiff make the allegations set forth in this class action complaint upon personal knowledge as to himself and his own acts, and on information and belief as to all other matters, based in part upon investigation conducted by counsel.

**NATURE OF THE ACTION**

1. This is a class action complaint against Expedia, Inc., as successor by merger to HomeAway, Inc., and against HomeAway.com, Inc., for breach of contract, fraud and violations of consumer protection laws.

2. The claims asserted in this action arise out of a variation of a classic bait-and-switch scheme, pursuant to which defendants: (a) marketed, promoted and sold to Plaintiff and

other members of the Class, the Premium Subscription Subclass, and the Oregon Sub-Class (all as defined below) prepaid subscriptions to advertise and list their vacation properties for rental on websites operated by defendants, for a specified (usually annual) term, at a specified price, based on a business model under which no additional fees would be charged to the renters of the properties (the “bait”), all the while knowing, but failing to disclose to Plaintiff and other members of the Class, the Premium Subscription Subclass, and the Oregon Sub-Class, as the case may be, that defendants were actively planning to change their business model in the near future, by (i) imposing fees on travelers/renters, which would effectively increase the effective price, and diminish the value, of the services for which Plaintiff and the other class members had subscribed and previously paid, and (ii) modifying the listing algorithm used on the websites operated by HomeAway.com, Inc., so as to favor properties whose owners or managers elected to permit online booking of their properties with preferential placement in response to queries by travelers, and to penalize properties whose owners or managers did not elect to permit online booking of their properties otherwise responsive to the same queries, but for which Plaintiff and other members of the Premium Subscription Subclass already had paid for favorable placement, by subjecting such properties to less favorable placement (making bookings less likely); and (b) then subsequently changed their business model, during the term of the subscription contracts of Plaintiff and other members of the Class, the Premium Subscription Subclass, and Oregon Sub-Class, by (i) unilaterally imposing fees upon travelers/renters, without the consent of Plaintiff or the other Class members, thereby increasing the effective price, and diminishing the effective value, of the services for which Plaintiff and tens or hundreds of thousands of other property owners and managers had prepaid, and (ii) unilaterally modifying the listing algorithm used on the websites operated by HomeAway.com, Inc., so as to favor properties whose owners or managers elected to

permit online booking of their properties with preferential placement in response to queries by travelers, and to penalize properties whose owners or managers did not elect to permit online booking of their properties otherwise responsive to the same queries, but for which Plaintiff and other members of the Premium Subscription Subclass already had paid for favorable placement, by subjecting such properties to less favorable placement (making bookings less likely) (the “switch”).

3. By engaging in the conduct alleged in this Class Action Complaint, defendant HomeAway.com, Inc. breached the express terms of its contracts with Plaintiff and the other members of the Class, as defined below.

4. In addition, or in the alternative, HomeAway, Inc. and HomeAway.com, Inc. defrauded Plaintiff and the other class members, and otherwise violated applicable Oregon consumer protection laws, by failing to disclose to Plaintiff and the other members of the Class, the Premium Subscription Sub-Class, and the Oregon Sub-Class that, at the same time that defendants were marketing and promoting prepaid subscription services to Plaintiff and the other members of the Class, the Premium Subscription Sub-Class and the Oregon Sub-Class, HomeAway, Inc. and HomeAway.com, Inc. were actively planning to change their business model by: (i) charging fees to renters, over and above the subscription fees prepaid by Plaintiff and other class members to advertise and list their vacation properties, which would (and did) thereby increase the effective price, and diminish the value, of the prepaid subscription services they were marketing and selling to Plaintiff and the other class and sub-class members, during the term of such prepaid subscription services, thereby misrepresenting such prepaid services; and (ii) modifying the listing algorithm used on the websites operated by HomeAway.com, Inc., so as to favor properties whose owners or managers elected to permit online booking of their properties

with preferential placement in response to queries by travelers, and to penalize properties whose owners or managers did not elect to permit online booking of their properties otherwise responsive to the same queries, but for which Plaintiff and other members of the Premium Subscription Sub-class already had paid for favorable placement, by subjecting such properties to less favorable placement, also thereby misrepresenting such prepaid subscription services.

5. The actions of HomeAway, Inc. and HomeAway.com, Inc. have materially damaged Plaintiff and hundreds of thousands of other vacation home owners and managers.

6. By this action, Plaintiffs seek compensation for the damages that they and other similarly situated owners have suffered as a result of Defendant's breaches of contract, fraud and violation of consumer protection statutes, punitive damages, as well as other equitable and declaratory relief as set forth herein.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because (1) there are over 100 members in the proposed Class and in the Oregon Sub-Class (as defined below); (2) members of the proposed Class and the Oregon Sub-Class have citizenships different from those of Defendants; and (3) the claims of the proposed Class members exceed \$5,000,000 in the aggregate.

8. Venue is proper in this District under 28 U.S.C. §§ 1391 because HomeAway.com, Inc. resides, for purposes of venue, in this District and is subject to personal jurisdiction in this District.

### **PARTIES**

9. Plaintiff James May is an adult individual residing in Portland, Oregon, and is a citizen of the State of Oregon. Plaintiff was a Member of HomeAway since at least 2013.

10. On or about September 29, 2015, Plaintiff entered into a contract with HomeAway to renew his VRBO Platinum Level Subscription for a term of one year, commencing October 1, 2015, for which Plaintiff paid HomeAway a total of \$1,299.00. The express terms and conditions of Plaintiff's contract with HomeAway (the "Contract") are set forth in written Terms and Conditions, effective September 15, 2015, which were published on HomeAway's website, a true and correct copy of which is attached to this Complaint as Exhibit A.

11. Defendant Expedia, Inc. ("Expedia"), is a corporation organized and existing under the laws of the State of Delaware, with its headquarters and principal place of business in Bellevue, Washington. Expedia is named in this action as the successor by merger to HomeAway, Inc.

12. Defendant HomeAway.com, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its headquarters and principal place of business in Austin, Texas. Prior to November 4, 2015, HomeAway.com, Inc. was a subsidiary of HomeAway, Inc. On or about November 4, 2015, Home Away, Inc., merged with and into Expedia, Inc., with Expedia, Inc. being the surviving entity. At all times from and after the merger of HomeAway, Inc., with Expedia, HomeAway.com has been, and continues to be, a subsidiary of Expedia.

13. For ease of reference, the pre-merger HomeAway, Inc. and HomeAway.com, Inc. are sometimes referred to jointly as "HomeAway."

14. On information and belief, HomeAway.com, Inc. currently operates the world's largest online market for the vacation and rental industry. It operates at least 40 websites, including, in the United States, HomeAway.com, VRBO.com and VacationRentals.com.

15. The acts alleged to have been done by Defendants, and each of them were authorized, ordered or done by their directors, officers, agents, partners, employees or representatives while actively engaged in the management of each defendant's respective affairs.

## **FACTS**

16. At all times relevant to this action, defendant HomeAway.com, Inc., has operated vacation rental websites including HomeAway.com, VRBO.com, and VacationRentals.com.

17. Prior to February 9, 2016, HomeAway.com, Inc., through its various websites, operated and marketed itself as a vacation rental marketplace which enabled owners and managers of fully furnished, private owned residential properties to list and offer their properties online for short-term rental.

18. At all times relevant to this action, HomeAway.com, Inc. has served two separate but related major categories of users: (1) the owners and managers of properties offered for short-term rental (collectively referred to by HomeAway and herein as “Members”), and (2) individuals seeking to rent vacation homes on a short term basis (collectively referred to by HomeAway and herein as “renters” or “travelers”).

19. At all times relevant to this action, Members could pay to list their homes on HomeAway’s websites in one of two ways. First, Members could purchase subscriptions. Subscriptions are available for varying durations (most commonly annual) and at different levels on most of HomeAway’s websites. Alternatively, members who use HomeAway’s websites could list their homes through a pay-per-booking option. With pay-per-booking, Members pay a commission only for actual bookings received, instead of prepaying an upfront subscription fee on an annual or other basis.

20. Prior to February 9, 2016, HomeAway.com, Inc. offered multiple subscription options to owners. For example, on VRBO.com, HomeAway.com, Inc. offered five varying subscription “levels” (Platinum, Gold, Silver, Bronze and Classic), with Classic being the least

expensive subscription level and Platinum the most expensive. For a one-year term, the subscription level costs owners anywhere from several hundred to well over one thousand dollars.

21. HomeAway.com, Inc. marketed and promoted its subscription “levels” by representing that owners obtained greater benefits, including more favorable placement of listings on its websites, at higher subscription levels, i.e., that Members who subscribed at the Platinum level received greater benefits than Subscribers to the gold level.

22. The most significant benefit that HomeAway.com, Inc. represented would be received by Subscribers purchasing a more expensive subscription level was the promise of a higher ranking and placement in search results when Travelers searched its websites for rental properties. In other words, HomeAway.com, Inc. represented that higher level (i.e., more expensive) subscription levels would buy Members enhanced visibility when Travelers searched for properties on its websites. For example, rental properties posted by owners who are Silver-level subscribers would appear before listings of properties by Classic-level Subscribers in the relevant geographic area that otherwise satisfied the Traveler’s criteria.

23. HomeAway.com, Inc. also offered Members two different “bundle” options at additional cost. Members in the United States could select either a “US Bundle” or a “Global Bundle.” The “US Bundle” allowed rental properties to appear on HomeAway’s three principal U.S. websites: HomeAway.com, VRBO.com, and VacationRentals.com. The more expensive “Global Bundle” enabled Members to have their rental properties appear on all three principal U.S. websites, as well as on 24 international websites owned by HomeAway. These bundle options were sold on a one-year subscription basis, and cost several hundred dollars each.

24. Prior to February 9, 2016, Defendant obtained revenue principally through the sale of varying subscriptions and bundles to owners who utilized its websites. Defendant did not obtain

any additional fees from renters using its websites and did not charge renters any type of booking or service fees.

25. Prior to November 4, 2015, in marketing and promoting its services to Plaintiff and other Owners, HomeAway consistently, intentionally and systematically represented that the vacation home website listing and other services offered by HomeAway.com, Inc., to Owners were based on a marketplace model, under which HomeAway.com, Inc., charged Owners an agreed price to list and rent their vacation properties to travelers, but did not charge any separate fee to travelers for use of the service. Instead, travelers were required to pay only the cost of renting the vacation property charged by the respective Owners.

26. Defendants widely touted their marketplace model as a competitive advantage and a key differentiation from its competitors, including TripAdvisor and AirBnB. For example, as Brian Sharples, the co-founder and CEO of HomeAway, Inc., publicly stated to analysts, investors and others in a conference call held on November 5, 2014, to announce its third-quarter earnings:

We are going to be free to travelers. TripAdvisor and Airbnb have chosen to charge big fees to travelers. Well, we're going to have a pretty sizeable marketing budget in the next few years. And we're going to be letting everybody know, when you come to our platform and you don't pay a fee and we think that's a big deal, because if you look historically at the travel industry, those competitors who adopted no traveler fees first are the ones that ended up being the big winners in that business.

27. Owners prefer the marketplace model, under which HomeAway charged no separate fees to renters, because such fees were and are widely perceived as having the effect of either (a) reducing demand for their properties, by increasing the effective price, resulting in the loss of bookings and revenue, or (b) effectively reducing the price that the Owners themselves could advertise and charge for the rental of their vacation properties.



28. Acting in reliance on HomeAway's marketplace model, and its representation and agreement that it would not charge additional fees to renters, Plaintiff and thousands of other Owners entered into year-long subscription contracts with HomeAway for the right to list their rental vacation properties on Defendant's websites. In exchange for that right, Plaintiffs and other property owners paid HomeAway annual subscription fees, often thousands of dollars per property.

29. HomeAway knew that Plaintiff and other owners relied on HomeAway's marketplace model, including its promise not to charge fees to travelers who used the service, in subscribing to HomeAway's service and becoming Members. HomeAway was fully aware that Plaintiffs and other owners relied on its representation of HomeAway's marketplace model when they entered into year-long subscription contracts with HomeAway, and prepaid annual subscription fees to HomeAway.

30. Consistent with its representations HomeAway had for several years adhered to the marketplace model whereby it charged Members fees to list their vacation properties on HomeAway's websites, and permitted travelers to search and book vacation rental properties without any charge other than the cost of the vacation home itself.

31. Unbeknownst to Plaintiff, and to the other members of the Class and subclass defined below, while HomeAway, Inc., and HomeAway.com, Inc., continued to publicly market and promote their services and websites as utilizing a marketplace model, their management and board of directors privately were actively discussing and pursuing changes to the business model, including the possibility of introducing a traveler fee to grow transaction-based revenue and the transition to a subscription and transaction-based revenue model, which HomeAway referred to as the "new business model."

32. The internal discussions regarding the new business model began sometime prior to the second quarter of 2015, on a date or dates presently unknown to Plaintiff.

33. Sometime in the second quarter of 2015, on a date presently unknown to Plaintiff, HomeAway began an internal review focused on identifying initiatives that would accelerate the transition to the new business model.

34. On August 20, 2015, at a regularly scheduled meeting of the board of directors of HomeAway, Inc., the board of directors and HomeAway management further discussed the proposed new business model.

35. Sometime prior to October 1, 2015, on a date or dates presently unknown to Plaintiff, HomeAway management prepared financial projections reflecting the new business model, which were shared on October 1, 2015, and October 5, 2015, with other companies which had expressed in acquiring HomeAway.

36. Despite the active preparations by HomeAway's management and directors to pursue the new business model, pursuant to which HomeAway would, for the first time, impose fees on Travelers, HomeAway continued to enter into and renew contracts with Members, including Plaintiff and the other members of the Class, predicated on the marketplace model, under which no fees were to be charged to Travelers.

37. The following description of HomeAway's websites contained in the Terms and Conditions of Plaintiff's contract with HomeAway.com, Inc., and in the Terms and Conditions of the contracts between HomeAway.com, Inc. and each of the other Class members, reflects the marketplace model:

“HomeAway.com and other Sites act as a venue to allow homeowners and property managers who advertise on the Site (each, a “member”) to offer for rent in a variety of pricing formats, a

specific vacation or short term rental property to potential renters....”

38. HomeAway’s websites similarly continued to represent and promote the absence of fees to travelers:

- a. “VRBO has no booking fees and is free for travelers.”
- b. “No traveler fees. Free to book with no hidden costs.”
- c. “No fees for travelers. No online booking fees or hidden costs.”

39. In reliance on HomeAway’s representations that it was and would remain a vacation rental marketplace free to travelers booking vacation homes on its sites, Plaintiff renewed his VRBO Platinum Level Subscription on September 29, 2015, for a term of one year, commencing October 1, 2015, for which he paid \$1,299.00 to HomeAway.com, Inc. At the time Plaintiff purchased his year-long renewal subscription, HomeAway’s fees and charges did not include any booking or service fees to travelers.

40. The Terms and Conditions of the standard express contracts that Plaintiff and the other Class members entered into with HomeAway.com, Inc. specified that charges and fees in effect at the time of the subscription agreements would govern throughout the one-year term of those agreements:

“For subscription listings, the rates in effect at the time of the member’s next subscription renewal, new listing or a member’s upgrade or any other additional or new order of any product or service will govern for such renewal or other order.”

41. The Terms and Conditions of the standard express contracts also specified that any non-clerical or substantive changes to the Terms and Conditions would be effective only if approved by the respective Member party:

“We reserve the right, in our sole discretion, to amend these Terms, in whole or in part, at any time, with or without your consent and

you acknowledge and agree that your consent to any such amendment is not required in the event the proposed amendment is clerical and/or non-substantive in nature. Notification of any amendment will be posted on the Site by the indication of the last amendment date at the top of these Terms and will be effective immediately. If you disagree with any non-clerical and/or substantive amendment to these Terms, then (i) your sole remedy as a traveler, or any other user other than a member, is to discontinue your use of the Site, and (ii) your sole remedy as a member is to withhold your consent to the applicability of the proposed amendment to your use of the Site, in which case your use of the Site will continue to be governed by the terms and conditions that were applicable to your use of the Site during the then current term of your subscription as the same were in effect immediately prior to the proposed amendment and you agree that you are responsible for keeping a copy of such terms.”

42. The decision by HomeAway to begin charging fees to travelers constituted a material, substantive change to the Terms of the subscription contract of Plaintiff and the Class. Because the rates in effect upon the renewal of Plaintiff’s contract, and the contracts of each of the other Class members, did not include any fees to travelers, the Terms and Conditions of the standard express contracts of Plaintiff and each of the other Class members with HomeAway.com, Inc. prohibited it from changing its fees or rates to impose such fees during the one-year term of Plaintiff’s contract without his consent, or during the terms of the respective contracts of the other Class members without their consent.

43. HomeAway did not seek or obtain the consent of Plaintiff or the other members of the Class to the proposed amendment to the Terms of their respective subscription contracts, and Plaintiff and the other members of the Class have withheld their consent to the applicability of the proposed amendment to their use of HomeAway sites.

44. On November 4, 2015, Expedia, Inc. acquired HomeAway, Inc., by means of a merger transaction in which Expedia, Inc. was the surviving entity. Defendant HomeAway.com, Inc. remains in existence, and continues to operate, as a subsidiary of Expedia, Inc.

45. In announcing the merger of HomeAway, Inc. with Expedia, Inc., on November 4, 2015, Brian Sharples, the co-founder and CEO of HomeAway, Inc., also announced what he characterized as “some important business model changes,” including a plan to introduce traveler service fees sometime in mid-2016.

46. On or about February 9, 2016, despite the contractual provision precluding any change in rates, or other substantive amendments, during the term of the Member’s subscription, without Member’s consent, and despite HomeAway’s repeated prior representations that use of its websites would remain free to travelers, HomeAway.com, Inc. unilaterally abandoned and materially amended the terms of its subscription contracts with Plaintiffs and the other members of the Class by abandoning its marketplace model and adopting an entirely different model and rate structure in the middle of the contractual period.

47. From that point forward, Defendant adopted a materially different “online travel agency” model (“OTA model”), whereby Defendant began to charge fees to travelers for the use of Defendant’s websites, giving these additional fees the generic label, “service fees.”

48. The “service fees” instituted and charged by HomeAway.com, Inc. in connection with its new OTA model range from 4-10% (on average 6%) of the total rental amount, thereby increasing the total cost to renters. Just as Plaintiff and other owners feared, the “service fees” have reduced the number and value of bookings by travelers, resulting in significant damage to Plaintiffs and other owners, and have breached the contracts Plaintiffs entered into with the Defendant.

49. Nevertheless, despite these contractual obligations, and without the consent of Plaintiff or of any of the other members of the Class, on February 9, 2016, HomeAway.com, Inc. unilaterally, substantively, non-clerically and materially changed its fee and rate structure. No

longer would HomeAway adhere to the marketplace model that it had previously promoted as superior to other models. No longer would HomeAway be free to travelers as it had previously promised it would remain.

50. On or about February 9, 2016, HomeAway.com, Inc. began doing precisely what it promised it would not do and exactly what the contract does not permit. It began charging service fees to travelers to book vacation rental properties listed by its Member subscribers, including Plaintiff and the other members of the Class.

51. After February 9, 2016, HomeAway.com, Inc. began charging travelers “service fees” equal to between 4% and 10% (on average 6%) of the total rental amount payable for a property.

52. The effect of HomeAway’s new “service fee” on Plaintiff and other members of the Class has been consistently negative.

53. Plaintiff and other members of the Class have been have been harmed in several ways by HomeAway’s improper unilateral adoption of its new “service fee,” which was done without notice to or consent of Plaintiff and the other members of the Class, and in breach of their respective contracts with HomeAway.com, Inc., including the following:

a. Plaintiff’s and other owners’ subscriptions to HomeAway’s websites have been devalued. Plaintiff and other owners paid hundreds or thousands of dollars to subscribe to HomeAway’s websites at a time when HomeAway did not charge fees to travelers. Had HomeAway been charging fees to travelers when Plaintiff and other owners subscribed, Plaintiff and other owners either would not have subscribed or would not have paid as much as they did for their subscriptions.

b. Plaintiff believes and avers that demand to rent his property has decreased, or infers that it will decrease, and that he and other members of the Class have lost, or face the likely future loss of, bookings of their vacation properties, due to the effective increase in the cost to travelers of renting Plaintiff's property, and the properties of other members of the Class, which Plaintiff believes and avers has reduced, or will reduce, demand for the properties at the same rental amount.

c. Defendants' conduct in unilaterally imposing service fees on travelers effectively diminished the value of the services that Plaintiff and other Owners purchase from Defendant (*i.e.* the value of their annual subscriptions).

54. HomeAway.com, Inc. appears to have recognized that its imposition of a service fee on travelers materially diminished the value of its annual subscriptions. Starting on or about July 11, 2016, HomeAway.com, Inc. stopped selling multi-level subscriptions (Platinum, Gold, Silver, Bronze and Classic), and moved to a single annual subscription fee, significantly lower in amount than the premium level annual subscription fees previously paid by Plaintiff and other members of the Class.

55. In connection with the new subscription model, HomeAway.com, Inc. also sought to induce Members to allow online booking of their properties, which HomeAway.com, Inc. enabled by means of the addition of a "Book Now" button to a property's listing.

56. On information and belief, HomeAway viewed (and continues to view) online booking as a means to increase conversion of travelers, increase its revenues and reduce its costs.

57. Many Members, however, preferred to personally interact with and vet prospective renters before committing to rent their vacation homes.

58. HomeAway.com, Inc. sought to induce Members to permit online booking of their properties in two ways. First, HomeAway.com, Inc.'s set its new annual subscription fee in a lower amount (\$349 per year) for properties as to which Members agreed to permit online booking, and at a higher amount (\$499 per year) for properties without online booking. Second, HomeAway.com, Inc. modified its property listing algorithm to give more favorable placement to properties which Members allowed to be booked by online booking, and less favorable placement to properties which were not subject to online booking – even if such properties were owned or managed by Members who had previously paid for premium-level subscriptions to obtain favorable placement.

59. Prior to the change in subscription model and property listing algorithm to favor online booking, Members, such as Plaintiff and other members of the Premium Subscription Sub-Class, who had already paid for annual premium-level subscriptions, and who preferred to personally communicate with and vet prospective renters of their vacation homes before booking a rental, could do so without penalty. Now, Members who elect not to allow online booking are penalized by less favorable placement of their properties on HomeAway.com, Inc.'s websites.

#### **CLASS AND SUB-CLASS ALLEGATIONS**

60. This action is brought and may properly be maintained as a class action pursuant to the relevant provisions of Fed. R. Civ. P. 23(b) and (c). Plaintiff brings this action on behalf of himself and all other persons similarly situated as representative members of the following proposed class (the "Class"):

All vacation home owners and managers who purchased a subscription to one or more of HomeAway's web sites between February 9, 2015 and February 8, 2016. Expressly excluded from the Class are HomeAway and its subsidiaries, affiliates, officers, directors and employees.



61. This action is also brought on behalf of the following sub-class (the “Premium Subscription Sub-Class”):

All vacation home owners and managers who purchased a premium-level subscription (designated as “Platinum,” “Gold,” “Silver,” or “Bronze”) to one or more of HomeAway’s web sites between February 9, 2015 and February 8, 2016. Expressly excluded from the Premium Subscription Sub-Class are HomeAway and its subsidiaries, affiliates, officers, directors and employees.

62. This action is also brought on behalf of the following sub-class (the “Oregon Sub-Class”):

All Oregon residents who purchased a subscription to one or more of HomeAway’s web sites between February 9, 2015 and February 8, 2016. Expressly excluded from the California Sub-Class are HomeAway and its subsidiaries, affiliates, officers, directors and employees.

63. In this suit, plaintiff seeks for the members of the Class, the Premium Subscription Sub-Class and the Oregon Sub-Class, as the case may be, both monetary relief and damages, and equitable relief, including declaratory, injunctive, restitutionary and other equitable relief, as set forth more fully below.

#### **NUMEROSITY OF THE CLASS AND SUB-CLASSES**

64. The members of each of the proposed Class, Premium Subscription Sub-Class and Oregon Sub-Class are so numerous that individual joinder of all of their respective members in one action is impracticable. While the identities and exact number of members of the Class, the Premium Subscription Sub-Class and of the Oregon Sub-Class are not presently known to Plaintiff, they are known and readily available to HomeAway, and can be ascertained through appropriate investigation and discovery. Based on publicly available information published and disseminated by HomeAway, Plaintiff estimates that Class and the Premium Subscription Sub-Class, as defined,

consists of at least tens of thousands (and likely hundreds of thousands) of members, and that the Oregon Sub-Class includes at least hundreds (and likely thousands) of members.

**EXISTENCE AND PREDOMINANCE OF  
COMMON QUESTIONS OF LAW AND FACT**

65. Common questions of law and fact arising out of the claims here at issue exist as to all of the members of the Class, the Premium Subscription Sub-Class and the Oregon Sub-Class, respectively, and predominate over any individual issues. These common legal and factual questions include, but are not limited to, the following:

a. Whether the Terms and Conditions of the Contracts prohibit HomeAway.com, Inc. from unilaterally changing its fee structure during the term of the subscriptions of Plaintiff and the other members of the Class, without their approval;

b. Whether HomeAway previously represented that it would not charge service fees to travelers;

c. Whether HomeAway began charging service fees to travelers;

d. Whether HomeAway's practice of charging service fees to travelers breached its contracts with members of the Class;

e. Whether HomeAway's practice of charging service fees to travelers deprived Class members of the benefits of their respective Contracts;

f. Whether HomeAway modified the listing algorithm used on its websites, so as to favor properties subject to online booking with preferential placement in response to queries by travelers, and to penalize properties not subject to online booking, and otherwise responsive to the same queries, but for which Plaintiff and other members of the Premium Subscription Subclass already had paid for favorable placement, with less favorable placement (making bookings less likely);

g. Whether HomeAway's conduct injured the Class, the Premium Subscription Sub-Class and the Oregon Sub-Class;

h. The amount of revenue and profit HomeAway received, and/or the amount of monies or other obligations imposed on or lost by members of the Class, the Premium Subscription Sub-Class and Oregon Sub-Class as a result of HomeAway's conduct;

i. Whether members of the Class, the Premium Subscription Sub-Class and Oregon Sub-Class are threatened with irreparable harm and/or are entitled to injunctive and other equitable relief and, if so, what is the nature of such relief; and

j. Whether members of the Class, the Premium Subscription Sub-Class and Oregon Sub-Class are entitled to payment of monetary relief and/or damages plus interest thereon, and if so, what is the nature of such relief.

#### **TYPICALITY OF CLAIMS**

66. Plaintiff's claims are typical of the claims of members of the Class, the Premium Subscription Sub-Class and of the Oregon Sub-Class. Plaintiff and all members of the Class, the Premium Subscription Sub-Class and Oregon Sub-Class entered into substantially identical contracts with HomeAway, pursuant to which they were entitled to list their respective vacation homes for rent on one or more of HomeAway's websites. Pursuant to the terms of those contracts, HomeAway was prohibited from changing its rates and charges for the listing of properties during the terms of those agreements without the express approval of Plaintiff, the Class, the Premium Subscription Sub-Class and the Oregon Sub-Class, as applicable. Notwithstanding the fact that Plaintiff and the Class, the Premium Subscription Sub-Class and Oregon Sub-Class did not approve any change to HomeAway's rates or fees, HomeAway unilaterally and without any legal right to do so changed its rates and fees during the terms of its contracts with Plaintiff and the

members of the Class, the Premium Subscription Sub-Class and Oregon Sub-Class. Plaintiff and the Class, the Premium Subscription Sub-Class and Oregon Sub-Class have been damaged by HomeAway's conduct in that they have lost prospective bookings and/or in that their subscriptions to HomeAway's websites have been devalued to an amount less than they paid for those subscriptions and in that they have lost bookings of their vacation rentals they otherwise would have received in the absence of HomeAway's impermissible "service fee" to travelers.

#### **ADEQUATE REPRESENTATION**

67. Plaintiff will fairly and adequately protect the interests of the members of the Class and the Oregon Sub-Class in that he has no irreconcilable conflicts with or interests materially antagonistic to those of the other Class or Oregon Sub-Class members.

68. Plaintiff has retained attorneys experienced in the prosecution of class actions, and who have been previously appointed by courts as adequate class counsel.

#### **SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS LITIGATION**

69. A class action is superior to other available methods for the fair and efficient group-wide adjudication of this controversy and possesses substantial benefits. Individual joinder of all members of the Class and Oregon Sub-Class is impracticable, and no other group method of adjudication of all claims asserted herein is more efficient and manageable while at the same time providing all the remedies available to ensure the full purpose of the laws at issue here are effectuated.

70. Furthermore, as the damages suffered by each individual member of the Class and the Oregon Sub-Class may be relatively small compared to the expense and burden of individual litigation in order to obtain such relief, it would be difficult or impossible for individual members of the Class and Oregon Sub-Class to redress the wrongs done to them, and the cost to the court

system of adjudicating such litigation on an individual basis would be substantial. The Class and Oregon Sub-Class members, because of the amounts at stake, would have little interest in individually controlling the prosecution of separate actions. To counsel's knowledge there is no substantial litigation concerning this controversy pending against the parties.

71. It is not anticipated that there will be any difficulties in the management of this litigation due to the focus of the wrongdoing on HomeAway's conduct and the level of its knowledge of the true facts. In contrast, individualized litigation would present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. The conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each Class member and Oregon Sub-Class member as compared to other methods for the group-wide adjudication of this controversy.

72. Thus, the Class, the Oregon Sub-Class and the court system will obtain substantial benefits from the prosecution of this action on a class-wide basis. Such benefits will include avoiding the burden and cost of multiple litigations involving identical claims, assisting consumers in curtailing illegitimate, unfair, deceptive and unlawful business practices, and ensuring a therapeutic and deterrent effect on companies such as HomeAway that indulge in breaches of contract and fraudulent practices.

73. Notice of the pendency of and any resolution of this action can be provided to the Class members by individual mailed notice, or the best notice practicable under the circumstances.

74. This action is also properly certified to proceed on a class-wide basis under Fed. R. Civ. Proc. 23(b)(1) and (b)(2) because:

a. The prosecution of separate actions by the individual members of the Class and the Oregon Sub-Class would create a risk of inconsistent or varying adjudications with respect to individual Class and Oregon Sub-Class members, thus establishing incompatible standards of conduct for HomeAway;

b. Because of the nature of some of the relief sought, the prosecution of separate actions by individual Class and Oregon Sub-Class members would create a risk of adjudication with respect to them that would, as a practical matter, be dispositive of the interests of the other Class and Oregon Sub-Class members not parties to such adjudications or would substantially impair or impede the ability of such Class and Oregon Sub-Class members to protect their interests; and

c. Defendant has acted or refused to act in respects generally applicable to the Class, thereby making appropriate final injunctive relief with regard to the members of the Class as a whole in terms of the equitable relief sought.

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

**(On Behalf of Plaintiff and the Class Against HomeAway.com, Inc.)**

75. Plaintiff restates and incorporates the facts alleged in paragraphs 1 through 67 above as if set forth in full.

76. Plaintiff asserts this First Claim for Relief against defendant HomeAway.com, Inc. only.

77. As set forth herein, Plaintiff and HomeAway.com, Inc. entered into a contract, the express terms and conditions of which are attached hereto as Exhibit A (“Plaintiff’s Contract”). HomeAway also entered into contracts containing the same material express terms and conditions

with each of the other members of the Class (the “Class Contracts” and, together with Plaintiff’s Contract, sometimes referred to collectively as the “Contracts”).

78. Plaintiff and the other members of the Class have fully performed all material covenants, conditions and obligations which each of them was required to perform by reason of their respective Contracts with HomeAway.com, Inc., except to the extent waived, excused or made impossible by HomeAway.com, Inc.’s breaches of the respective Contracts.

79. Section 21 of Plaintiff’s Contract, and of each of the Class Contracts, provides:

“For subscription listings, the rates in effect at the time of the member’s next subscription renewal, new listing or a member’s upgrade or any other additional or new order of any product or service will govern for such renewal or other order.”

80. Section 21 of Plaintiff’s Contract also provides that HomeAway.com, Inc. cannot make any non-clerical or substantive changes or amendments to the contract without Plaintiff’s consent. The Class Contracts likewise prohibit HomeAway.com, Inc. from making any non-clerical or substantive changes or amendments to such Class Contracts without the consent of the other members of the Class who are parties to the respective Class Contracts. No such consent has been given by Plaintiff or, on information and belief, by any of the other Class members.

81. As set forth herein, HomeAway.com, Inc. materially breached its obligations under Plaintiff’s Contract, and under each of the respective Class Contracts, by: (a) unilaterally, and without the consent of Plaintiff or the other members of the Class, effectively raising the cost of renting the respective vacation rental properties listed by Plaintiff and the other members of the Class on the website(s) operated by HomeAway.com, Inc., by instituting and imposing service fees upon traveler/renters that were not in effect at the time Plaintiff and the other members of the Class entered into or renewed their respective Contracts; (b) unilaterally and without the consent of Plaintiff or the other members of the Class modifying the listing algorithm used on the websites

operated by HomeAway.com, Inc., so as to favor properties subject to online booking with preferential placement in response to queries by travelers, and to penalize properties not subject to online booking, and otherwise responsive to the same queries, with less favorable placement (making bookings less likely); and (c) purporting to unilaterally make substantive, non-clerical changes to the contract.

82. As a direct and proximate result of the breaches by HomeAway.com, Inc. of its obligations under the express terms of Plaintiff's contract, and of the respective contracts of each of the other members of the Class, Plaintiff and the other members of the Class have suffered, and will continue to suffer in the future, economic damages in amounts to be proven at trial, plus interest allowable under applicable law.

83. Plaintiff and the Class also are entitled to an award of attorneys' fees pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code.

**SECOND CLAIM FOR RELIEF**  
**(Fraud/Fraudulent Inducement)**  
**(On Behalf of Plaintiff and the Class)**

84. Plaintiff restates and incorporates the facts alleged in paragraphs 1 through 67 above as if set forth in full.

85. Plaintiff asserts this Third Claim for Relief against both defendant Expedia, Inc., as successor by merger to HomeAway, Inc., and defendant HomeAway.com, Inc., jointly and severally.

86. At all times immediately before Plaintiff and the other Class members entered into or renewed their respective subscription contracts with HomeAway.com, Inc., and for at least several years prior thereto, HomeAway voluntarily disclosed and represented to the public, to Plaintiff and to the other Class members, that the absence of any charges to travelers was and



would remain a central element of its business model, and that travelers would continue to be able to use its websites to book and rent properties of its Members free of any charge by HomeAway, with the only cost to the traveler being the rent or fee payable to the Member.

87. Because HomeAway voluntarily disclosed to Plaintiff and the Class information concerning its business plan, including its election not to charge any fees to travelers using its websites, HomeAway owed Plaintiff and the Class a duty to disclose the whole truth, including a duty to disclose additional information necessary to prevent its prior and contemporaneous partial disclosures from being materially untrue or misleading, or creating a false impression on the part of Plaintiffs and the Class.

88. In particular, HomeAway owed Plaintiff and the Class a duty to disclose that HomeAway's board of directors and management were actively planning to change HomeAway's business model, and to impose charges and fees upon travelers, in the near future, before the expiration of the terms of the impending renewal term of Plaintiff's subscription contract, and before the expiration of the terms of the impending new or renewal terms of the subscription contracts of the other members of the Class.

89. By failing to fully, fairly and timely disclose the true facts regarding the planned change to HomeAway's business model, and its intent to begin imposing charges and fees upon travelers, HomeAway effectively misrepresented the true facts, and created a false impression on the part of Plaintiff and the other members of the Class concerning HomeAway's business model, and concerning its present intent not to impose charges and fees upon travelers to Plaintiff and the other Class members when they entered into or renewed their respective subscription contracts with HomeAway.

90. The representations regarding HomeAway's business model, and its ongoing intent not to impose charges and fees upon travelers, were material to Plaintiff, and the other Class members; if they had known that the representations were false, Plaintiff and the other Class members would have not entered into or renewed their respective subscription, or would only have done so at a lower price. But Plaintiff and the Class were unaware of the true facts.

91. HomeAway knew that its incomplete and misleading representations to Plaintiff and the other members of the Class regarding its business model, and its intent to continue to refrain from imposing charges and fees upon travelers, were false, and intended that Plaintiff and the other members of the Class would rely upon the false impression created by its misleading partial representations and omissions.

92. Plaintiff and the other Class members reasonably relied upon the truth of the representations by HomeAway in entering into or renewing their respective subscription contracts with HomeAway.

93. HomeAway's misrepresentations have proximately caused injury to Plaintiff and the Class in an amount to be proved at trial.

94. In failing to disclose facts which it had a duty to disclose, and thereby misrepresenting its present intent regarding its business model and intent to impose charges and fees upon travelers, HomeAway acted with actual or implied malice, entitling Plaintiff and the Class to also recover exemplary damages, in an amount determined to be just and proper.

**THIRD CLAIM FOR RELIEF**  
**(Fraudulent Concealment)**  
**(On Behalf of Plaintiff and the Class)**

95. Plaintiff restates and incorporates the facts alleged in paragraphs 1 through 67, above as if set forth in full.

96. Plaintiff asserts this Fourth Claim for Relief against both defendant Expedia, Inc., as successor by merger to HomeAway, Inc., and defendant HomeAway.com, Inc., jointly and severally.

97. HomeAway, in its marketing materials and website, represents to Members and prospective Members that, “in traveler searches, results are initially ordered according to subscription level” and that “within subscription levels, the order in which listings appear is determined by our recently introduced best match system.”

98. HomeAway, in its marketing materials and website, also represents to Members and prospective Members that vacation homes listed for rent by platinum-level subscribers will appear in search results above vacation homes listed for rent by gold-level subscribers, that vacation homes listed for rent by gold-level subscribers will appear in search results above vacation homes listed for rent by silver-level subscribers, that vacation homes listed for rent by silver-level subscribers will appear in search results above vacation homes listed for rent by bronze-level subscribers and that vacation homes listed for rent by bronze-level subscriber will appear in search results above vacation homes listed for rent by classic level subscribers.

99. In addition to these annual subscriptions, HomeAway also offers Members a pay-per-booking option, which involves no annual subscription fee, but instead charges owners a commission equal to 8% of the booking cost.

100. HomeAway, in its marketing materials and website, represented that pay-per-booking listings are listed in search results based solely upon “a combination of traveler preferences and the booking experience a listing provides.”

101. HomeAway nowhere disclosed and, indeed, affirmatively concealed, the true facts about these pay-per-booking listings: namely (on information and belief) that HomeAway’s search listing algorithm gives special weight to pay-per-booking listings, such that pay-per-booking listings appear higher in search results than they would if they were subscription listings.

102. HomeAway and Plaintiff were, at all relevant times, in a contractual relationship such that HomeAway had a duty to disclose this omitted and concealed fact.

103. That undisclosed and suppressed fact was material, such that had Plaintiff and the Class known that HomeAway’s search listing algorithm gives extra weight and higher placement to pay-per-booking listings than to subscription-based listings, Plaintiff and the Class either would not have purchased annual subscriptions from HomeAway or would have paid less for their subscriptions.

104. At all relevant times, Plaintiff and the Class were ignorant of the undisclosed and suppressed information.

105. HomeAway’s failure to disclose the undisclosed and suppressed information has proximately caused injury to Plaintiff and the Class in an amount to be proved at trial.

106. In failing to disclose that HomeAway’s search listing algorithm gives special weight to pay-per-booking listings, such that pay-per-booking listings appear higher in search results than they would if they were subscription listings, and thereby misrepresenting the value and worth of subscription based-listings, HomeAway acted with actual or implied malice, entitling

Plaintiff and the Class to also recover exemplary damages, in an amount determined to be just and proper.

**FOURTH CLAIM FOR RELIEF**  
**(Violation of Oregon Unlawful Trade Practices Act, ORS §605, et seq.)**  
**(On Behalf of Plaintiff and the Oregon Sub-Class)**

107. Plaintiff restates and incorporates the facts alleged in paragraphs 1 through 59 above as if set forth in full.

108. The Terms and Conditions attached hereto as Exhibit A are a contract of adhesion presented to Plaintiff and the Oregon Sub-Class on a take it or leave it basis.

109. Plaintiff asserts this Sixth Claim for Relief against both defendant Expedia, Inc., as successor by merger to HomeAway, Inc., and defendant HomeAway.com, Inc., jointly and severally.

110. The Oregon Unlawful Trade Practices Act, Oregon Revised Statutes section 646.605, *et seq.* (“UTPA”), provides that, subject to specified exceptions not applicable here, “a person that suffers an ascertainable loss of money or property ... as a result of another person’s willful use or employment of a method, act or practice declared unlawful under ORS 646.608, may bring an individual action in an appropriate court to recover actual damages or statutory damages of \$200, whichever is greater. The court or the jury may award punitive damages and the court may provide any equitable relief the court considers necessary or proper.” ORS 646.638(1).

111. The UTPA expressly permits a class action to be maintained under Section 646.638. *See* ORS 646.638(8).

112. Section 646.608 of the UTPA, in relevant part in subsection (1), declares that a person engages in an unlawful practice if, during the course of the person’s business, the person:

\* \* \*

(e) Represents that ... services have ... characteristics ... benefits ... or qualities that the ... services do not have....

\* \* \*

(g) Represents that ... services are of a particular standard ... if the ... services are of another.

\* \* \*

(l) Makes false or misleading representations relating to commissions or other compensation to be paid ... in exchange for submitting names of potential customers. [or]

\* \* \*

(s) Makes false or misleading representations of fact concerning the offering price of ... services.

\* \* \*

ORS 646.608(1).

113. Subsection 646.608(2) of the UTPA provides that “a representation under subsection (1) of this section may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.” ORS 646.608(2).

114. HomeAway engaged in practices declared to be unlawful under ORS 646.608 by making false or misleading assertions of fact, by means of its failure to disclose material facts, as alleged in this complaint, including, without limitation:

- a. by failing to disclose to Plaintiff and the other members of the Oregon Sub-Class, before they entered into or renewed their respective contracts, that the board of directors and management of HomeAway, Inc. and HomeAway.com, Inc. were actively discussing and pursuing a change in their business model from a marketplace model, under

which no fees were charged to renters/travelers, to an OTA Model, under which fees would be charged to renters/travelers; and

b. by failing to disclose to Plaintiff and the other members of the Oregon Sub-Class, before they entered into or renewed their respective contracts, that defendants were actively planning to change their business model in the near future, by modifying the listing algorithm used on the websites operated by HomeAway.com, Inc., so as to favor properties whose owners or managers elected to permit online booking of their properties with preferential placement in response to queries by travelers, and to penalize properties whose owners or managers did not elect to permit online booking of their properties otherwise responsive to the same queries, but for which Plaintiff and other members of the Premium Subscription Subclass already had paid for favorable placement, by subjecting such properties to less favorable placement.

By means of its failure to disclose the foregoing material facts, HomeAway

a. Represented that the services it provided has characteristics, benefits or qualities that the services did not and do not have;

b. Represented that its services were of a particular standard when they were of another;

c. Made false or misleading representations to Plaintiffs and the other members of the Oregon Sub-Class relating to the compensation to be paid to HomeAway in exchange for submitting the names of potential customers; and

d. Made false or misleading representations to Plaintiff and the other members of the Oregon Sub-Class concerning the offering price of HomeAway's services, by failing

to disclose that HomeAway was actively planning to implement imminent changes to such price in the price of its services intended to implement charges to travelers.

115. Plaintiff and the other members of the Oregon Sub-Class were harmed, and suffered ascertainable losses of money or property, as a result of HomeAway's use of methods, acts or practices declared unlawful under ORS 646.608. The harm and ascertainable loss occurred when Plaintiff and each of the other members of the Oregon Sub-Class paid a subscription fee to subscribe to one or more of HomeAway's web sites, which they never would have paid, or which were in excess of the amounts they would have paid, if the true facts were known; or paid a price in excess of what they would have paid if HomeAway had accurately disclosed its fees and planned fees to travelers who rented vacation homes listed on HomeAway's web sites.

116. As a result of HomeAway's violations of the UTPA, Plaintiff and the Oregon Sub-Class are entitled to recover the actual damages that each of them has sustained, or statutory damages of \$200, whichever is greater, together with punitive damages in an amount determined to be just and proper, or in the alternative equitable relief in the form of full restitution of the subscription fees they paid to HomeAway during the Class Period and/or in the form of full restitution of the inflated subscription fees they paid to HomeAway during the Class Period.

117. Plaintiff and the Oregon Sub-Class also seek an order enjoining HomeAway from continuing its unlawful business practices and from such future conduct.

**FIFTH CLAIM FOR RELIEF**  
**(Fraud/Fraudulent Inducement)**  
**(On Behalf of Plaintiff and the Oregon Sub-Class)**

118. Plaintiff restates and incorporates the facts alleged in paragraphs 1 through 67 above as if set forth in full.



119. At all times immediately before Plaintiff and the other members of the Oregon Sub-Class entered into or renewed their respective subscription contracts with HomeAway.com, Inc., and for at least several years prior thereto, HomeAway voluntarily disclosed and represented to the public, to Plaintiff and to the other members of the Oregon Sub-Class, that the absence of any charges to travelers was a central element of its business model, thereby implying that travelers would continue to be able to use its websites to book and rent properties of its Members free of any charge by HomeAway, with the only cost to the traveler being the rent or fee payable to the Member.

120. Because HomeAway voluntarily disclosed to Plaintiff and the Oregon Sub-Class information concerning its business model and plans, including its election not to charge any fees to travelers using its websites, HomeAway owed Plaintiff and the Oregon Sub-Class a duty to disclose the whole truth, including a duty to disclose additional information necessary to prevent its prior and contemporaneous partial disclosures from being materially untrue or misleading, or creating a false impression on the part of Plaintiffs and the Oregon Sub-Class.

121. In particular, HomeAway owed Plaintiff and the Oregon Sub-Class a duty to disclose that HomeAway's board of directors and management were actively planning to change HomeAway's business model by imposing charges and fees upon travelers, and by changing the listing algorithm in the near future, as set forth above, before the expiration of the terms of the impending renewal term of Plaintiff's subscription contract, and before the expiration of the terms of the impending new or renewal terms of the subscription contracts of the other members of the Oregon Sub-Class.

122. By failing to fully, fairly and timely disclose the true facts regarding the planned change to HomeAway's business model, and its intent to begin imposing charges and fees upon

travelers, HomeAway effectively misrepresented the true facts, and created a false impression on the part of Plaintiff and the other members of the Oregon Sub-Class concerning HomeAway's business model, and concerning its present intent not to impose charges and fees upon travelers to Plaintiff and the other Oregon Sub-Class members when they entered into or renewed their respective subscription contracts with HomeAway.

123. The representations regarding HomeAway's business model, and its ongoing intent not to impose charges and fees upon travelers, were material to any rational prospective Member, including Plaintiff, and the other members of the Oregon Sub-Class; if they had known that the representations were false, Plaintiff and the other members of the Oregon Sub-Class would have not entered into or renewed their respective subscription, or would only have done so at a lower price.

124. Because of HomeAway's deliberate failure to disclose material facts, Plaintiff and the Oregon Sub-Class were unaware of the true facts.

125. HomeAway knew that its incomplete and misleading representations to Plaintiff and the other members of the Oregon Sub-Class regarding its business model, and its intent to continue to refrain from imposing charges and fees upon travelers, were false, and intended that Plaintiff and the other members of the Oregon Sub-Class would rely upon the false impression created by its misleading partial representations and omissions.

126. Plaintiff and the Oregon Sub-Class justifiably relied to their detriment upon the truth of the representations by HomeAway in entering into or renewing their respective subscription contracts with HomeAway.

127. HomeAway's misrepresentations have proximately caused injury to Plaintiff and the Oregon Sub-Class in an amount to be proved at trial.

128. In failing to disclose facts which it had a duty to disclose, and thereby misrepresenting its present intent regarding its business model and intent to impose charges and fees upon travelers, HomeAway acted with actual or implied malice, entitling Plaintiff and the Oregon Sub-Class to also recover exemplary damages, in an amount determined to be just and proper.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment against defendants, and each of them, jointly and severally with respect to those claims asserted against both defendants, as follows:

1. An Order certifying the plaintiff Class, the Premium Subscription Sub-Class and the Oregon Sub-Class, and appointing Plaintiff and his counsel to represent the Class, the Premium Sub-Class and the Oregon Sub-Class;
2. For compensatory damages in an amount to be proven at trial;
3. For treble damages, with respect to the statutory claims providing for such damages;
4. For declaratory, equitable, injunctive and/or monetary relief as requested;
5. For pre- and post-judgment interest;
6. For exemplary and punitive damages;
7. For attorneys' fees and costs; and
8. For such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all claims so triable and an advisory jury for a factual determination on all equitable claims.

Dated: October 31, 2016

Respectfully submitted,

/s/ Robert C. Alden

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*Counsel for Plaintiff James May and the Putative Class*

# EXHIBIT A

# Terms and Conditions

*Last updated: September 15, 2015*

By using or accessing HomeAway.com, VRBO.com, GreatRentals.com, VacationRentals.com, CyberRentals.com, HomeAway.com.mx, HomeAway.ca, HomeAway.com.ar, HomeAway.com.co, software.HomeAway.com, InstantSoftware.com, Escapia.com, ClearStay.com, a subdomain of any such websites, any mobile application for such websites or any other website operated by us on which these Terms and Conditions are posted via a link or otherwise (each referred to herein as a “Site”), you acknowledge that you agree to and are subject to the following terms and conditions, as well as our [Privacy Policy](#) (collectively, the “Terms”). If you do not fully agree to these Terms, Privacy Policy and any other terms and conditions posted or linked to any Site, you are not authorized to access or otherwise use the Site. Under these Terms, “use” or “access” of the Site specifically includes any direct or indirect access or use of the Site or any cached version of the Site and any direct or indirect access or use of any information or content on the Site, regardless of how obtained and the term “Site” includes, without limitation, any cached version thereof.

Each Site is operated by HomeAway.com, Inc. (a subsidiary of HomeAway, Inc.) or a subsidiary of HomeAway, Inc., as explained further under “General – HomeAway Corporate Entities” below. Unless otherwise specified, the entity controlling the Site you are accessing is referred to herein as “HomeAway,” “we,” “us” or “our”.

You should read through all the Terms carefully. The Terms constitute a legally binding agreement between you and HomeAway. You are not authorized to use this Site unless you are at least 18 and able to enter into legally binding contracts. We do not knowingly collect the information of anyone under the age of 18.

If you arrived on the Site after having been re-directed or otherwise clicking on another website, you agree that these Terms shall govern your use of this Site.

## **1. The Site is a Venue and We are Not a Party to any Rental Agreement or other Transaction Between Users of the Site.**

We urge all users to be responsible about their use of this Site and any transaction entered into as a result of either listing a property or renting a property. We do not own or manage, nor can we contract for, any vacation rental property listed on a Site. HomeAway.com and other Sites act as

a venue to allow homeowners and property managers who advertise on the Site (each, a “member”) to offer for rent in a variety of pricing formats, a specific vacation or short term rental property to potential renters (each, a “traveler” and, collectively with a member, the “users”). rent (also referred to as “users” herein). “Members” may also include property owners or managers who originally advertised their properties on another website and their listings have been redistributed on the Site. We also may offer online booking or other tools or services to allow users to communicate with each other and enter into rental agreements or other transactions.

We are not a party to any rental or other agreement between users. This is true even if the Site allows you to book a rental or provides other ancillary products or services, as the Site may facilitate booking a rental or other tools, services or products, but we are not a party to any rental or other agreement between users.

As a result, any part of an actual or potential transaction between a traveler and a member, including the quality, condition, safety or legality of the properties advertised, the truth or accuracy of the listings (including the content thereof or any review relating to any property), the ability of members to rent a vacation property or the ability of travelers to contract for properties are solely the responsibility of each user. You acknowledge and agree that you may be required to enter into one or more separate agreements, waivers or terms and conditions prior to making a booking or purchasing a product or service and may place additional restrictions on your booking, product or service.

Responsibility for applicable laws, rules and regulations: Users agree that they are responsible for, and agree to abide by, all laws, rules and regulations applicable to their use of the Site, their use of any tool, service or product offered on the Site and any transaction they enter into on the Site or in connection with their use of the Site.

Members further agree that they are responsible for and agree to abide by all laws, rules and regulations applicable to the listing of their rental property and the conduct of their rental business, including but not limited to any and all laws, rules, regulations or other requirements relating to taxes, credit cards, data and privacy, taxes, permits or license requirements, zoning ordinances, safety compliance and compliance with all anti-discrimination and fair housing laws, as applicable. Please be aware that, even though we are not a party to any rental transaction and assume no liability for legal or regulatory compliance pertaining to rental properties listed on the Site, there may be circumstances where we are nevertheless legally obligated (as we may determine in our sole discretion) to provide information relating to your listing in order to comply with governmental bodies in relation to investigations, litigation or administrative proceedings, and we may choose to comply with or disregard such obligation in our sole discretion. Members who accept credit card, banking or other payment information from travelers agree to properly handle and safeguard all such information in accordance with applicable legal and regulatory requirements and best practices.

Travel Advisories: Although most travel is completed without a serious incident, travel to some destinations may involve more risk than others. We urge travelers to research the location they wish to visit and to review travel prohibitions, warnings, announcements and advisories issued by the United States Government prior to booking. Information may be found at [www.state.gov](http://www.state.gov), [www.tsa.gov](http://www.tsa.gov), [www.dot.gov](http://www.dot.gov), [www.faa.gov](http://www.faa.gov), [www.cdc.gov](http://www.cdc.gov), [www.treas.gov/ofac](http://www.treas.gov/ofac) and [www.customs.gov](http://www.customs.gov).

Warnings of Suspicious Activity: While we do take certain measures with a goal to assist users to avoid potentially fraudulent or other illegal activity of which we become aware, we assume no liability or obligation to take any such measures or actions. When we provide warnings or messages to users about any such activity, we do not warrant that such messages are accurate or that such messages will reach any or all users they should have reached in a timely manner or at all or that such messages or measures will prevent any harm or otherwise have any impact.

## **2. Limited License to Use the Site.**

Users are granted a limited, revocable, non-exclusive license to access the Site and the content and services provided on the Site solely for the purpose of advertising a vacation or short term

rental property, searching for a property, purchasing or researching (for the purpose of inquiring about purchasing) any of the products or services offered on any Site, participating in an interactive area hosted on any Site or for any other purpose clearly stated on a Site, all in accordance with the Terms. Any use of the Site that is not for one of these purposes or otherwise in accordance with the Terms or as otherwise authorized by us in writing is expressly prohibited.

### 3. Unauthorized Uses of the Site.

The license to use the Site only extends to the uses expressly described herein. The license to use the site granted to users in these Terms does not include any right of collection, aggregation, copying, scraping, duplication, display or derivative use of the Site nor any right of use of data mining, robots, spiders or similar data gathering and extraction tools without our prior written permission; provided, however, that a limited exception from the foregoing exclusion is provided to general purpose internet search engines that use tools to gather information for the sole purpose of displaying hyperlinks to the Site, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file. "General purpose internet search engines" do not include a website or search engine or other service that provides classified listings or property rental advertisements, or any subset of the same or which is in the business of providing vacation property rental services or other services that compete with us.

Unauthorized uses of the Site also include, without limitation, those listed below. You agree not to do any of the following, unless otherwise previously specifically agreed to by us:

- Any commercial use (other than by members with a fully paid up subscription in good standing (a "**valid subscription**") or by members pursuant to a valid license to software offered on a Site (a "**valid license**") of the Site or any content on the Site;
- Any use of the Site or the tools and services on the Site for the purpose of booking or soliciting a rental for a property other than a property listed under a valid subscription;
- Copy, reproduce, upload, post, display, republish, distribute, or transmit any part of the content in any form whatsoever;
- Reproduce any portion of the Site on your website or otherwise, using any device including, but not limited to, use of a frame or border environment around the Site, or other framing technique to enclose any portion or aspect of the Site, or mirror or replicate any portion of the Site;
- Deep-link to any portion of the Site without our express written permission;
- Modify, translate into any language or computer language, or create derivative works from, any content or any part of the Site;
- Reverse engineer any part of the Site;
- Sell, offer for sale, transfer, or license any portion of the Site in any form to any third parties;
- Use any robot, spider, scraper, other automatic device, or manual process to monitor, copy, or keep a database copy of the content or any portion of the Site;
- Use the Site and its inquiry functionality other than to advertise and/or research vacation rentals, to make legitimate inquiries to our members or any other use expressly authorized on the Site;
- Use the Site or post or transmit information that is in any way false, fraudulent, or misleading, including making any reservation or inquiry under false pretenses, or taking any action that may be considered phishing or that would give rise to criminal or civil liability;
- Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, indecent, inflammatory, sexually explicit, pornographic or profane material;
- Violate, plagiarize or infringe the rights of us or third parties including, without



limitation, copyright, trademark, patent, trade secrets, rights of publicity or privacy or any other intellectual or proprietary rights; or

- Use or access the Site in any way that, in our sole discretion, adversely affects or could adversely affect the performance or function of the Site or any other system used by us or the Site.

If you are aware of or experience any content, activity or communication through or in connection with the Site that appears to be in violation of the above restrictions, or in violation of any other provision of these Terms, we ask that you please inform us of any such violation by contacting us as set forth under "Contact Us" below.

#### **4. Proprietary Rights and Downloading of Information from the Site.**

The Site and all content and information on the Site are protected by copyright as a collective work and/or compilation, pursuant to applicable U.S. and international copyright laws and conventions and database rights. You agree to abide by any and all copyright notices, information, or restrictions contained in or relating to any content on the Site. Copying, storing or otherwise accessing the Site or any content on the Site for other than for your personal, noncommercial use (other than in accordance with a valid subscription) is expressly prohibited without prior written permission from us.

As part of the rental inquiry process, for your own personal, noncommercial use and not for further distribution, you may download, display, and/or print one copy of any portion of the Site. You may not modify the same, and you must reproduce our copyright notice in the form displayed on the relevant portion(s) of the Site that you desire to download, display or print.

#### **5. Your E-mail Address and Data; Our Privacy Policy; Data Transmittal.**

When you provide your e-mail address, name or other information to us in connection with your use or access to the Site, any service or tool provided on the Site or otherwise, you agree to allow the Site and its affiliated websites to add your e-mail address, name or other information provided to our database of users. You may receive one or more promotional e-mails from either the Site or a website of one of HomeAway's affiliates. You are welcome to opt not to receive such promotional e-mails from the Site or such affiliates' websites at any time. Please review our [Privacy Policy](#) for more information regarding our email and other data collection practices and safeguards, and how to opt not to receive such emails. Your use of the Site signifies your acknowledgment of, and agreement, with our Privacy Policy.

Each user acknowledges and agrees that, regardless of such user's physical location, we may store and process any data transmitted to the Site from such user at locations both within and outside of the United States.

In the event that you use any of our tools that we may from time to time offer that integrate in any way with a third party website to which you have provided data or information, you acknowledge and agree that such third party website shall be responsible for how the data or information you have provided to such website is handled.

#### **6. Identity Verification.**

User verification on the Internet is difficult and we cannot, and do not assume any responsibility for, the confirmation of each user's purported identity. We encourage you to communicate directly with a traveler or member through the tools available on the Site, though even this does not assure you of the identity of the person with which you are communicating. We further

encourage you to take other reasonable measures to assure yourself of the other person's identity and, for travelers, of the property and relevant details of your booking or proposed booking.

You agree to (i) keep your password and online ID for both your account with us and your email account secure and strictly confidential, providing it only to authorized users of your accounts, (ii) instruct each person to whom you give your online ID and password that he or she is not to disclose it to any unauthorized person, (iii) notify us immediately and select a new online ID and password if you believe your password for either your account with us or your email account may have become known to an unauthorized person, and (iv) notify us immediately if you are contacted by anyone requesting your online ID and password. Further, if we suspect any unauthorized access to your account, upon our request, you agree to promptly change your ID and password and take any other related action as we may reasonably request.

We discourage you from giving anyone access to your online ID and password for your account with us and your email account. However, if you do give someone your online ID and online password, or if you fail to adequately safeguard such information, you are responsible for any and all transactions that the person performs while using your account with us or your email account, even those transactions that are fraudulent or that you did not intend or want performed.

EACH USER ACKNOWLEDGES AND AGREES THAT: (1) NEITHER HOMEAWAY NOR ANY OF ITS AFFILIATES WILL HAVE ANY LIABILITY TO ANY USER FOR ANY UNAUTHORIZED TRANSACTION MADE USING ANY USER'S ID OR PASSWORD; AND (2) THE UNAUTHORIZED USE OF YOUR ONLINE ID AND PASSWORD FOR YOUR HOMEAWAY ACCOUNT OR YOUR EMAIL ACCOUNT COULD CAUSE YOU TO INCUR LIABILITY TO BOTH HOMEAWAY AND OTHER USERS. Further, we may, without notice to you, suspend or cancel your listing at any time even without receiving notice from you if we suspect, in our sole discretion, that your account with us or your email account is being used in an unauthorized or fraudulent manner.

#### **7. Limitations on Communications and Use of Other Users' Information; No Spam.**

You agree that, with respect to other users' personal information that you obtain directly or indirectly from or through the Site or through any Site-related communication, transaction or software, we have granted to you a license to use such information only for: (a) Site-related communications that are not unsolicited commercial messages, (b) using services offered through the Site, and (c) inquiring about or otherwise facilitating a financial transaction between you and the other user related to the purpose of the Site (such as inquiring about or booking an online booking or charging a personal credit card). Any other purpose will require express permission from the user. You may not use any such information for any unlawful purpose or with any unlawful intent.

In all cases, you must give users an opportunity to remove their information from your address book or database or other records and a chance to review what information you have collected about them. In addition, under no circumstances, except as defined in this provision, may you disclose personal information about another user to any third party without both our consent and the consent of the other user. You agree that other users may use your personal information to communicate with you in accordance with this provision. Further, you agree that you will protect other users' personal information with the same degree of care that you protect your own confidential information (using at minimum a reasonable standard of care), and you assume all liability for the misuse, loss, or unauthorized transfer of such information.

We do not tolerate spam or unsolicited commercial electronic communications of any kind. Therefore, without limiting the foregoing, you are not licensed to add a Site user, even a user who has rented a vacation property from you or to you, to your mailing list (email or physical mail) without the user's express consent. You may not use any tool or service on the Site to send spam or unsolicited commercial electronic communications of any kind or in any other way that would violate these Terms. You are responsible for all content you provide to the Site or through any tool or service provided on the Site.

#### **8. Responsibility for Property Listings, Reviews and Other User contributed Content; Participation in Interactive Forums.**

We have no duty to pre-screen content posted on the Site by members, travelers or other users, whether directly contributed by the user or contributed by us or a third party on behalf of the user (including, without limitation, property listings, reviews of a rental property, participation in an interactive community, forum or blog (each an “**Interactive Forum**”) or any other content provided by a user to the Site), (collectively, “**user contributed content**”). We are not responsible for user contributed content. “**User contributed content**” also includes information that a user or any other person provided to a third party website or mobile application which is then provided to our Site by a tool we offer or any other exchange of user contributed content we have authorized.

We reserve the right to decline to permit the posting on the Site of or to remove from the Site any user contributed content that fails to meet our [Content Guidelines](#), any other guidelines posted on a Site or if it otherwise violates these Terms, each as determined in our discretion. We may also remove user contributed content if it is brought to our attention, such as by notice given to us by a user or any third party that any part of these Terms, or any other requirements governing the posting of such content, has/have been apparently breached in respect of such content, as determined in our consent. Finally, we reserve the right, but do not assume the obligation, to edit a member's content or user contributed content in a non-substantive manner solely to cause the content to comply with our content guidelines or formatting requirements or to provide services to members to create or improve on listings (such as translation services), in accordance with information we have about the property listed. Users remain responsible for reviewing their user-contributed content to ensure it is accurate and not misleading.

At a minimum, user contributed content must (as determined by us in our discretion):

- not infringe anyone's rights, violate the law or otherwise be inappropriate;
- not include personal information of another that can be used to identify or contact any person;
- not include unsolicited promotional content, advertising, political campaigns, contests, raffles or solicitations;
- be directly related to the Site, business service, product or forum where the content is submitted;
- not be obscene, abusive, discriminatory or illegal content; or
- not be false or misleading.

Property Listings: All property listings on the Site are the sole responsibility of the member (who may be the owner or a property manager or duly authorized property manager or agent of the owner) and we specifically disclaim any and all liability arising from the alleged accuracy of the listings, reviews, or any alleged breaches of contract on a user's part. Members are solely responsible for keeping their property information up-to-date on the Site, including, but not limited to any and all representations about any property, its amenities, location, price, and its availability for a specific date or range of dates. We do not represent or warrant that any of the

copy, content, property reviews, guest book entries, property location, suitability, pricing or availability information published on the Site is accurate or up-to-date even in the case where prospective travelers have searched for specific special offers, dates, or types of properties. We may from time to time provide or facilitate services to Members to create or improve the quality of their property listings. We also may from time to time create new or otherwise change the location or geographic descriptions we use to identify properties in their listings and search results. Consequently, we may change the location or geographic description associated with any property listing at any time without notice. However, we assume no responsibility to verify property listing content or the accuracy of the location. Members are solely responsible for ensuring the accuracy of location, geographic and other content and location or geographic descriptions and agree to promptly correct (or contact us to correct) any inaccuracy and travelers are solely responsible for verifying the accuracy of such content and descriptions.

**Responsibility for All Other User Contributed Content:** All other user contributed content is the sole responsibility of the user who contributed such content, whether such user contributed the content directly or through a third party website. Users are solely responsible for their user contributed content and we specifically disclaim all liability for user contributed content.

The user represents and warrants that the user owns or otherwise controls and have all legal rights to the user's submission and the name or other identifier used in connection with such submission including, but not limited to, all the rights necessary to provide, post, upload, input or submit the user contributed content. We reserve the right to request a proof of ownership or permission, and to refuse to post user generated content without such proof or if such proof is, in our sole discretion, insufficient.

**License and Rights Granted to Us:** By submitting or authorizing user contributed content, you grant to us and our affiliates a perpetual, worldwide, irrevocable, unrestricted, non-exclusive, royalty-free and fully paid-up license to use, copy, license, sublicense (through multiple tiers), adapt, distribute, display, publicly perform, reproduce, transmit, modify, edit and otherwise exploit the copy, the photographs and the likenesses (if any) of any of your user contributed content, in connection with our business or the business of our affiliates. Notwithstanding the foregoing, following the termination or expiration of a property listing subscription, we will not continue to display the user contributed content that was displayed in such listing.

You further grant us and our affiliates the ability to copyright and protect the user contributed content, including the images, copy, and content available via any member's listing, from the unauthorized use by unaffiliated third parties who may, from time to time, attempt to pirate such information via electronic or other means. This includes, but is not limited to, the right to file suit to seek injunctive relief to protect such material. You further agree to assist us—at our expense and control—to protect such copyrighted material from unauthorized redistribution.

You agree that we may sublicense all the rights granted to us under these Terms to one or more third parties we may contract with to display all or part of the member's property listing or otherwise provide promotional or other services related to our business.

Further, each member agrees that we may reproduce in whole or in part any photographic material supplied by such member in the promotion of either such member's property or the promotion of the Site.

In the event that it is determined that you retain any rights of attribution, integrity or any other moral rights in any user contributed content, you hereby declare that you do not require that any personally identifying information be used in connection with the user contributed content or any

derivative works thereof and that you have no objection to the publication, use, modification, deletion or exploitation of the user contributed content by us or our affiliates.

Privacy Policy: We adhere to strong principles of privacy. You agree that we may access and use your user contributed content in accordance with these Terms or our [Privacy Policy](#) and we agree that we will only disclose your user contributed content in accordance with these Terms and our Privacy Policy.

## **9. Social Media or Third Party Websites.**

If the Site offers a tool or service which allows us to access or use any profile or other information about you that you have provided to Facebook or another third party website (each a “**Social Media Site**”) and you decide to use such a tool or service, you acknowledge and agree that:

- (i) The information or content that are a part of your Social Media Site profile, which you have designated as “public” (or a similar designation) (with such information or content and referred to herein as “**Social Media Content**”) may be accessed and used by us in connection with the Site;
- (ii) The Social Media Content will be considered “user generated content” under these Terms and both you and we shall have the same rights and responsibilities as you and we have with respect to user generated content under these Terms;
- (iii) In the event that the Social Media Content was for any reason misclassified with a public or similar designation or is otherwise inaccurate or to which you do not agree with for any reason, you agree to work with the Social Media Site to make any changes or resolve any disputes and acknowledge that we will not be able to provide you with recourse; and
- (iv) The operation of your profile and account with and on the Social Media Site shall continue to be governed by the terms and conditions and privacy policy of such Social Media Site.

## **10. Translations and Maps.**

If any user contributed content created by members or users is translated for display on any Site or any site of any affiliate of HomeAway, we cannot guarantee the accuracy or quality of such translation and the member or user is solely responsible for the review, verification and accuracy of such translation. Unless we specify otherwise to the user or member, any translation services are offered by us free of charge.

Maps provided on the Site that are provided by Google are subject to the Google Maps terms and conditions located at: [http://www.google.com/intl/en\\_us/help/terms\\_maps.html](http://www.google.com/intl/en_us/help/terms_maps.html).

## **11. Notification of Infringement; DMCA Policy.**

We respect the intellectual property rights of others, and HomeAway does not permit, condone, or tolerate the posting of any content on the Site that infringes any person's

copyright. HomeAway will terminate, in appropriate circumstances, a member or traveler who is the source of repeat infringements of copyright. Should you become aware of or suspect any copyright infringement on this Site, please refer to our [procedures for Notification of Copyright Infringement](#).

## **12. Unsolicited Ideas and Feedback.**

Unsolicited Ideas: From time to time, users submit to us ideas or suggestions pertaining to our business, such as ideas for new or improved products or technologies, website or tool enhancements, processes, materials, marketing plans or new product names. We are under no obligation to review or consider them. If you choose to submit any ideas, original creative artwork, suggestions or other works (“**submissions**”) in any form to us, then regardless of what you say, write or provide to us in connection with your submissions, the following terms shall apply.

The sole purpose of this policy is to avoid potential misunderstandings or disputes in the event that any part of our business, such as our products, websites, technologies or marketing strategies, seem similar to any of your submissions. If you provide any submissions to us, you agree that: (1) your submission and its contents will automatically become the property of HomeAway, without any compensation to you; (2) HomeAway may use or redistribute any such submission and its contents for any purpose and in any way; (3) there is no obligation for HomeAway to review any submission; and (4) there is no obligation to keep any submission confidential.

Feedback on our Business: We welcome your feedback regarding many areas of our business. If you want to send us your feedback, we simply request that you send it to us using the links under “General – Contact Us” below or you can choose from the many other listed areas for your feedback. Please provide only specific feedback on our websites and services. Keep in mind that we assume no obligation to keep any feedback you provide confidential and we reserve the right to use or disclose such information in any manner.

To provide feedback, you can contact us as provided under “Contact Us” below.

## **13. Software Available on the Site.**

The Site is controlled and operated by HomeAway or an affiliate of HomeAway in the United States. Software available on the Site (the “Software”) is subject to United States export controls. No Software available on the Site or software available any other site operated by HomeAway or an affiliate of HomeAway in the United States may be downloaded or otherwise exported or re-exported (a) into (or to a resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria or any other country to which the United States has embargoed goods, or (b) anyone on the United States Treasury Department’s list of Specially Designated Nationals or the United States Commerce Department’s Table of Deny Orders. By using the Site, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.



All Software is the copyrighted work of HomeAway, an affiliate of HomeAway or an identified third party. Your use of such Software is governed by these Terms and the terms of any additional license agreement that accompanies or is included with such Software. If the Software is not accompanied by an additional license agreement, we hereby grant you a limited, personal, nontransferable license to use the Software for viewing and using this Site in accordance with these Terms and for no other purpose.

THE SOFTWARE IS WARRANTED, IF AT ALL, ONLY ACCORDING TO THE TERMS OF THE LICENSE AGREEMENT ACCOMPANYING SUCH SOFTWARE. COPYING OR REPRODUCING ANY SOFTWARE AVAILABLE ON THIS SITE IS EXPRESSLY PROHIBITED, EXCEPT AS SPECIFICALLY PROVIDED FOR IN A LICENSE AGREEMENT ACCOMPANYING SUCH SOFTWARE.

#### **14. Links to Third Party Sites.**

This Site may contain links and pointers to other Internet sites, resources, and sponsors of the Site. Links to and from the Site to other third-party sites, maintained by third parties, do not constitute an endorsement by us of any third parties, the third-party sites or the contents thereof. We may also provide tools to allow interaction between the Site and a third party site, such as a Social Media Site. We are not responsible in any way for such third-party sites or resources and your use of such sites and resources will not be governed by these Terms.

#### **15. Limitation of Liability.**

**IN NO EVENT WILL HOMEAWAY, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, CONSULTANTS, AGENTS AND/OR EMPLOYEES (COLLECTIVELY, THE "HOMEAWAY GROUP"), OR ANY THIRD PARTY PROVIDER OF A SERVICE OR TOOL OFFERED ON ANY SITE OF A MEMBER OF THE HOMEAWAY GROUP (EACH A "THIRD PARTY PROVIDER"), BE LIABLE FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM (A) OUR SITE, (B) THESE TERMS, (C) ANY BREACH OF THESE TERMS BY YOU OR A THIRD PARTY, (D) USE OF THE SITE, TOOLS OR SERVICES WE PROVIDE, OR ANY THIRD PARTY PROVIDER PROVIDES, RELATED TO THE BUSINESS WE OPERATE ON THE SITE, BY YOU OR ANY THIRD PARTY (E) ANY USER CONTRIBUTED CONTENT, (F) INTERACTION BETWEEN OUR SITE AND ANY THIRD PARTY SITE, INCLUDING WITHOUT LIMITATION A SOCIAL MEDIA SITE, FACILITATED BY A TOOL OR SERVICE ON OUR SITE AND/OR (G) ANY ACTUAL OR ATTEMPTED COMMUNICATION OR TRANSACTION, INCLUDING WITHOUT LIMITATION, ANY PAYMENT TRANSACTION (EVEN IF WE OR ANY THIRD PARTY PROVIDER RECEIVE A COMMISSION OR FEE IN CONNECTION THEREWITH) BETWEEN USERS, IN EACH CASE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) STRICT LIABILITY, (4) TORT, (5) NEGLIGENCE, OR (6) ANY OTHER CAUSE OF ACTION,**

**TO THE MAXIMUM EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW.**

**IF YOU ARE DISSATISFIED WITH THE SITE, YOU DO NOT AGREE WITH ANY PART OF THE TERMS, OR HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST US, ANY THIRD PARTY PROVIDER OR ANY USER OF THE SITE WITH RESPECT TO THESE TERMS OR THE SITE, THEN YOUR SOLE AND EXCLUSIVE REMEDY AGAINST US IS TO DISCONTINUE USING THE SITE. IN ALL EVENTS, OUR LIABILITY, AND THE LIABILITY OF ANY MEMBER OF THE HOMEAWAY GROUP, TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCE ARISING OUT OF OR IN CONNECTION WITH THE SITE IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES YOU PAY TO US IN THE TWELVE MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY OR (B) \$100.00 IN THE AGGREGATE FOR ALL CLAIMS.**

**16. Disclaimers.**

**THE SITE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE SITE, IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR THE CONTENT ON THE SITE OR THE MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SITE, FOR ANY PRODUCTS OR SERVICES OR HYPERTEXT LINKS TO THIRD PARTIES OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SITE OR ANY LINKED SITE, EVEN IF WE BECOME AWARE OF ANY SUCH BREACHES. FURTHER, WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE OR ANY MATERIALS OR CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.**

**YOU ACKNOWLEDGE AND AGREE THAT ANY TRANSMISSION TO AND FROM THIS SITE IS NOT CONFIDENTIAL AND YOUR COMMUNICATIONS OR USER CONTRIBUTED CONTENT MAY BE READ OR INTERCEPTED BY OTHERS. YOU FURTHER ACKNOWLEDGE AND AGREE THAT BY SUBMITTING COMMUNICATIONS OR USER CONTRIBUTED CONTENT TO US AND BY POSTING INFORMATION ON THE SITE, INCLUDING PROPERTY LISTINGS, NO CONFIDENTIAL, FIDUCIARY, CONTRACTUALLY IMPLIED OR OTHER RELATIONSHIP IS CREATED BETWEEN YOU AND US OTHER THAN PURSUANT TO THESE TERMS.**



**YOU ACKNOWLEDGE AND AGREE THAT YOU WILL NOT HOLD OR SEEK TO HOLD US OR ANY THIRD PARTY PROVIDER RESPONSIBLE FOR THE CONTENT PROVIDED BY ANY USER, INCLUDING, WITHOUT LIMITATION, ANY TRANSLATION THEREOF, AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT WE ARE NOT A PARTY TO ANY RENTAL TRANSACTION OR OTHER TRANSACTION BETWEEN USERS OF THE SITE. WE HAVE NO CONTROL OVER AND DO NOT GUARANTEE (OTHER THAN PURSUANT TO ANY GUARANTEE THE MAY BE OFFERED ON THE SITE) THE SAFETY OF ANY TRANSACTION, RENTAL PROPERTY OR THE TRUTH OR ACCURACY OF ANY LISTING OR OTHER CONTENT PROVIDED ON THE SITE.**

**YOU FURTHER ACKNOWLEDGE THAT BY DISPLAYING INFORMATION OR PROPERTY LISTINGS IN PARTICULAR DESTINATIONS, WE DO NOT REPRESENT OR WARRANT THAT TRAVEL TO SUCH DESTINATIONS IS WITHOUT RISK AND ARE NOT LIABLE FOR DAMAGES WITH RESPECT TO TRAVEL TO ANY DESTINATION.**

**17. Release; Indemnification.**

**IN THE EVENT THAT YOU HAVE A DISPUTE WITH ONE OR MORE OTHER USERS OF THE SITE (INCLUDING, WITHOUT LIMITATION, ANY DISPUTE BETWEEN USERS REGARDING ANY TRANSACTION OR USER CONTRIBUTED CONTENT) OR ANY THIRD PARTY PROVIDER OR ANY THIRD PARTY WEBSITE THAT MAY BE LINKED TO OR FROM OR OTHERWISE INTERACT WITH THE SITE, INCLUDING WITHOUT LIMITATION ANY SOCIAL MEDIA SITE, YOU HEREBY AGREE TO RELEASE, REMISE AND FOREVER DISCHARGE EACH MEMBER OF THE HOMEAWAY GROUP, EACH OF THEIR RESPECTIVE AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, AND ALL OTHER RELATED PERSONS OR ENTITIES FROM ANY AND ALL MANNER OF RIGHTS, CLAIMS, COMPLAINTS, DEMANDS, CAUSES OF ACTION, PROCEEDINGS, LIABILITIES, OBLIGATIONS, LEGAL FEES, COSTS, AND DISBURSEMENTS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, WHICH NOW OR HEREAFTER ARISE FROM, RELATE TO, OR ARE CONNECTED WITH SUCH DISPUTE AND/OR YOUR USE OF THE SITE.**

**IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."**

**YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD EACH MEMBER OF THE HOMEAWAY GROUP (COLLECTIVELY, THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY AND COSTS INCURRED BY THE INDEMNIFIED PARTIES IN CONNECTION WITH ANY CLAIM**

**ARISING OUT OF YOUR USE OF THE SITE OR OTHERWISE RELATING TO THE BUSINESS WE CONDUCT ON THE SITE (INCLUDING, WITHOUT LIMITATION, ANY POTENTIAL OR ACTUAL COMMUNICATION, TRANSACTION OR DISPUTE BETWEEN YOU AND ANY OTHER USER OR THIRD PARTY), ANY CONTENT POSTED BY YOU OR ON YOUR BEHALF OR POSTED BY OTHER USERS OF YOUR ACCOUNT TO THE SITE, ANY USE OF ANY TOOL OR SERVICE PROVIDED BY A THIRD PARTY PROVIDER, ANY USE OF A TOOL OR SERVICE OFFERED BY US THAT INTERACTS WITH A THIRD PARTY WEBSITE, INCLUDING WITHOUT LIMITATION ANY SOCIAL MEDIA SITE OR ANY BREACH BY YOU OF THESE TERMS OR THE REPRESENTATIONS, WARRANTIES AND COVENANTS MADE BY YOU HEREIN, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS. YOU SHALL COOPERATE AS FULLY AS REASONABLY REQUIRED IN THE DEFENSE OF ANY CLAIM.**

**WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU AND YOU SHALL NOT IN ANY EVENT SETTLE ANY MATTER WITHOUT OUR WRITTEN CONSENT.**

**18. Jurisdiction; Choice of Law and Forum; Time Limit.**

**THIS SITE IS OPERATED BY US IN THE UNITED STATES AND WE MAKE NO WARRANTY THAT THE MATERIALS AND CONTENT ON THE SITE ARE APPROPRIATE OR AVAILABLE FOR USE OUTSIDE OF THE UNITED STATES. THOSE WHO CHOOSE TO ACCESS THE SITE FROM OUTSIDE THE UNITED STATES DO SO ON THEIR OWN INITIATIVE AND ARE RESPONSIBLE FOR LOCAL LAWS, IF AND TO THE EXTENT THAT LOCAL LAWS ARE APPLICABLE.**

**ANY AND ALL SERVICES AND RIGHTS OF USE HEREUNDER ARE PERFORMED, PERFORMABLE AND/OR SOLD IN THE STATE OF TEXAS, UNITED STATES OF AMERICA, AND YOU IRREVOCABLY AGREE AND CONSENT THAT ANY CAUSE OF ACTION YOU MAY SUBMIT IN CONNECTION WITH YOUR USE OF THE SITE OR PURSUANT TO THESE TERMS WILL BE FILED IN THE STATE OR FEDERAL COURTS IN TRAVIS COUNTY, TEXAS WHICH YOU ACKNOWLEDGE, CONSENT TO AND AGREE WILL BE THE EXCLUSIVE FORUM AND VENUE FOR ANY LEGAL DISPUTE BETWEEN YOU AND US. YOU ALSO AGREE THAT ANY DISPUTE BETWEEN YOU AND US WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.**

**ANY CAUSE OF ACTION YOU MAY HAVE HEREUNDER OR WITH RESPECT TO YOUR USE OF THE SITE MUST BE COMMENCED BY FILING SUIT IN TRAVIS COUNTY, TEXAS, WITHIN ONE (1) YEAR AFTER THE INCIDENT UPON WHICH THE CLAIM OR CAUSE OF ACTION IS BASED FIRST OCCURRED.**

## 19. Additional Terms and Conditions Applicable to Online Booking.

Use of Reservation Manager or other Online Booking Tools We Offer on our Sites. In addition to being bound by the other terms set forth herein, Users and Members who use ReservationManager™ or any other tool provided by us or a third party provider on our Site enabling users to book and/or pay for the rental of properties online on one or more of our Sites (collectively, the “**Booking Services**”) are also bound by the following terms, which are in addition to any other terms applicable in connection with using our Site. In addition, if such Booking Services include payment or other services provided by a third party provider, such services are subject to the additional terms and conditions and privacy policies of such third party providers.

**Booking Services.** We provide Booking Services to manage inquiries, quotes, rental agreements and allow for payments to be made relating to the rental. Please review the following terms and the terms and conditions of any third party provider carefully. If you do not agree to these or such third party provider’s terms, you have no right to obtain information from or otherwise continue using our Booking Services. Failure to use our Booking Services in accordance with the following terms of use may subject you to severe civil and criminal penalties and other liability.

**Rental Agreement.** By utilizing a rental agreement as part of the Booking Services or otherwise displaying terms relating to the rental as part of the online booking process (including such terms that we may require), the user (as “**Guest**”) and member (as “**Owner**”) each agree to the terms and conditions set forth in the rental agreement or other such terms displayed in the booking process (including without limitation the cancellation refund policy) effective as of the date that the user indicates acceptance of the booking or rental agreement, as applicable. You hereby acknowledge and agree that (a) you are fully responsible for such terms and conditions, (b) any rental agreement used, whether a sample provided by the Site or a rental agreement copied and pasted in ReservationManager (or other online booking tool on the Site) by either party, is used solely at their own risk and expense, (c) nothing contained in the Booking Services, this Agreement, or any sample rental agreement is a substitute for the advice of an attorney, and (d) that you have been hereby advised to obtain local legal counsel to prepare, review and revise as necessary any rental agreements to ensure compliance with federal, state, and local law and their particular circumstances, and to revise the rental agreement as necessary to accurately represent their property, rules, features, etc.

**Terms Applicable to Use of Booking Services or Third Party Online Booking Services.**

**Third Party Booking Services Software.** There are some Members, typically property managers, who use software provided by our affiliate, HomeAway Software, or a third party. Such software (“**Other Booking Services**”) may be governed by terms provided by the third parties or Members making such Other Booking Services available. Users who use such Third Party Booking Services are responsible for complying with such terms in addition to our Terms, including, but not limited to the following.

**Timing of Acceptance of Booking Requests and Payment Processing Applicable to Property Managers and Other Members Using Online Booking.** Members who are property managers and other members who use our online booking tools agree to use commercially reasonable efforts to respond to all booking requests from travelers within 24 hours of receipt of a request for

booking. Such Members further agree to take commercially reasonable efforts to cause all traveler payments to be processed within 24 hours of authorization by the traveler for such payment.

Property Damage Protection. By utilizing and/or purchasing Property Damage Protection you agree to the terms and conditions under the Property Damage Protection plan, acknowledge that you understand that certain policy restrictions apply, and agree that Property Damage Protection may be included in the rental. You further acknowledge and agree that (a) although the Property Damage Protection policy will pay a maximum benefit up to the policy limit, you remain fully responsible for the care and condition of the property and for any damage to the property, (b) you remain fully responsible for any damages that are not covered by the policy or that exceed the policy limits, (c) if during you stay at the vacation rental (if applicable) you, as the insured person under the Property Damage Protection plan, causes any damage to real or personal property of the member as a result of inadvertent acts or omissions, you will be responsible for the cost of repair or replacement of such property and hereby authorize and request CSA Travel Protection and Insurance Services to pay directly the Member any amount payable under the terms and conditions of the Property Damage Protection plan up to a maximum benefit of the policy limit. Full details of the Property Damage Protection coverage are contained in the Description of Coverage

<https://www.propertydamageprotection.com/pdf/100HADoc.pdf>. Members further acknowledge and agree that they will choose the plan level with the appropriate level of coverage needed for each property and that they will offer that same plan level to all Users agreeing to rent this property.

Carefree Rental Guarantee. By utilizing and/or purchasing Carefree Rental Guarantee you agree to the terms and conditions of the Carefree Rental Guarantee found here:

<http://guarantee.homeaway.com/tac>.

Cancellation Protection. By utilizing and/or purchasing Cancellation Protection you agree to the terms and conditions under the plan and acknowledge that User understands that certain policy restrictions apply. Full details of the Cancellation Protection coverage are contained in the Description of Coverage <http://www.csatravelprotection.com/certpolicy.do?productclass=G-330CSA>.

**20. Responsibility for Property and Traveler Liability.** We do not provide liability insurance protection for owners, property managers, or travelers; regardless of whether a user obtains insurance coverage through one of our third party providers. Users are solely responsible for obtaining insurance coverage sufficient to protect their properties and guests or their trip, as applicable. Members agree that they have or will obtain the appropriate insurance coverage sufficient to cover the rental of the properties they list on the Site prior to the arrival of their first traveler and will maintain adequate insurance coverage through the departure date of any traveler they have obtained via one of our Sites. Further, Members agree to provide us with copies of relevant proof of coverage upon request.

## 21. GENERAL

Contact Us: To contact us for any reason, users can visit [help.homeaway.com](http://help.homeaway.com).

HomeAway Corporate Entities: The following Sites are operated by the following Subsidiaries of HomeAway, Inc., a Delaware corporation.

HomeAway.com, VRBO.com and VacationRentals.com, and any subdomains thereof, are operated by HomeAway.com, Inc., a Delaware corporation.

Software/HomeAway.com, InstantSoftware.com, Escapia.com, ClearStay.com and HomeAwaySoftware.com, and any subdomains thereof, are operated by HomeAway Software, Inc., as of December 31, 2011 and prior to such date, InstantSoftware.com was operated by Instant, Inc. and Escapia.com and ClearStay.com were operated by Escapia, Inc.

Your agreement to abide by these Terms, the Privacy Policy and any other terms posted on any Site, with respect to any Site you use, is between you and the entity listed above operating such Site.

No Agency: Our relationship is that of independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relations is intended or created by these Terms or your use of the Site.

Notices: Except as explicitly stated otherwise, any notices to us shall be given by postal mail to:

HomeAway.com, Inc., Attn: Legal Department, 1011 W. Fifth Street, Suite 300, Austin, Texas 78703

When we need to send you notice, it will be sent to the email address you provide to the Site during the registration process or as later updated in your account (if applicable). Notice shall be deemed given upon receipt or 24 hours after an email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to any physical or electronic address provided to us during the registration process or as later updated in your account (if applicable). In such case, notice shall be deemed given three days after the date of mailing to a physical address and one day after mailing to an electronic address.

Changes to the Site or these Terms and Conditions: We may change, suspend or discontinue any aspect of the Site at any time, including the availability of any Site features, database, or content. We may also impose limits on certain features or services or restrict your access to parts or the entire Site without notice or liability.

This version of the Terms became effective on the date set forth above and this version amends the version effective prior to such date. We reserve the right, in our sole discretion, to amend these Terms, in whole or in part, at any time, with or without your consent and you acknowledge

and agree that your consent to any such amendment is not required in the event the proposed amendment is clerical and/or non-substantive in nature. Notification of any amendment will be posted on the Site by the indication of the last amendment date at the top of these Terms and will be effective immediately. If you disagree with any non-clerical and/or substantive amendment to these Terms, then (i) your sole remedy as a traveler, or any other user other than a member, is to discontinue your use of the Site, and (ii) your sole remedy as a member is to withhold your consent to the applicability of the proposed amendment to your use of the Site, in which case your use of the Site will continue to be governed by the terms and conditions that were applicable to your use of the Site during the then current term of your subscription as the same were in effect immediately prior to the proposed amendment and you agree that you are responsible for keeping a copy of such terms. When members renew subscriptions, the terms in effect at the time of renewal will govern, provided that such terms may change as described above.

We also reserve the right, in our sole discretion and from time to time, to offer programs, products or services with unique terms and conditions that are separate from and may supersede or supplement in certain respects these Terms. In such cases, your use of the Site with respect to such special program is governed by these Terms together with the terms and conditions of such program, product or service.

We reserve the right, but assume no obligation, to agree to different or conflicting terms and conditions with respect to any user. Any such terms and conditions will not be enforceable unless specifically agreed to by us.

Subscription rates and fees (including any commissions) charged for any listing that is not subscription based (such as pay-per-booking or pay-per-lead) are set at the time of a user or member's purchase of the subscription or renewal or sign up for the non-subscription based, listing, as applicable. Such rates and fees are subject to change without notice or approval. For subscription listings, the rates in effect at the time of the member's next subscription renewal, new listing or a member's upgrade or any other additional or new order of any product or service will govern for such renewal or other order. The fees and commissions applicable to pay-per-booking listings offered on one or more Sites will be displayed under the "List Your Property" tab when such product is generally made available on a Site or shall be otherwise set forth in a communication between us and the member.

The types of products and services (including the features, terms and operation thereof) offered at the time of a member's subscription or sign up for a non-subscription based listing are subject to the descriptions displayed at the time of use and/or purchase and are subject to change without notice or approval. We further reserve the right to offer additional products, services or features for purchase at any time. See also the section below relating to auto renewal of subscriptions.

Your Record of These Terms: We do not separately file the Terms entered into by each user of the Site. Please make a copy of these Terms for your records by printing and/or saving a downloaded copy of the Terms on your personal computer.

Enforcement of These Terms: We may immediately terminate any user's access to or use of the



Site due to such user's breach of these Terms or any other unauthorized use of the Site. However, we do not guarantee that we will take action against all breaches of these Terms. Our failure to take immediate action with respect to a breach by you or others does not waive our right to act with respect to such breach or any other breach. Any action or inaction by us in response to any breach of these Terms does not limit our rights with respect to actions we may take in response to any other similar or different type of breach.

**Entire Agreement, Conflict, Headings and Severability:** These Terms constitute the entire agreement between us and you with respect to the matters set forth herein, and supersede any prior agreement between us and you with respect to your use of the Site. Headings in these Terms are for reference only and do not limit the scope or extent of such section. In the event of any conflict between these Terms and any other terms and conditions applicable to a product, tool or service offered on our Site, the Terms herein shall prevail. If any portion of these Terms is found to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of these Terms shall remain in full force and effect. Further, any provision of these Terms held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**Assignment:** We may assign these Terms in our sole discretion. Users must obtain our prior written consent to assign these Terms, which may be granted or withheld by us in our sole discretion.

### **Additional Terms and Conditions Applicable to Our Members**

In addition to being bound by the Terms set forth above, members who purchase subscriptions to advertise a property on the Site are also bound by the following terms, which are in addition to any other terms agreed to in connection with purchasing or renewing a subscription.

#### **22. Member Eligibility; Accuracy of Information; Representations.**

Our services may only be used by members who can form legally binding contracts under applicable law. If you are registering as a business entity, you represent that you have the authority to bind the entity to these Terms. Each member represents and covenants that all information submitted to us and to the Site during such member's registration with the Site shall be true and correct. Each member further agrees to promptly provide notice to the Site by contacting us as provided above under "General – Contact Us" regarding any updates to any such contact information previously submitted by such member to the Site. Each member agrees to promptly provide such proof of personal identification, proof of ownership of the property listed on the Site, and proof of authority to list the property as we may request. Each member further represents and covenants that: (i) it owns and/or has all necessary rights and authority to offer for rent and to rent the property listed by such member; (ii) it will not wrongfully withhold a rental deposit in breach of the underlying rental agreement; (iii) that it will accurately describe the subject rental property, will not fail to disclose a material defect in, or material information about, a rental property and will upon request, or otherwise from time to time, review the property listing content and location or geographic description to ensure it is accurate and not

misleading ; (iv) that it will not wrongfully deny access to the listed property; and (v) that it will not fail to provide a refund when due in accordance with the applicable cancellation policy or underlying rental agreement. Upon our request, each member agrees to promptly provide to us such proof of personal identification, proof that the condition, location, or amenities associated with the property are accurately described in the listing, proof of ownership of the property listed on the Site, and/or proof of authority to list the property as we may request. If you are a tenant who is listing a home, condominium, or apartment, please refer to your rental contract or lease, or contact your landlord, prior to listing the property to determine whether your lease or contract contains restrictions that would limit your ability to list your room, home, condominium or apartment. Listing your home may be a violation of your lease or contract and could result in legal action against you by your landlord, including possible eviction.

### **23. Appearance in Search Results.**

We cannot guarantee that your listing will appear in any specific order in search results on a Site. Search order will fluctuate based on a variety of factors such as search parameters, subscription level purchased, listing quality, how frequently a calendar is updated, and other factors that we may deem important to the user experience from time to time. Listing appearance or order in any particular search result may also vary depending on the search criteria used by the particular traveler. We reserve the right to apply various search algorithms or to use methods to optimize results for particular travelers' experiences and the overall marketplace. Listings placed on a non-subscription basis, such as pay-per-booking, may not always appear in search results in any particular subscription level or at all. Listings distributed on third party sites are not guaranteed to display on such third party site in any particular order or at all. Search results and sort order may appear different on HomeAway's mobile application than they appear on the Site. To optimize the search experience for both members and travelers, HomeAway retains the right to run occasional tests that will be limited in duration but may alter how we display search results and subscription levels.

### **24. Content, Layout and Copy.**

All content and copy edits submitted by members are subject to review and approval by us in our sole discretion. We reserve the right to refuse to publish any content that we determine in our sole discretion does not meet these Terms or is otherwise unacceptable to us. However, we assume no duty to review content and we shall not have any liability for any loss or damage resulting from the design or positioning of the copy, properties, content and/or photographs or any change made to any content, photograph or copy submitted by any member. All content must meet these Terms and our [Content Guidelines](#). We reserve the right to edit content submitted to the Site in a non-substantive manner solely to cause the content to comply with our content guidelines or formatting requirements. Members are responsible for reviewing and ensuring that any content displayed on the Site appears as the member intended.



## **25. Photographs.**

Photographs should depict the vacation rental as the main subject of the photograph and may not include children or adults if you do not have their legal consent or any information that would violate the privacy rights, intellectual property rights or any other rights of a third party. Photographs must meet our [Content Guidelines](#). We reserve the right not to display or to remove any photographs that we determine, in our sole discretion, do not meet these Terms or are otherwise unacceptable to us.

By submitting a photograph to us, the member represents and warrants that (a) (i) it holds all intellectual property rights with respect to each submitted photograph, or (ii) it has secured from the copyright holder all rights necessary for the photograph to be used in an online advertisement, (b) that any people in the photograph have given permission for their likeness to be displayed in an online advertisement on the Site, (c) that the photograph accurately and fairly represents the subject of the photograph and has not been altered in any manner that would mislead a viewer of that photograph, and (d) that it will indemnify and hold harmless the Site and any member of the HOMEAWAY Group from any cause of action arising from any misrepresentation with respect to any and all photographs so submitted.

It is the member's responsibility to obtain reproduction permission for all photographic and other material used in its listings. The member warrants that it is the owner of the copyright in such material or is authorized by the owner thereof to grant to us the rights therein contained and agrees to provide any proof of such rights to us that we may request.

Further, each member agrees that we may reproduce in whole or in part any photographic material supplied by such member in the promotion of either such member's property or the promotion of the Site.

## **26. Uses of Our Trademarks or Logos.**

There are limited ways in which you may use our trademarks or logos without specific prior written authorization. The following are general guidelines: It is usually permissible for you to refer to HomeAway or the name of one of our affiliate websites on which you list your property in a descriptive manner in your listing on the Site or in other permissible communications. For example, you might say "Check out my vacation rental on HomeAway," or "I list properties on HomeAway." However, you may not refer to HomeAway or any of our affiliates in any way that might lead someone to believe that your company or site is sponsored by, affiliated with, or endorsed by HomeAway or one of our affiliates. For example, you may not say "HomeAway sponsors my vacation rental," or describe your property as "HomeAway's best vacation rental." You may not use the HomeAway name or one of our affiliates' names on any other website that lists vacation rentals without our prior written authorization.

The HomeAway name and logo and those of the HomeAway Group and our affiliates are registered trademarks in the United States and other jurisdictions around the world. We generally do not permit the use of our names and logos, other than as described above or with our prior written authorization. If you want permission to use our name and/or logo in any other manner, including, without limitation, on any website, business card, signage, t-shirts, etc., or if you have other questions, you may visit [help.homeaway.com](http://help.homeaway.com).

**27. Hypertext Links.**

We reserve the right to refuse hypertext links to, or addresses of, other web sites from members' pages, and to remove links or web addresses without notice at our sole discretion. Further, we reserve the right to charge for hypertext links at any time.

**28. Substitution of Properties; Advertising More Than One Property; Property Managers.**

Each listing must relate to an individual and uniquely identified property, unless (i) you are a property manager who has signed up for one of our packages for members who are property managers or (ii) you otherwise purchased a listing package that expressly allows for substitution of properties. This means that:

(a) The property in a listing may not be substituted for another property without our consent. We may approve a request in our discretion if the property manager's contract for the property was terminated and the member provides sufficient proof, as requested by us, and completes any additional request forms we may request. The term of the subscription for any substituted property shall be the same as the term of the originally listed property (i.e., the term will not be extended past the original term).

If a member submits changes to an existing listing that, if approved, would substantially alter the listing to make it that of another property, then we have the right to terminate the listing and may choose, in our sole discretion, to retain any fees associated with the term of the previously existing listing as compensation for the violation of this condition.

(b) The listing specifically cannot be a mere example of properties in a given area. Only one property can appear on each listing, unless it is a property with multiple rental units on the same site and additional advertising units are purchased. We reserve the right to amend the copy or remove any listing when more than one property is described in such listing, and may choose, in our sole discretion to retain any fees associated with the initial term of such non-conforming listing as compensation for the violation of this condition.

(c) Members who manage twenty or more properties should contact HomeAway for Property Managers at (888) 581-1849 to discuss the packages that may best suit their needs. All other subscription listing packages require one subscription per listing (one subscription per property). Contact HomeAway for Property Managers for additional information.

**29. Unauthorized Payment Methods; Subscription Payments; Automatic Renewal of Subscription Payments.**

Payments between members and travelers: We are not a party to any payment transaction between members and travelers, even if we receive a commission in connection with any payment transaction. No member may request any traveler to mail cash, or utilize any instant-cash wire transfer service such as Western Union or MoneyGram in payment for all or part of a

property rental transaction. Any violation of this term or any other unacceptable payment methods that may be posted on the Site may result in the immediate removal of the non-conforming listing from the Site without notice to the member and without refund. From time to time, we may become aware of users attempting to conduct a transaction that would involve an unauthorized payment method or a fraudulent payment method. Ideally, we hope to be able to assist users in avoiding such transactions, but we assume no liability or responsibility to do so or to inform users of any such actual or suspected activity.

Payments for subscriptions: Payment for subscription listings must be made to us in U.S. Dollars paid either by major credit or debit card, or a check drawn on a U.S. bank.

Automatic Renewal of Subscriptions: For any subscription paid for by credit card, such subscription shall automatically renew at the expiration of the then-current term for an additional term of the same duration (as the previous term) and at the then-current non-promotional subscription rate. If such subscription was purchased by check or another form of payment other than by credit card (if such other payment form was permitted), such subscription shall not be automatically renewed. Automatic renewal applies to all subscriptions purchased by credit card. The automatic renewal feature allows your service to remain uninterrupted at the expiration of your then-current term. If you wish to turn off auto-renewal, you must log on to your account and manually turn off auto-renewal in your owner dashboard (for HomeAway.com, VRBO.com and VacationRentals.com), at least 5 days prior to expiration of the then-current term. Upon any such turning off auto-renewal, your subscription will remain active through the expiration of your then-current subscription term; however your subscription will not be automatically renewed upon the expiration of your then current term. If your subscription does not auto-renew or expires at the end of your then current subscription term and you desire to renew your subscription, you will be required to pay the then-current non-promotional subscription rate to renew your subscription or to activate a new subscription.

If you do not turn off auto-renewal and you continue to use our subscription service, you re-affirm and authorize us to charge your credit card at the end of each subscription term for an additional term of the same duration as the initial term and at the then-current non-promotional subscription rate for the same product or service.

If the product or service that you last purchased has changed in any way or is no longer offered, you agree and authorize us to charge your credit card at the renewal of your subscription term for a product or service that is the most similar, as determined by us, to the product or service that you previously purchased, even if the price of such product or service is not the same of the prior product or service that you purchased. You agree to be responsible for any such charges, and we reserve the right to obtain payment directly from you if necessary.

If you wish to avoid billing of subscription fees for the renewal term to your credit card, you must turn off auto-renewal for your subscription at least 5 days before it renews. If you wish to change your credit card to be charged or if your credit card information otherwise changes, see [help.homeaway.com](http://help.homeaway.com) for FAQ information on updating the information in your owner dashboard, as applicable or to provide the new or different credit card information, as applicable, to provide the new or different credit card information.

Non-Subscription Listings: If a Site enables you to list your property on a basis other than by subscription, you agree to pay us compensation as described to you in the sign up process for each rental of the property displayed in such listing, which terms may be updated by us from time to time without notice by us displaying the terms on the Site on which you signed up for the listing. The sign up process and additional notices you may receive from us may also provide additional terms and conditions for such listings.

### **30. Subscription Term, Refund Requests and Termination or Transfer of Listings.**

Subscription Term: All subscription listings are sold to run the full term that is chosen by the member. The term starts on the date that the member submits the full or initial (as applicable) payment and expires on the last date of the term chosen by the member. For example, for an annual subscription term, if the member submits payment for the subscription on July 1st, the subscription would expire on June 30 of the following year.

Refund Requests: Generally, no refunds are available unless a member qualifies for a refund under any guarantee program we may have in effect. If you believe you qualify for a refund under a guarantee we are offering, you may contact customer support by sending your request to the address listed under “General – Contact Us” above and include your listing number, and your reason for dissatisfaction. We will then determine, in accordance with the applicable guarantee program, whether any refund is due.

Refund Requests for Subscription Listings Not Completed: In the event you purchase a subscription for a listing but do not complete the creation of the listing or the listing does not get posted after purchase for any other reason, refund requests will be considered only during the first three (3) months following the purchase date. If within such three (3) month period you do not complete the creation of your listing as we may require to display such listing on the Site (i) you shall not be entitled to any refund and (ii) your subscription will expire no more than 15 months from the purchase date of the subscription regardless of the listing posting date.

If you renew your subscription, or if your subscription automatically renews under its terms of your subscription, your listing will remain online for the entire subscription period without refund. If you sell your property and no longer wish for the listing to remain online, please contact us and we can remove the listing; however, no refund will be owed.

Our Right to Terminate a Listing: If, in our sole discretion, any member submits unsuitable material to our Site or into our database, misuses the Site or our online system or is in material breach of these Terms, we reserve the right to terminate such member’s subscription(s) immediately without refund. In addition, if we become aware of or receive a complaint or a series of complaints from any user or other third party regarding a member’s listing or rental practices that, in our sole discretion, warrants the immediate removal of such member’s listing from the Site (for example, and without limitation, if a member double-books a property for multiple travelers on the same date, or engages in any practice that, in our sole discretion, would be considered deceptive, unfair or improper within the vacation rental industry or in an online marketplace for vacation rentals, if we determine or suspect that the member’s payment-related practices or procedures are not secure, legal or otherwise proper, or if we receive a complaint

that any listing's content infringes on the rights of a third party), then we may immediately terminate such member's listing(s) or subscription(s) without notice to the member and without refund. We assume no duty to investigate complaints. Finally, if any member is abusive or offensive to any employee or representative of the HomeAway Group, we reserve the right to terminate such member's listing(s) or subscription(s) immediately without refund. Finally, if any member is in breach of these Terms or its obligations to us or any of our third party providers then we may terminate such member's subscription(s) immediately without notice to the member and without refund.

Transfer of Listing to a Third Party: No listing may be transferred to another party. In the event of a property sale or change in property management, HomeAway will provide guidance on options for creating a new listing.

### **31. Additional Terms Applicable to Pay-Per-Booking Listings.**

A description of the features and applicable fees and commissions that will apply to pay-per-booking listings will be displayed under the "List Your Property" tab of the Site offering such product, when made generally available.

When available, pay-per-booking listings may be agreed to by property owners and managers approved for an online payments account. Such accounts are subject to the additional terms, conditions and requirements set forth during the sign up for such an account, including those of our third party providers. Online booking and payments is required for all pay-per-booking listings. Online payments are provided by third party providers and are subject to the terms and conditions and privacy policies of such providers.

Pay-per-booking listings may be converted to subscription listings at any time; however any bookings already made shall remain subject to applicable pay-per-booking fees and commissions.

Cancellation policies are required for all pay-per-booking listings, and requirements for such cancellation policies shall be displayed through the "List Your Property" tab of the Site offering the pay-per-booking listing. To the fullest extent legally permissible, Members who list their properties in a pay-per-booking listing, agree to rent such properties through such listing and not through any other means.

### **32. Distribution of Listings to Third Party Websites.**

To enable Members to obtain broader distribution of their properties, we may provide your listing information, or otherwise provide for the distribution of, your listing on a Third Party Website. Additional terms and conditions may apply to such distributions, as we may notify you of via your online account or email.

1:16-cv-01211

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b> James May, on behalf of himself and all others similarly situated</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Multnomah, OR</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Thomas S. McNamara (attorney-in-charge) INDIK &amp; McNAMARA, P.C. 100 South Broad Street, Suite 2230, Philadelphia, PA 19110; 215-567-7125</p>	<p><b>DEFENDANTS</b> Expedia, Inc., a Delaware corporation, as successor by merger to HomeAway, Inc., a Delaware corporation; and Homeaway.com, Inc., a Delaware corporation</p> <p><b>County of Residence of First Listed Defendant</b> <u>New Castle, DE</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p><b>LABOR</b></p> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. Section 1332 (d)(2); 28 U.S.C. Section 1391

Brief description of cause:  
 Breach of contract, fraud, and violations of consumer protection laws.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 11/07/2016    SIGNATURE OF ATTORNEY OF RECORD: *Robert C. Alder*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_